

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 LABOR**
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~~**MUST**
23 not be required to provide indigent criminal defense services in
24 excess of 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 **MUST** be independent of the judiciary but ensure that the judges of

1 this state are permitted and encouraged to contribute information
2 and 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. AN INDIGENT**
18 **CRIMINAL DEFENSE SYSTEM'S DETERMINATION REGARDING THE AMOUNT OF**
19 **MONEY A PARTIALLY INDIGENT DEFENDANT MUST CONTRIBUTE TO HIS OR HER**
20 **DEFENSE IS SUBJECT TO JUDICIAL REVIEW.** Nothing in this act shall
21 ~~prevent~~**PREVENTS** a court from making a determination of indigency
22 for any purpose consistent with article VI of the state
23 constitution of 1963.

24 (b) A defendant is considered to be indigent if he or she is
25 unable, without substantial financial hardship to himself or
26 herself or to his or her dependents, to obtain competent, qualified
27 legal representation on his or her own. Substantial financial

1 hardship ~~shall be~~ **IS** rebuttably presumed if the defendant receives
2 personal public assistance, including under the food assistance
3 program, temporary assistance for needy families, ~~medicaid,~~
4 **MEDICAID**, or disability insurance, resides in public housing, or
5 earns an income less than 140% of the federal poverty guideline. A
6 defendant is also rebuttably presumed to have a substantial
7 financial hardship if he or she is currently serving a sentence in
8 a correctional institution or is receiving residential treatment in
9 a mental health or substance abuse facility.

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

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

24 (E) THE MIDC SHALL PROMULGATE OBJECTIVE STANDARDS FOR INDIGENT
25 CRIMINAL DEFENSE SYSTEMS TO DETERMINE WHETHER A DEFENDANT IS
26 INDIGENT OR PARTIALLY INDIGENT. THESE STANDARDS MUST INCLUDE
27 AVAILABILITY OF PROMPT JUDICIAL REVIEW, UNDER THE DIRECTION AND

1 SUPERVISION OF THE SUPREME COURT, IF THE INDIGENT CRIMINAL DEFENSE
2 SYSTEM IS MAKING THE DETERMINATION REGARDING A DEFENDANT'S
3 INDIGENCY OR PARTIAL INDIGENCY.

4 (F) THE MIDC SHALL PROMULGATE OBJECTIVE STANDARDS FOR INDIGENT
5 CRIMINAL DEFENSE SYSTEMS TO DETERMINE THE AMOUNT A PARTIALLY
6 INDIGENT DEFENDANT MUST CONTRIBUTE TO HIS OR HER DEFENSE. THE
7 STANDARDS MUST INCLUDE AVAILABILITY OF PROMPT JUDICIAL REVIEW,
8 UNDER THE DIRECTION AND SUPERVISION OF THE SUPREME COURT, IF THE
9 INDIGENT CRIMINAL DEFENSE SYSTEM IS MAKING THE DETERMINATION
10 REGARDING HOW MUCH A PARTIALLY INDIGENT DEFENDANT MUST CONTRIBUTE
11 TO HIS OR HER DEFENSE.

12 (G) ~~(d)~~—A defendant ~~shall be~~ IS responsible for applying for
13 indigent defense counsel and for establishing his or her indigency
14 and eligibility for appointed counsel under this act. Any oral or
15 written statements made by the defendant in or for use in the
16 criminal proceeding and material to the issue of his or her
17 indigency ~~shall~~ MUST be made under oath or an equivalent
18 affirmation.

19 (4) THE MIDC SHALL ESTABLISH STANDARDS FOR TRAINERS AND
20 ORGANIZATIONS CONDUCTING TRAINING THAT RECEIVE MIDC FUNDS FOR
21 TRAINING AND EDUCATION. THE STANDARDS ESTABLISHED UNDER THIS
22 SUBSECTION MUST REQUIRE THAT THE MIDC ANALYZE THE QUALITY OF THE
23 TRAINING, AND MUST REQUIRE THAT THE EFFECTIVENESS OF THE TRAINING
24 BE CAPABLE OF BEING MEASURED AND VALIDATED.

