

**SENATE SUBSTITUTE FOR  
HOUSE BILL NO. 5985**

A bill to amend 2013 PA 93, entitled "Michigan indigent defense commission act," by amending sections 3, 5, 7, 9, 11, 13, 15, and 17 (MCL 780.983, 780.985, 780.987, 780.989, 780.991, 780.993, 780.995, and 780.997), sections 3, 5, and 11 as amended by 2016 PA 439, section 9 as amended by 2016 PA 440, section 13 as amended by 2016 PA 441, section 15 as amended by 2016 PA 442, and section 17 as amended by 2016 PA 443, and by adding section 22.

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

- 1           Sec. 3. As used in this act:
- 2           (a) "Adult" means either of the following:
- 3           (i) An individual 17 years of age or older.
- 4           (ii) An individual less than 17 years of age at the time of

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

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

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

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

16 (D) The prosecuting attorney authorizes the filing of a  
17 complaint and warrant for a specified juvenile violation under  
18 section 1f of chapter IV of the code of criminal procedure, 1927 PA  
19 175, MCL 764.1f.

20 (B) **"CONSUMER PRICE INDEX" MEANS THE ANNUAL UNITED STATES**  
21 **CONSUMER PRICE INDEX FOR ALL URBAN CONSUMERS AS DEFINED AND**  
22 **REPORTED BY THE UNITED STATES DEPARTMENT OF LABOR, BUREAU OF**  
23 **STATISTICS.**

24 (C) ~~(b)~~—"Department" means the department of licensing and  
25 regulatory affairs.

26 (D) ~~(e)~~—"Effective assistance of counsel" or "effective  
27 representation" means legal representation that is compliant with

1 standards established by the appellate courts of this state and the  
2 United States ~~supreme court~~. **SUPREME COURT.**

3 (E) ~~(d)~~—"Indigent" means meeting 1 or more of the conditions  
4 described in section 11(3).

5 (F) ~~(e)~~—"Indigent criminal defense services" means local legal  
6 defense services provided to a defendant and to which both of the  
7 following conditions apply:

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

12 (ii) The defendant is determined to be indigent under section  
13 11(3).

14 (G) ~~(f)~~—Indigent criminal defense services do not include  
15 services authorized to be provided under the appellate defender  
16 act, 1978 PA 620, MCL 780.711 to 780.719.

17 (H) ~~(g)~~—"Indigent criminal defense system" or "system" means  
18 either of the following:

19 (i) The local unit of government that funds a trial court.

20 (ii) If a trial court is funded by more than 1 local unit of  
21 government, those local units of government, collectively.

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

27 **BEGINNING ON NOVEMBER 1, 2018, IF THE CONSUMER PRICE INDEX HAS**

1 INCREASED SINCE NOVEMBER 1 OF THE PRIOR STATE FISCAL YEAR, THE  
2 LOCAL SHARE MUST BE ADJUSTED BY THAT NUMBER OR BY 3%, WHICHEVER IS  
3 LESS.

4 (J) ~~(i)~~ "MIDC" or "commission" means the Michigan indigent  
5 defense commission created under section 5.

6 (K) "PARTIALLY INDIGENT" MEANS A CRIMINAL DEFENDANT WHO IS  
7 UNABLE TO AFFORD THE COMPLETE COST OF LEGAL REPRESENTATION, BUT IS  
8 ABLE TO CONTRIBUTE A MONETARY AMOUNT TOWARD HIS OR HER  
9 REPRESENTATION.

10 Sec. 5. (1) The Michigan indigent defense commission is  
11 established within the department.

12 (2) The MIDC ~~shall retain as an autonomous entity all~~  
13 ~~statutory authority, powers, duties, functions, records, personnel,~~  
14 ~~property, unexpended balances of appropriations, allocations, and~~  
15 ~~other functions, including the functions of budgeting, personnel,~~  
16 ~~locating offices, and other management functions. Any portion of~~  
17 ~~funds appropriated to the MIDC that is not expended in a state~~  
18 ~~fiscal year shall not lapse to the general fund but shall be~~  
19 ~~carried forward in a work project account that is in compliance~~  
20 ~~with section 451a of the management and budget act, 1984 PA 431,~~  
21 ~~MCL 18.1451a, for use in the following state fiscal year. IS AN~~  
22 **AUTONOMOUS ENTITY WITHIN THE DEPARTMENT. EXCEPT AS OTHERWISE**  
23 **PROVIDED BY LAW, THE MIDC SHALL EXERCISE ITS STATUTORY POWERS,**  
24 **DUTIES, FUNCTIONS, AND RESPONSIBILITIES INDEPENDENTLY OF THE**  
25 **DEPARTMENT. THE DEPARTMENT SHALL PROVIDE SUPPORT AND COORDINATED**  
26 **SERVICES AS REQUESTED BY THE MIDC INCLUDING PROVIDING PERSONNEL,**  
27 **BUDGETING, PROCUREMENT, AND OTHER ADMINISTRATIVE SUPPORT TO THE**

1 **MIDC SUFFICIENT TO CARRY OUT ITS DUTIES, POWERS, AND**  
2 **RESPONSIBILITIES.**

3 (3) The MIDC shall propose minimum standards for the local  
4 delivery of indigent criminal defense services providing effective  
5 assistance of counsel to adults throughout this state. These  
6 minimum standards ~~shall~~**MUST** be designed to ensure the provision of  
7 indigent criminal defense services that meet constitutional  
8 requirements for effective assistance of counsel. However, these  
9 minimum standards ~~shall~~**MUST** not infringe on the supreme court's  
10 authority over practice and procedure in the courts of this state  
11 as set forth in section 5 of article VI of the state constitution  
12 of 1963.