25 (5) AN INDIGENT CRIMINAL DEFENSE SYSTEM MAY INCLUDE IN ITS
26 COMPLIANCE PLAN A REQUEST THAT THE MIDC SERVE AS A CLEARINGHOUSE
27 FOR EXPERTS AND INVESTIGATORS. IF AN INDIGENT CRIMINAL DEFENSE

1 SYSTEM MAKES A REQUEST UNDER THIS SUBSECTION, THE MIDC MAY DEVELOP
2 AND OPERATE A SYSTEM FOR DETERMINING THE NEED AND AVAILABILITY FOR
3 AN EXPERT OR INVESTIGATOR IN INDIVIDUAL CASES.

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

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

15 (3) No later than 180 days after a standard is approved by the
16 department, each indigent criminal defense system shall submit a
17 plan to the MIDC for the provision of indigent criminal defense
18 services in a manner as determined by the MIDC and shall submit an
19 annual plan for the following state fiscal year on or before
20 ~~February~~ **OCTOBER** 1 of each year. A plan submitted under this
21 subsection shall ~~shall~~ **MUST** specifically address how the minimum
22 standards established by the MIDC under this act shall ~~shall~~ **WILL** be met
23 and shall ~~shall~~ **MUST** include a cost analysis **FOR MEETING THOSE MINIMUM**
24 **STANDARDS**. The standards to be addressed in the annual plan are
25 those approved not less than ~~60~~ **180** days before the annual plan
26 submission date. ~~This~~ **THE** cost analysis shall ~~shall~~ **MUST** include a
27 statement of the funds in excess of the local share, if any,

1 necessary to allow its system to comply with the MIDC's minimum
2 standards.

3 (4) The MIDC shall approve or disapprove **ALL OR ANY PORTION OF**
4 a plan or cost analysis, or both a plan and cost analysis,
5 submitted under subsection (3), and shall do so within ~~60~~**90**
6 calendar days of the submission of the plan and cost analysis. If
7 the MIDC disapproves **ANY PART OF** the plan, the cost analysis, or
8 both the plan and the cost analysis, the indigent criminal defense
9 system shall consult with the MIDC and, **FOR ANY DISAPPROVED**
10 **PORTION**, submit a new plan, a new cost analysis, or both within ~~30~~
11 **60** calendar days of the mailing date of the official notification
12 of the MIDC's disapproval. If after 3 submissions a compromise is
13 not reached, the dispute ~~shall~~**MUST** be resolved as provided in
14 section 15. **ALL APPROVED PROVISIONS OF AN INDIGENT CRIMINAL DEFENSE**
15 **SYSTEM'S PLAN AND COST ANALYSIS MUST NOT BE DELAYED BY ANY**
16 **DISAPPROVED PORTION AND MUST PROCEED AS PROVIDED IN THIS ACT. THE**
17 **MIDC SHALL NOT APPROVE A COST ANALYSIS OR PORTION OF A COST**
18 **ANALYSIS UNLESS IT IS REASONABLY AND DIRECTLY RELATED TO AN**
19 **INDIGENT DEFENSE FUNCTION.**

20 (5) The MIDC shall submit a report to the governor, the senate
21 majority leader, the speaker of the house of representatives, and
22 the appropriations committees of the senate and house of
23 representatives requesting the appropriation of funds necessary to
24 ~~implement the plan for each system approved by the MIDC.~~ **COMPLIANCE**
25 **PLANS AFTER ALL THE SYSTEMS COMPLIANCE PLANS ARE APPROVED BY THE**
26 **MIDC. FOR STANDARDS APPROVED AFTER JANUARY 1, 2018, THE MIDC SHALL**
27 **INCLUDE A COST ANALYSIS FOR EACH MINIMUM STANDARD IN THE REPORT AND**

1 SHALL ALSO PROVIDE A COST ANALYSIS FOR EACH MINIMUM STANDARD
2 APPROVED ON OR BEFORE JANUARY 1, 2018, IF A COST ANALYSIS FOR EACH
3 MINIMUM STANDARD APPROVED WAS NOT PROVIDED AND SHALL DO SO NOT
4 LATER THAN OCTOBER 31, 2018. THE AMOUNT REQUESTED UNDER THIS
5 SUBSECTION MUST BE EQUAL TO THE TOTAL AMOUNT REQUIRED TO ACHIEVE
6 FULL COMPLIANCE AS AGREED UPON BY THE MIDC AND THE INDIGENT
7 CRIMINAL DEFENSE SYSTEMS UNDER THE APPROVAL PROCESS PROVIDED IN
8 SUBSECTION (4). The information used to create this report ~~shall~~
9 **MUST** be made available to the governor, the senate majority leader,
10 the speaker of the house of representatives, and the appropriations
11 committees of the senate and house of representatives.

12 (6) THE MIDC SHALL SUBMIT A REPORT TO THE GOVERNOR, THE SENATE
13 MAJORITY LEADER, THE SPEAKER OF THE HOUSE OF REPRESENTATIVES, AND
14 THE APPROPRIATIONS COMMITTEES OF THE SENATE AND HOUSE OF
15 REPRESENTATIVES NOT LATER THAN OCTOBER 31, 2021 THAT INCLUDES A
16 RECOMMENDATION REGARDING THE APPROPRIATE LEVEL OF LOCAL SHARE,
17 EXPRESSED IN BOTH TOTAL DOLLARS AND AS A PERCENTAGE OF THE TOTAL
18 COST OF COMPLIANCE FOR EACH INDIGENT CRIMINAL DEFENSE SYSTEM.

19 (7) ~~(6)~~ Except as provided in subsection ~~(8)~~, (9), an indigent
20 criminal defense system shall maintain not less than its local
21 share. If the MIDC determines that funding in excess of the
22 indigent criminal defense system's share is necessary in order to
23 bring its system into compliance with the minimum standards
24 established by the MIDC, that excess funding ~~shall~~ **MUST** be paid by
25 this state. The legislature shall appropriate to the MIDC the
26 additional funds necessary for a system to meet and maintain those
27 minimum standards, which ~~funds shall~~ **MUST** be provided to indigent

1 criminal defense systems through grants as described in subsection
2 ~~(7)~~ (8). THE LEGISLATURE MAY APPROPRIATE FUNDS THAT APPLY TO LESS
3 THAN ALL OF THE MINIMUM STANDARDS AND MAY PROVIDE LESS THAN THE
4 FULL AMOUNT OF THE FUNDS REQUESTED UNDER SUBSECTION (5).
5 NOTWITHSTANDING THIS SUBSECTION, IT IS THE INTENT OF THE
6 LEGISLATURE TO FUND ALL OF THE MINIMUM STANDARDS CONTAINED IN THE
7 REPORT UNDER SUBSECTION (5) WITHIN 3 YEARS OF THE DATE ON WHICH THE
8 MINIMUM STANDARDS WERE ADOPTED.

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

14 (9) ~~(8)~~—An indigent criminal defense system is not required to
15 expend its local share if the minimum standards established by the
16 MIDC may be met for less than that share, but the local share of a
17 system that expends less than its local share under these
18 circumstances is not reduced by the lower expenditure.

19 (10) ~~(9)~~—This state shall appropriate funds to the MIDC for
20 grants to the local units of government for the reasonable costs
21 associated with data required to be collected under this act that
22 is over and above the local unit of government's data costs for
23 other purposes.