13 (4) The commission shall convene a public hearing before a  
14 proposed standard is recommended to the department. A minimum  
15 standard proposed under this subsection ~~shall~~**MUST** be submitted to  
16 the department for approval or rejection. Opposition to a proposed  
17 minimum standard may be submitted to the department in a manner  
18 prescribed by the department. An indigent criminal defense system  
19 that objects to a recommended minimum standard on the ground that  
20 the recommended minimum standard would exceed the MIDC's statutory  
21 authority shall state specifically how the recommended minimum  
22 standard would exceed the MIDC's statutory authority. A proposed  
23 minimum standard is final when it is approved by the department. A  
24 minimum standard that is approved by the department is not subject  
25 to challenge through the appellate procedures in section 15. An  
26 approved minimum standard for the local delivery of indigent  
27 criminal defense services within an indigent criminal defense

1 system is not a rule as **THAT TERM IS** defined in section 7 of the  
2 administrative procedures act of 1969, 1969 PA 306, MCL 24.207.

3 (5) Approval of a minimum standard proposed by the MIDC is  
4 considered a final department action subject to judicial review  
5 under section 28 of article VI of the state constitution of 1963 to  
6 determine whether the approved minimum standard is authorized by  
7 law. Jurisdiction and venue for judicial review are vested in the  
8 court of claims. An indigent criminal defense system may file a  
9 petition for review in the court of claims within 60 days after the  
10 date of mailing notice of the department's final decision on the  
11 recommended minimum standard. The filing of a petition for review  
12 does not stay enforcement of an approved minimum standard, but the  
13 department may grant, or the court of claims may order, a stay upon  
14 appropriate terms.

15 (6) The MIDC shall identify and encourage best practices for  
16 delivering the effective assistance of counsel to indigent  
17 defendants charged with crimes.

18 **(7) THE MIDC SHALL IDENTIFY AND IMPLEMENT A SYSTEM OF**  
19 **PERFORMANCE METRICS TO ASSESS THE PROVISION OF INDIGENT DEFENSE**  
20 **SERVICES IN THIS STATE RELATIVE TO NATIONAL STANDARDS AND**  
21 **BENCHMARKS. THE MIDC SHALL PROVIDE AN ANNUAL REPORT TO THE**  
22 **GOVERNOR, LEGISLATURE, SUPREME COURT, AND THE STATE BUDGET DIRECTOR**  
23 **ON THE PERFORMANCE METRICS NOT LATER THAN DECEMBER 15 OF EACH YEAR.**

24 Sec. 7. (1) The MIDC includes ~~15-18~~ voting members and the ex  
25 officio member described in subsection (2). The ~~15-18~~ voting  
26 members shall be appointed by the governor for terms of 4 years,  
27 except as provided in subsection (4). Subject to subsection (3),

1 the governor shall appoint members under this subsection as  
2 follows:

3 (a) Two members submitted by the speaker of the house of  
4 representatives.

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

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

8 (d) Three members from a list of 9 names submitted by the  
9 ~~eriminal defense attorney association~~ **CRIMINAL DEFENSE ATTORNEYS** of  
10 Michigan.

11 (e) One member from a list of 3 names submitted by the  
12 Michigan ~~judges association~~ **JUDGES ASSOCIATION**.

13 (f) One member from a list of 3 names submitted by the  
14 Michigan ~~district judges association~~ **DISTRICT JUDGES ASSOCIATION**.

15 (g) One member from a list of 3 names submitted by the ~~state~~  
16 ~~bar~~ **STATE BAR** of Michigan.

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

21 (i) One member from a list of 3 names submitted by the  
22 ~~prosecuting attorney's association~~ **PROSECUTING ATTORNEYS**  
23 **ASSOCIATION** of Michigan who is a former county prosecuting attorney  
24 or former assistant county prosecuting attorney.

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

26 ~~——(k) One member selected to represent local units of~~  
27 ~~government.~~

1           (K) ONE MEMBER REPRESENTING THE FUNDING UNIT OF A CIRCUIT  
2 COURT FROM A LIST OF 3 NAMES SUBMITTED BY THE MICHIGAN ASSOCIATION  
3 OF COUNTIES.

4           (I) ONE MEMBER REPRESENTING THE FUNDING UNIT OF A DISTRICT  
5 COURT FROM A LIST OF 3 NAMES SUBMITTED BY THE MICHIGAN TOWNSHIP  
6 ASSOCIATION.

7           (M) ONE MEMBER REPRESENTING THE FUNDING UNIT OF A DISTRICT  
8 COURT OF THE THIRD CLASS FROM A LIST OF 3 NAMES SUBMITTED BY THE  
9 MICHIGAN MUNICIPAL LEAGUE.

10           (N) ONE MEMBER FROM A LIST OF 3 NAMES SUBMITTED BY THE STATE  
11 BUDGET OFFICE.

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

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



1 (4) MIDC members shall hold office until their successors are  
2 appointed. The terms of the members ~~shall~~**MUST** be staggered.  
3 Initially, 4 members ~~shall~~**MUST** be appointed for a term of 4 years  
4 each, 4 members ~~shall~~**MUST** be appointed for a term of 3 years each,  
5 4 members ~~shall~~**MUST** be appointed for a term of 2 years each, and 3  
6 members ~~shall~~**MUST** be appointed for a term of 1 year each.

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

17 (6) The governor shall appoint 1 of the original MIDC members  
18 to serve as chairperson of the MIDC for a term of 1 year. At the  
19 expiration of that year, or upon the vacancy in the membership of  
20 the member appointed chairperson, the MIDC shall annually elect a  
21 chairperson from its membership to serve a 1-year term. An MIDC  
22 member shall not serve as chairperson of the MIDC for more than 3  
23 consecutive terms.

24 (7) MIDC members shall not receive compensation in that  
25 capacity but ~~shall~~**MUST** be reimbursed for their reasonable actual  
26 and necessary expenses by the state treasurer.

27 (8) The governor may remove an MIDC member for incompetence,

1 dereliction of duty, malfeasance, misfeasance, or nonfeasance in  
2 office, or for any other good cause.

3 (9) A majority of the MIDC voting members constitute a quorum  
4 for the transaction of business at a meeting of the MIDC. A  
5 majority of the MIDC voting members are required for official  
6 action of the commission.

7 (10) Confidential case information, including, but not limited  
8 to, client information and attorney work product, is exempt from  
9 disclosure under the freedom of information act, 1976 PA 442, MCL  
10 15.231 to 15.246.

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

12 (a) Developing and overseeing the implementation, enforcement,  
13 and modification of minimum standards, rules, and procedures to  
14 ensure that indigent criminal defense services providing effective  
15 assistance of counsel are consistently delivered to all indigent  
16 adults in this state consistent with the safeguards of the United  
17 States constitution, the state constitution of 1963, and this act.

18 (b) Investigating, auditing, and reviewing the operation of  
19 indigent criminal defense services to assure compliance with the  
20 commission's minimum standards, rules, and procedures. However, an  
21 indigent criminal defense service that is in compliance with the  
22 commission's minimum standards, rules, and procedures shall not be  
23 required to provide indigent criminal defense services in excess of  
24 those standards, rules, and procedures.

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

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

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

4 (ii) Assisting the MIDC in developing, implementing, and  
5 regularly reviewing the MIDC's standards, rules, and procedures,  
6 including, but not limited to, recommending to the MIDC suggested  
7 changes to the criteria for an indigent adult's eligibility for  
8 receiving criminal trial defense services under this act.

9 (e) Establishing procedures for the receipt and resolution of  
10 complaints, and the implementation of recommendations from the  
11 courts, other participants in the criminal justice system, clients,  
12 and members of the public.

13 (f) Establishing procedures for the mandatory collection of  
14 data concerning the operation of the MIDC, each indigent criminal  
15 defense system, and the operation of indigent criminal defense  
16 services.

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

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

25 (2) Upon the appropriation of sufficient funds, the MIDC shall  
26 establish minimum standards to carry out the purpose of this act,  
27 and collect data from all indigent criminal defense systems. The

1 MIDC shall propose goals for compliance with the minimum standards  
2 established under this act consistent with the metrics established  
3 under this section and appropriations by this state.

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

10 (4) The MIDC shall be mindful that defense attorneys who  
11 provide indigent criminal defense services are partners with the  
12 prosecution, law enforcement, and the judiciary in the criminal  
13 justice system.

14 (5) The ~~commission~~-MIDC shall establish procedures for the  
15 conduct of its affairs and promulgate policies necessary to carry  
16 out its powers and duties under this act.

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

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

26 (a) The delivery of indigent criminal defense services shall  
27 be independent of the judiciary but ensure that the judges of this

1 state are permitted and encouraged to contribute information and  
2 advice concerning that delivery of indigent criminal defense  
3 services.

4 (b) If the caseload is sufficiently high, indigent criminal  
5 defense services may consist of both an indigent criminal defender  
6 office and the active participation of other members of the state  
7 bar.

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

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

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

25 (b) Defense counsel's workload is controlled to permit  
26 effective representation. Economic disincentives or incentives that  
27 impair defense counsel's ability to provide effective

1 representation ~~shall~~**MUST** be avoided. The MIDC may develop workload  
2 controls to enhance defense counsel's ability to provide effective  
3 representation.

4 (c) Defense counsel's ability, training, and experience match  
5 the nature and complexity of the case to which he or she is  
6 appointed.

7 (d) The same defense counsel continuously represents and  
8 personally appears at every court appearance throughout the  
9 pendency of the case. However, indigent criminal defense systems  
10 may exempt ministerial, nonsubstantive tasks, and hearings from  
11 this prescription.

12 (e) Indigent criminal defense systems employ only defense  
13 counsel who have attended continuing legal education relevant to  
14 counsels' indigent defense clients.