24 (11) ~~(10)~~—Within 180 days after receiving funds from the MIDC
25 under subsection ~~(7)~~, (8), an indigent criminal defense system
26 shall comply with the terms of the grant in bringing its system
27 into compliance with the minimum standards established by the MIDC

1 for effective assistance of counsel. THE TERMS OF A GRANT MAY ALLOW
2 AN INDIGENT CRIMINAL DEFENSE SYSTEM TO EXCEED 180 DAYS FOR
3 COMPLIANCE WITH A SPECIFIC ITEM NEEDED TO MEET MINIMUM STANDARDS IF
4 NECESSITY IS DEMONSTRATED IN THE INDIGENT CRIMINAL DEFENSE SYSTEM'S
5 COMPLIANCE PLAN. THE MIDC HAS THE AUTHORITY TO ALLOW AN INDIGENT
6 CRIMINAL DEFENSE SYSTEM TO EXCEED 180 DAYS FOR IMPLEMENTATION OF
7 ITEMS IF AN UNFORESEEABLE CONDITION PROHIBITS TIMELY COMPLIANCE.

8 (12) ~~(11)~~—If an indigent criminal defense system is awarded no
9 funds for implementation of its plan under this act, the MIDC shall
10 nevertheless issue to the system a zero grant reflecting that it
11 will receive no grant funds.

12 (13) ~~(12)~~—The MIDC may apply for and obtain grants from any
13 source to carry out the purposes of this act. All funds received by
14 MIDC, from any source, are state funds and ~~shall~~ **MUST** be
15 appropriated as provided by law.

16 (14) THE MIDC SHALL ENSURE PROPER FINANCIAL PROTOCOLS IN
17 ADMINISTERING AND OVERSEEING FUNDS UTILIZED BY INDIGENT CRIMINAL
18 DEFENSE SYSTEMS, INCLUDING, BUT NOT LIMITED TO, ALL OF THE
19 FOLLOWING:

20 (A) REQUIRING DOCUMENTATION OF EXPENDITURES.

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

24 (C) REQUIRING EACH INDIGENT CRIMINAL DEFENSE SYSTEM TO COMPLY
25 WITH THE STANDARDS PROMULGATED BY THE GOVERNMENTAL ACCOUNTING
26 STANDARDS BOARD.

27 (15) IF AN INDIGENT CRIMINAL DEFENSE SYSTEM DOES NOT FULLY

1 EXPEND A GRANT TOWARD ITS COSTS OF COMPLIANCE, ITS GRANT IN THE
2 SECOND SUCCEEDING FISCAL YEAR MUST BE REDUCED BY THE AMOUNT EQUAL
3 TO THE UNEXPENDED FUNDS. IDENTIFIED UNEXPENDED GRANT FUNDS MUST BE
4 REPORTED BY INDIGENT CRIMINAL DEFENSE SYSTEMS ON OR BEFORE OCTOBER
5 31 OF EACH YEAR. FUNDS SUBJECT TO EXTENSION UNDER SUBSECTION (11)
6 MUST BE REPORTED BUT NOT INCLUDED IN THE REDUCTIONS DESCRIBED IN
7 THIS SUBSECTION. ANY GRANT MONEY THAT IS DETERMINED TO HAVE BEEN
8 USED FOR A PURPOSE OUTSIDE OF THE COMPLIANCE PLAN MUST BE REPAID TO
9 THE MIDC, OR IF NOT REPAID, MUST BE DEDUCTED FROM FUTURE GRANT
10 AMOUNTS.

11 (16) IF AN INDIGENT CRIMINAL DEFENSE SYSTEM EXPENDS FUNDS IN
12 EXCESS OF ITS LOCAL SHARE AND THE APPROVED MIDC GRANT TO MEET
13 UNEXPECTED NEEDS IN THE PROVISION OF INDIGENT CRIMINAL DEFENSE
14 SERVICES, THE MIDC SHALL RECOMMEND THE INCLUSION OF THE FUNDS IN A
15 SUBSEQUENT YEAR'S GRANT IF ALL EXPENDITURES WERE REASONABLY AND
16 DIRECTLY RELATED TO INDIGENT CRIMINAL DEFENSE FUNCTIONS.