15 (f) Indigent criminal defense systems systematically review  
16 defense counsel at the local level for efficiency and for effective  
17 representation according to MIDC standards.

18 (3) The following requirements apply to the application for,  
19 and appointment of, indigent criminal defense services under this  
20 act:

21 (a) A preliminary inquiry regarding, and the determination of,  
22 the indigency of any defendant, **INCLUDING A DETERMINATION REGARDING**  
23 **WHETHER A DEFENDANT IS PARTIALLY INDIGENT**, for purposes of this act  
24 ~~shall~~**MUST** be made as determined by the indigent criminal defense  
25 system not later than at the defendant's first appearance in court.  
26 The determination may be reviewed by the indigent criminal defense  
27 system at any other stage of the proceedings. In determining

1 whether a defendant is entitled to the appointment of counsel, the  
2 indigent criminal defense system shall consider whether the  
3 defendant is indigent and the extent of his or her ability to pay.  
4 Factors to be considered include, but are not limited to, income or  
5 funds from employment or any other source, including personal  
6 public assistance, to which the defendant is entitled, property  
7 owned by the defendant or in which he or she has an economic  
8 interest, outstanding obligations, the number and ages of the  
9 defendant's dependents, employment and job training history, and  
10 his or her level of education. A trial court may play a role in  
11 this determination as part of any indigent criminal defense  
12 system's compliance plan under the direction and supervision of the  
13 supreme court, consistent with section 4 of article VI of the state  
14 constitution of 1963. **IF AN INDIGENT CRIMINAL DEFENSE SYSTEM**  
15 **DETERMINES THAT A DEFENDANT IS PARTIALLY INDIGENT, THE INDIGENT**  
16 **CRIMINAL DEFENSE SYSTEM SHALL DETERMINE THE AMOUNT OF MONEY THE**  
17 **DEFENDANT MUST CONTRIBUTE TO HIS OR HER DEFENSE.** Nothing in this  
18 act ~~shall prevent~~ **PREVENTS** a court from making a determination of  
19 indigency for any purpose consistent with article VI of the state  
20 constitution of 1963.

21 (b) A defendant is considered to be indigent if he or she is  
22 unable, without substantial financial hardship to himself or  
23 herself or to his or her dependents, to obtain competent, qualified  
24 legal representation on his or her own. Substantial financial  
25 hardship ~~shall be~~ **IS** rebuttably presumed if the defendant receives  
26 personal public assistance, including under the food assistance  
27 program, temporary assistance for needy families, ~~medicaid,~~

1 **MEDICAID**, or disability insurance, resides in public housing, or  
2 earns an income less than 140% of the federal poverty guideline. A  
3 defendant is also rebuttably presumed to have a substantial  
4 financial hardship if he or she is currently serving a sentence in  
5 a correctional institution or is receiving residential treatment in  
6 a mental health or substance abuse facility.

7 (c) A defendant not falling below the presumptive thresholds  
8 described in subdivision (b) ~~shall~~**MUST** be subjected to a more  
9 rigorous screening process to determine if his or her particular  
10 circumstances, including the seriousness of the charges being  
11 faced, his or her monthly expenses, and local private counsel rates  
12 would result in a substantial hardship if he or she were required  
13 to retain private counsel.

14 (D) **A DETERMINATION THAT A DEFENDANT IS PARTIALLY INDIGENT MAY**  
15 **ONLY BE MADE IF THE INDIGENT CRIMINAL DEFENSE SYSTEM DETERMINES**  
16 **THAT A DEFENDANT IS NOT FULLY INDIGENT. AN INDIGENT CRIMINAL**  
17 **DEFENSE SYSTEM THAT DETERMINES A DEFENDANT IS NOT FULLY INDIGENT**  
18 **BUT MAY BE PARTIALLY INDIGENT MUST UTILIZE THE SCREENING PROCESS**  
19 **UNDER SUBDIVISION (C). THE PROVISIONS OF SUBDIVISION (E) APPLY TO A**  
20 **PARTIALLY INDIGENT DEFENDANT.**

21 (E) **THE MIDC SHALL PROMULGATE OBJECTIVE STANDARDS FOR INDIGENT**  
22 **CRIMINAL DEFENSE SYSTEMS TO DETERMINE WHETHER A DEFENDANT IS**  
23 **PARTIALLY INDIGENT.**

24 (F) ~~(d)~~**A defendant shall be IS** responsible for applying for  
25 indigent defense counsel and for establishing his or her indigency  
26 and eligibility for appointed counsel under this act. Any oral or  
27 written statements made by the defendant in or for use in the



1 criminal proceeding and material to the issue of his or her  
2 indigency ~~shall~~**MUST** be made under oath or an equivalent  
3 affirmation.

4 (4) THE MIDC SHALL ESTABLISH STANDARDS FOR TRAINERS AND  
5 ORGANIZATIONS CONDUCTING TRAINING THAT RECEIVE MIDC FUNDS FOR  
6 TRAINING AND EDUCATION. THE STANDARDS ESTABLISHED UNDER THIS  
7 SUBSECTION MUST REQUIRE THAT THE MIDC ANALYZE THE QUALITY OF THE  
8 TRAINING, AND MUST REQUIRE THAT THE EFFECTIVENESS OF THE TRAINING  
9 BE CAPABLE OF BEING MEASURED AND VALIDATED.

10 (5) AN INDIGENT CRIMINAL DEFENSE SYSTEM MAY INCLUDE IN ITS  
11 COMPLIANCE PLAN A REQUEST THAT THE MIDC SERVE AS A CLEARINGHOUSE  
12 FOR EXPERTS AND INVESTIGATORS. IF AN INDIGENT CRIMINAL DEFENSE  
13 SYSTEM MAKES A REQUEST UNDER THIS SUBSECTION, THE MIDC MAY DEVELOP  
14 AND OPERATE A SYSTEM FOR DETERMINING THE NEED AND AVAILABILITY FOR  
15 AN EXPERT OR INVESTIGATOR IN INDIVIDUAL CASES.

16 Sec. 13. (1) All indigent criminal defense systems and, at the  
17 direction of the supreme court, attorneys engaged in providing  
18 indigent criminal defense services shall cooperate and participate  
19 with the MIDC in the investigation, audit, and review of their  
20 indigent criminal defense services.

21 (2) An indigent criminal defense system may submit to the MIDC  
22 an estimate of the cost of developing the plan and cost analysis  
23 for implementing the plan under subsection (3) to the MIDC for  
24 approval. ~~Upon approval,~~ **IF APPROVED**, the MIDC shall award the  
25 indigent criminal defense system a grant to pay the approved costs  
26 for developing the plan and cost analysis under subsection (3).

27 (3) No later than 180 days after a standard is approved by the

1 department, each indigent criminal defense system shall submit a  
2 plan to the MIDC for the provision of indigent criminal defense  
3 services in a manner as determined by the MIDC and shall submit an  
4 annual plan for the following state fiscal year on or before  
5 ~~February~~**OCTOBER** 1 of each year. A plan submitted under this  
6 subsection ~~shall~~**MUST** specifically address how the minimum  
7 standards established by the MIDC under this act ~~shall~~**WILL** be met  
8 and ~~shall~~**MUST** include a cost analysis **FOR MEETING THOSE MINIMUM**  
9 **STANDARDS**. The standards to be addressed in the annual plan are  
10 those approved not less than ~~60~~**180** days before the annual plan  
11 submission date. ~~This~~**THE** cost analysis ~~shall~~**MUST** include a  
12 statement of the funds in excess of the local share, if any,  
13 necessary to allow its system to comply with the MIDC's minimum  
14 standards.

15 (4) The MIDC shall approve or disapprove **ALL OR ANY PORTION OF**  
16 a plan or cost analysis, or both a plan and cost analysis,  
17 submitted under subsection (3), and shall do so within ~~60~~**90**  
18 calendar days of the submission of the plan and cost analysis. If  
19 the MIDC disapproves **ANY PART OF** the plan, the cost analysis, or  
20 both the plan and the cost analysis, the indigent criminal defense  
21 system shall consult with the MIDC and, **FOR ANY DISAPPROVED**  
22 **PORTION**, submit a new plan, a new cost analysis, or both within ~~30~~  
23 **60** calendar days of the mailing date of the official notification  
24 of the MIDC's disapproval. If after 3 submissions a compromise is  
25 not reached, the dispute ~~shall~~**MUST** be resolved as provided in  
26 section 15. **ALL APPROVED PROVISIONS OF AN INDIGENT CRIMINAL DEFENSE**  
27 **SYSTEM'S PLAN AND COST ANALYSIS MUST NOT BE DELAYED BY ANY**

1 DISAPPROVED PORTION AND MUST PROCEED AS PROVIDED IN THIS ACT. THE  
2 MIDC SHALL NOT APPROVE A COST ANALYSIS OR PORTION OF A COST  
3 ANALYSIS UNLESS IT IS REASONABLY AND DIRECTLY RELATED TO AN  
4 INDIGENT DEFENSE FUNCTION.

5 (5) The MIDC shall submit a report to the governor, the senate  
6 majority leader, the speaker of the house of representatives, and  
7 the appropriations committees of the senate and house of  
8 representatives requesting the appropriation of funds necessary to  
9 implement ~~the plan for each system approved by the MIDC.~~ **COMPLIANCE**  
10 **PLANS AFTER ALL THE SYSTEMS COMPLIANCE PLANS ARE APPROVED BY THE**  
11 **MIDC. FOR STANDARDS APPROVED AFTER JANUARY 1, 2018, THE MIDC SHALL**  
12 **INCLUDE A COST ANALYSIS FOR EACH MINIMUM STANDARD IN THE REPORT AND**  
13 **SHALL ALSO PROVIDE A COST ANALYSIS FOR EACH MINIMUM STANDARD**  
14 **APPROVED ON OR BEFORE JANUARY 1, 2018, IF A COST ANALYSIS FOR EACH**  
15 **MINIMUM STANDARD APPROVED WAS NOT PROVIDED AND SHALL DO SO NOT**  
16 **LATER THAN OCTOBER 31, 2018. THE AMOUNT REQUESTED UNDER THIS**  
17 **SUBSECTION MUST BE EQUAL TO THE TOTAL AMOUNT REQUIRED TO ACHIEVE**  
18 **FULL COMPLIANCE AS AGREED UPON BY THE MIDC AND THE INDIGENT**  
19 **CRIMINAL DEFENSE SYSTEMS UNDER THE APPROVAL PROCESS PROVIDED IN**  
20 **SUBSECTION (4).** The information used to create this report ~~shall~~  
21 **MUST** be made available to the governor, the senate majority leader,  
22 the speaker of the house of representatives, and the appropriations  
23 committees of the senate and house of representatives.