17 (17) THE COURT SHALL COLLECT CONTRIBUTION OR REIMBURSEMENT
18 FROM INDIVIDUALS DETERMINED TO BE PARTIALLY INDIGENT UNDER
19 APPLICABLE COURT RULES AND STATUTES. REIMBURSEMENT UNDER THIS
20 SUBSECTION IS SUBJECT TO SECTION 22 OF CHAPTER XV OF THE CODE OF
21 CRIMINAL PROCEDURE, 1927 PA 175, MCL 775.22. THE COURT SHALL REMIT
22 100% OF THE FUNDS IT COLLECTS UNDER THIS SUBSECTION TO THE INDIGENT
23 CRIMINAL DEFENSE SYSTEM IN WHICH THE COURT IS SITTING. TWENTY
24 PERCENT OF THE FUNDS RECEIVED UNDER THIS SUBSECTION BY AN INDIGENT
25 CRIMINAL DEFENSE SYSTEM MUST BE REMITTED TO THE DEPARTMENT IN A
26 MANNER PRESCRIBED BY THE DEPARTMENT AND REPORTED TO THE MIDC BY
27 OCTOBER 31 OF EACH YEAR. THE FUNDS RECEIVED BY THE DEPARTMENT UNDER

1 THIS SUBSECTION MUST BE EXPENDED BY THE MIDC IN SUPPORT OF INDIGENT
2 CRIMINAL DEFENSE SYSTEMS IN THIS STATE. THE REMAINING 80% OF THE
3 FUNDS COLLECTED UNDER THIS SUBSECTION MAY BE RETAINED BY THE
4 INDIGENT CRIMINAL DEFENSE SYSTEM FOR PURPOSES OF REIMBURSING THE
5 COSTS OF COLLECTING THE FUNDS UNDER THIS SUBSECTION AND FUNDING
6 INDIGENT DEFENSE IN THE SUBSEQUENT FISCAL YEAR. THE FUNDS COLLECTED
7 UNDER THIS SUBSECTION MUST NOT ALTER THE CALCULATION OF THE LOCAL
8 SHARE MADE PURSUANT TO SECTION 3(I).

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

1 equally by the parties.

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

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

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

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

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

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

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

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

26 (d) The action ~~shall~~ **MUST** be brought in the judicial circuit
27 where the indigent criminal defense service is located. The state

1 court administrator, as authorized by the supreme court, shall
2 assign an active or retired judge from a judicial circuit other
3 than the judicial circuit where the action was filed to hear the
4 case. Costs associated with the assignment of the judge ~~shall~~**MUST**
5 be paid equally by the parties.

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

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

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

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

27 (7) If the court orders the MIDC to provide indigent criminal

1 defense services on behalf of an indigent criminal defense system,
2 the court shall order the system to pay the following amount of the
3 state's costs that the MIDC determines are necessary in order to
4 bring the indigent criminal defense system into compliance with the
5 minimum standards established by the MIDC:

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

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

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

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

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

12 (8) An indigent criminal defense system may resume providing
13 indigent criminal defense services at any time as provided under
14 section 13. When a system resumes providing indigent criminal
15 defense services, it is no longer required to pay an assessment
16 under subsection (7) but ~~shall~~**MUST** be required to pay no less than
17 its share.

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

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

26 (3) The MIDC may proceed under section 15 if an indigent
27 criminal defense system breaches its duty of compliance under

1 subsection (1).

2 SEC. 22. (1) THE MICHIGAN INDIGENT DEFENSE FUND IS CREATED
3 WITHIN THE STATE TREASURY.

4 (2) THE STATE TREASURER MAY RECEIVE MONEY OR OTHER ASSETS FROM
5 ANY SOURCE FOR DEPOSIT INTO THE FUND, INCLUDING PRIVATE GIFTS,
6 BEQUESTS, AND DONATIONS. THE STATE TREASURER SHALL DIRECT THE
7 INVESTMENT OF THE FUND. THE STATE TREASURER SHALL CREDIT TO THE
8 FUND INTEREST AND EARNINGS FROM FUND INVESTMENTS.

9 (3) MONEY IN THE FUND AT THE CLOSE OF THE FISCAL YEAR SHALL
10 LAPSE TO THE GENERAL FUND.

11 (4) THE COMMISSION SHALL BE THE ADMINISTRATOR OF THE FUND FOR
12 AUDITING PURPOSES.

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

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