24 (6) **THE MIDC SHALL SUBMIT A REPORT TO THE GOVERNOR, THE SENATE**  
25 **MAJORITY LEADER, THE SPEAKER OF THE HOUSE OF REPRESENTATIVES, AND**  
26 **THE APPROPRIATIONS COMMITTEES OF THE SENATE AND HOUSE OF**  
27 **REPRESENTATIVES NOT LATER THAN OCTOBER 31, 2021 THAT INCLUDES A**

1 RECOMMENDATION REGARDING THE APPROPRIATE LEVEL OF LOCAL SHARE,  
2 EXPRESSED IN BOTH TOTAL DOLLARS AND AS A PERCENTAGE OF THE TOTAL  
3 COST OF COMPLIANCE FOR EACH INDIGENT CRIMINAL DEFENSE SYSTEM.

4 (7) ~~(6)~~—Except as provided in subsection ~~(8)~~, (10), an  
5 indigent criminal defense system shall maintain not less than its  
6 local share. If the MIDC determines that funding in excess of the  
7 indigent criminal defense system's share is necessary in order to  
8 bring its system into compliance with the minimum standards  
9 established by the MIDC, that excess funding shall ~~shall~~**MUST** be paid by  
10 this state. The legislature shall appropriate to the MIDC the  
11 additional funds necessary for a system to meet and maintain those  
12 minimum standards, which funds ~~shall~~**MUST** be provided to indigent  
13 criminal defense systems through grants as described in subsection  
14 ~~(7)~~. (9). THE LEGISLATURE MAY APPROPRIATE FUNDS THAT APPLY TO LESS  
15 THAN ALL OF THE MINIMUM STANDARDS AND MAY PROVIDE LESS THAN THE  
16 FULL AMOUNT OF THE FUNDS REQUESTED UNDER SUBSECTION (5).  
17 NOTWITHSTANDING THIS SUBSECTION, IT IS THE INTENT OF THE  
18 LEGISLATURE TO FUND ALL OF THE MINIMUM STANDARDS CONTAINED IN THE  
19 REPORT UNDER SUBSECTION (5) WITHIN 3 YEARS OF THE DATE ON WHICH THE  
20 MINIMUM STANDARDS WERE ADOPTED.

21 (8) IF THE LEGISLATURE APPROPRIATES GRANT FUNDING AT A LEVEL  
22 LOWER THAN THE AMOUNT REQUIRED TO ACHIEVE FULL COMPLIANCE WITH ALL  
23 STANDARDS IN AN INDIGENT CRIMINAL DEFENSE SYSTEM'S APPROVED PLAN,  
24 THE MIDC SHALL DO ALL OF THE FOLLOWING:

25 (A) DETERMINE THE METHOD BY WHICH FUNDING IS DISTRIBUTED.

26 (B) REPORT THE PROCESS BY WHICH FUNDING WAS DETERMINED AND THE  
27 FUNDING AMOUNTS BY INDIGENT CRIMINAL DEFENSE SYSTEM TO THE

1 LEGISLATURE.

2 (C) INFORM EACH INDIGENT CRIMINAL DEFENSE SYSTEM OF THE AMOUNT  
3 THAT WILL BE FUNDED TO THAT SYSTEM.

4 (9) ~~(7)~~—An indigent criminal defense system ~~shall~~**MUST** not be  
5 required to provide funds in excess of its local share. The MIDC  
6 shall provide grants to indigent criminal defense systems to assist  
7 in bringing the systems into compliance with minimum standards  
8 established by the MIDC.

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

14 (11) ~~(9)~~—This state shall appropriate funds to the MIDC for  
15 grants to the local units of government for the reasonable costs  
16 associated with data required to be collected under this act that  
17 is over and above the local unit of government's data costs for  
18 other purposes.

19 (12) ~~(10)~~—Within 180 days after receiving funds from the MIDC  
20 under subsection ~~(7)~~, ~~(9)~~, an indigent criminal defense system  
21 shall comply with the terms of the grant in bringing its system  
22 into compliance with the minimum standards established by the MIDC  
23 for effective assistance of counsel. **THE TERMS OF A GRANT MAY ALLOW**  
24 **AN INDIGENT CRIMINAL DEFENSE SYSTEM TO EXCEED 180 DAYS FOR**  
25 **COMPLIANCE WITH A SPECIFIC ITEM NEEDED TO MEET MINIMUM STANDARDS IF**  
26 **NECESSITY IS DEMONSTRATED IN THE INDIGENT CRIMINAL DEFENSE SYSTEM'S**  
27 **COMPLIANCE PLAN. THE MIDC HAS THE AUTHORITY TO ALLOW AN INDIGENT**

1 CRIMINAL DEFENSE SYSTEM TO EXCEED 180 DAYS FOR IMPLEMENTATION OF  
2 ITEMS IF AN UNFORESEEABLE CONDITION PROHIBITS TIMELY COMPLIANCE.

3 (13) ~~(11)~~—If an indigent criminal defense system is awarded no  
4 funds for implementation of its plan under this act, the MIDC shall  
5 nevertheless issue to the system a zero grant reflecting that it  
6 will receive no grant funds.

7 (14) ~~(12)~~—The MIDC may apply for and obtain grants from any  
8 source to carry out the purposes of this act. All funds received by  
9 MIDC, from any source, are state funds and ~~shall~~**MUST** be  
10 appropriated as provided by law.

11 (15) THE MIDC SHALL ENSURE PROPER FINANCIAL PROTOCOLS IN  
12 ADMINISTERING AND OVERSEEING GRANTS TO INDIGENT CRIMINAL DEFENSE  
13 SYSTEMS, INCLUDING, BUT NOT LIMITED TO, ALL OF THE FOLLOWING:

14 (A) REQUIRING DOCUMENTATION OF EXPENDITURES.

15 (B) REQUIRING EACH INDIGENT CRIMINAL DEFENSE SYSTEM TO HOLD  
16 ALL GRANT FUNDS IN A FUND THAT IS SEPARATE FROM OTHER FUNDS HELD BY  
17 THE INDIGENT CRIMINAL DEFENSE SYSTEM.

18 (C) REQUIRING EACH INDIGENT CRIMINAL DEFENSE SYSTEM TO COMPLY  
19 WITH THE STANDARDS PROMULGATED BY THE GOVERNMENTAL ACCOUNTING  
20 STANDARDS BOARD.

21 (16) IF AN INDIGENT CRIMINAL DEFENSE SYSTEM DOES NOT FULLY  
22 EXPEND A GRANT TOWARD ITS COSTS OF COMPLIANCE, ITS GRANT IN THE  
23 SECOND SUCCEEDING FISCAL YEAR MUST BE REDUCED BY THE AMOUNT EQUAL  
24 TO THE UNEXPENDED FUNDS. IDENTIFIED UNEXPENDED GRANT FUNDS MUST BE  
25 REPORTED BY INDIGENT CRIMINAL DEFENSE SYSTEMS ON OR BEFORE OCTOBER  
26 31 OF EACH YEAR. FUNDS SUBJECT TO EXTENSION UNDER SUBSECTION (12)  
27 MUST BE REPORTED BUT NOT INCLUDED IN THE REDUCTIONS DESCRIBED IN

1 THIS SUBSECTION. ANY GRANT MONEY THAT IS DETERMINED TO HAVE BEEN  
2 USED FOR A PURPOSE OUTSIDE OF THE COMPLIANCE PLAN MUST BE REPAID TO  
3 THE MIDC, OR IF NOT REPAID, MUST BE DEDUCTED FROM FUTURE GRANT  
4 AMOUNTS.

5 (17) IF AN INDIGENT CRIMINAL DEFENSE SYSTEM EXPENDS FUNDS IN  
6 EXCESS OF ITS LOCAL SHARE AND THE APPROVED MIDC GRANT TO MEET  
7 UNEXPECTED NEEDS IN THE PROVISION OF INDIGENT CRIMINAL DEFENSE  
8 SERVICES, THE MIDC SHALL RECOMMEND THE INCLUSION OF THE FUNDS IN A  
9 SUBSEQUENT YEAR'S GRANT IF ALL EXPENDITURES WERE REASONABLY AND  
10 DIRECTLY RELATED TO INDIGENT CRIMINAL DEFENSE FUNCTIONS.

11 (18) AN INDIGENT CRIMINAL DEFENSE SYSTEM MAY ASSESS AND SHALL  
12 COLLECT CONTRIBUTION OR REIMBURSEMENT FROM INDIVIDUALS DETERMINED  
13 TO BE PARTIALLY INDIGENT UNDER APPLICABLE COURT RULES AND STATUTES.  
14 TWENTY PERCENT OF THE FUNDS RECEIVED UNDER THIS SUBSECTION MUST BE  
15 REMITTED BY AN INDIGENT CRIMINAL DEFENSE SYSTEM TO THE DEPARTMENT  
16 IN A MANNER PRESCRIBED BY THE DEPARTMENT AND REPORTED TO THE MIDC  
17 BY OCTOBER 31 OF EACH YEAR. THE FUNDS RECEIVED BY THE DEPARTMENT  
18 UNDER THIS SUBSECTION MUST BE EXPENDED BY THE MIDC IN SUPPORT OF  
19 INDIGENT CRIMINAL DEFENSE SYSTEMS IN THIS STATE. THE REMAINING 80%  
20 OF THE FUNDS COLLECTED UNDER THIS SUBSECTION MAY BE RETAINED BY THE  
21 INDIGENT CRIMINAL DEFENSE SYSTEM FOR PURPOSES OF FUNDING INDIGENT  
22 DEFENSE IN THE SUBSEQUENT FISCAL YEAR AND MUST NOT ALTER THE  
23 CALCULATION OF THE LOCAL SHARE MADE PURSUANT TO SECTION 3(I).

24 Sec. 15. (1) Except as provided in section 5, if a dispute  
25 arises between the MIDC and an indigent criminal defense system  
26 concerning the requirements of this act, including a dispute  
27 concerning the approval of an indigent criminal defense system's

1 plan, cost analysis, or compliance with section 13 or 17, the  
2 parties shall attempt to resolve the dispute by mediation. The  
3 state court administrator, as authorized by the supreme court,  
4 shall appoint a mediator agreed to by the parties within 30  
5 calendar days of the mailing date of the official notification of  
6 the third disapproval by the MIDC under section 13(4) to mediate  
7 the dispute and shall facilitate the mediation process. The MIDC  
8 shall immediately send the state court administrative office a copy  
9 of the official notice of that third disapproval. If the parties do  
10 not agree on the selection of the mediator, the state court  
11 administrator, as authorized by the supreme court, shall appoint a  
12 mediator of his or her choosing. Mediation ~~shall~~**MUST** commence  
13 within 30 calendar days after the mediator is appointed and  
14 terminate within 60 calendar days of its commencement. Mediation  
15 costs associated with mediation of the dispute ~~shall~~**MUST** be paid  
16 equally by the parties.

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

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

22 (b) The MIDC shall consider the recommendation of the  
23 mediator, if any, and shall approve a final plan or the cost  
24 analysis, or both, in the manner the MIDC considers appropriate  
25 within 30 calendar days, and the indigent criminal defense system  
26 shall implement the plan as approved by the MIDC.

27 (c) The indigent criminal defense system that is aggrieved by



1 the final plan, cost analysis, or both, may bring an action seeking  
2 equitable relief as described in subsection (3).

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

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

8 (b) Within 60 days after the system receives grant funds under  
9 section ~~13(7)~~, **13(9)**, if the plan, cost analysis, or both, required  
10 a grant award for implementation of the plan.

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

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

21 (e) The action ~~shall~~ **MUST** not challenge the validity,  
22 legality, or appropriateness of the minimum standards approved by  
23 the department.

24 (4) If the dispute involves the indigent criminal defense  
25 system's plan, cost analysis, or both, the court may approve,  
26 reject, or modify the submitted plan, cost analysis, or the terms  
27 of a grant awarded under section ~~13(7)~~ **13(9)** other than the amount

1 of the grant, determine whether section 13 has been complied with,  
2 and issue any orders necessary to obtain compliance with this act.  
3 However, the system ~~shall~~**MUST** not be required to expend more than  
4 its local share in complying with this act.

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

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

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

21 (a) In the first year, ~~10%~~**20%** of the state's costs.

22 (b) In the second year, ~~20%~~**40%** of the state's costs.

23 (c) In the third year, ~~30%~~**60%** of the state's costs.

24 (d) In the fourth year, ~~40%~~**80%** of the state's costs.

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

27 (8) An indigent criminal defense system may resume providing

1 indigent criminal defense services at any time as provided under  
2 section 13. When a system resumes providing indigent criminal  
3 defense services, it is no longer required to pay an assessment  
4 under subsection (7) but ~~shall~~**MUST** be required to pay no less than  
5 its share.

6 Sec. 17. (1) Except as provided in subsection (2), every local  
7 unit of government that is part of an indigent criminal defense  
8 system shall comply with an approved plan under this act.

9 (2) A system's duty of compliance with ~~the terms of~~**1 OR MORE**  
10 **STANDARDS WITHIN** the plan ~~as prescribed~~ under subsection (1) is  
11 contingent upon receipt of a grant in the amount **SUFFICIENT TO**  
12 **COVER THAT PARTICULAR STANDARD OR STANDARDS** contained in the plan  
13 and cost analysis approved by the MIDC.

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

17 **SEC. 22. (1) THE MICHIGAN INDIGENT DEFENSE FUND IS CREATED**  
18 **WITHIN THE STATE TREASURY.**

19 **(2) THE STATE TREASURER MAY RECEIVE MONEY OR OTHER ASSETS FROM**  
20 **ANY SOURCE FOR DEPOSIT INTO THE FUND, INCLUDING PRIVATE GIFTS,**  
21 **BEQUESTS, AND DONATIONS. THE STATE TREASURER SHALL DIRECT THE**  
22 **INVESTMENT OF THE FUND. THE STATE TREASURER SHALL CREDIT TO THE**  
23 **FUND INTEREST AND EARNINGS FROM FUND INVESTMENTS.**

24 **(3) MONEY IN THE FUND AT THE CLOSE OF THE FISCAL YEAR SHALL**  
25 **LAPSE TO THE GENERAL FUND.**

26 **(4) THE COMMISSION SHALL BE THE ADMINISTRATOR OF THE FUND FOR**  
27 **AUDITING PURPOSES.**

1           (5) THE COMMISSION SHALL EXPEND MONEY FROM THE FUND TO CARRY  
2 OUT ITS RESPONSIBILITIES UNDER THIS ACT.

3           Enacting section 1. This amendatory act takes effect 180 days  
4 after the date it is enacted into law.