

HOUSE BILL No. 5985

May 15, 2018, Introduced by Rep. VerHeulen and referred to the Committee on Appropriations.

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

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
- 5 the commission of a felony if any of the following conditions
- 6 apply:
- 7 (A) During consideration of a petition filed under section 4

1 of chapter XIIIA of the probate code of 1939, 1939 PA 288, MCL
2 712A.4, to waive jurisdiction to try the individual as an adult and
3 upon granting a waiver of jurisdiction.

4 (B) The prosecuting attorney designates the case under section
5 2d(1) of chapter XIIIA of the probate code of 1939, 1939 PA 288, MCL
6 712A.2d, as a case in which the juvenile is to be tried in the same
7 manner as an adult.

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

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

17 (b) "Department" means the department of licensing and
18 regulatory affairs.

19 (C) **"DETROIT CONSUMER PRICE INDEX" MEANS THE MOST**
20 **COMPREHENSIVE INDEX OF CONSUMER PRICES AVAILABLE FOR THE DETROIT**
21 **AREA FROM THE BUREAU OF LABOR STATISTICS OF THE UNITED STATES**
22 **DEPARTMENT OF LABOR, OR ITS SUCCESSOR DEPARTMENT.**

23 (D) ~~(e)~~ "Effective assistance of counsel" or "effective
24 representation" means legal representation that is compliant with
25 standards established by the appellate courts of this state and the
26 United States ~~supreme court.~~ **SUPREME COURT.**

27 (E) ~~(d)~~ "Indigent" means meeting 1 or more of the conditions

1 described in section 11(3).

2 **(F)** ~~(e)~~—"Indigent criminal defense services" means local legal
3 defense services provided to a defendant and to which both of the
4 following conditions apply:

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

9 (ii) The defendant is determined to be indigent under section
10 11(3).

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

14 **(H)** ~~(g)~~—"Indigent criminal defense system" or "system" means
15 either of the following:

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

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

19 **(I)** ~~(h)~~—"Local share" or "share" means an indigent criminal
20 defense system's average annual expenditure for indigent criminal
21 defense services in the 3 fiscal years immediately preceding the
22 creation of the MIDC under this act, excluding money reimbursed to
23 the system by individuals determined to be partially indigent. **THE**
24 **LOCAL SHARE MUST BE ADJUSTED ANNUALLY BY THE DETROIT CONSUMER PRICE**
25 **INDEX OR 3%, WHICHEVER IS LESS.**

26 **(J)** ~~(i)~~—"MIDC" or "commission" means the Michigan indigent
27 defense commission created under section 5.

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

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

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

17 (2) SUBJECT TO APPROPRIATION, IF REQUESTED BY THE MIDC, THE
18 DEPARTMENT SHALL PROVIDE STAFF AND OTHER SUPPORT TO THE MIDC
19 SUFFICIENT TO CARRY OUT ITS DUTIES, POWERS, AND RESPONSIBILITIES.

20 (3) The MIDC shall propose minimum standards for the local
21 delivery of indigent criminal defense services providing effective
22 assistance of counsel to adults throughout this state. These
23 minimum standards ~~shall~~**MUST** be designed to ensure the provision of
24 indigent criminal defense services that meet constitutional
25 requirements for effective assistance of counsel. However, these
26 minimum standards ~~shall~~**MUST** not infringe on the supreme court's
27 authority over practice and procedure in the courts of this state

1 as set forth in section 5 of article VI of the state constitution
2 of 1963.

3 (4) The commission shall convene a public hearing before a
4 proposed standard is recommended to the department. A minimum
5 standard proposed under this subsection ~~shall~~**MUST** be submitted to
6 the department for approval or rejection. Opposition to a proposed
7 minimum standard may be submitted to the department in a manner
8 prescribed by the department. An indigent criminal defense system
9 that objects to a recommended minimum standard on the ground that
10 the recommended minimum standard would exceed the MIDC's statutory
11 authority shall state specifically how the recommended minimum
12 standard would exceed the MIDC's statutory authority. A proposed
13 minimum standard is final when it is approved by the department. A
14 minimum standard that is approved by the department is not subject
15 to challenge through the appellate procedures in section 15. An
16 approved minimum standard for the local delivery of indigent
17 criminal defense services within an indigent criminal defense
18 system is not a rule as **THAT TERM IS** defined in section 7 of the
19 administrative procedures act of 1969, 1969 PA 306, MCL 24.207.

20 (5) Approval of a minimum standard proposed by the MIDC is
21 considered a final department action subject to judicial review
22 under section 28 of article VI of the state constitution of 1963 to
23 determine whether the approved minimum standard is authorized by
24 law. Jurisdiction and venue for judicial review are vested in the
25 court of claims. An indigent criminal defense system may file a
26 petition for review in the court of claims within 60 days after the
27 date of mailing notice of the department's final decision on the

1 recommended minimum standard. The filing of a petition for review
2 does not stay enforcement of an approved minimum standard, but the
3 department may grant, or the court of claims may order, a stay upon
4 appropriate terms.

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

8 **(7) THE MIDC SHALL IDENTIFY AND IMPLEMENT A SYSTEM OF**
9 **PERFORMANCE METRICS TO ASSESS THE PROVISION OF INDIGENT DEFENSE**
10 **SERVICES IN THIS STATE RELATIVE TO NATIONAL STANDARDS AND**
11 **BENCHMARKS. THE MIDC SHALL PROVIDE AN ANNUAL REPORT TO THE**
12 **GOVERNOR, LEGISLATURE, SUPREME COURT, AND THE STATE BUDGET DIRECTOR**
13 **ON THE PERFORMANCE METRICS NOT LATER THAN SEPTEMBER 30 OF EACH**
14 **YEAR.**

15 Sec. 7. (1) The MIDC includes ~~15-18~~ voting members and the ex
16 officio member described in subsection (2). The ~~15-18~~ voting
17 members shall be appointed by the governor for terms of 4 years,
18 except as provided in subsection (4). Subject to subsection (3),
19 the governor shall appoint members under this subsection as
20 follows:

21 (a) Two members submitted by the speaker of the house of
22 representatives.

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

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

26 (d) Three members from a list of 9 names submitted by the
27 ~~eriminal defense attorney association~~ **CRIMINAL DEFENSE ATTORNEYS** of

1 Michigan.

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

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

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

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

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

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

17 ~~—— (k) One member selected to represent local units of~~
18 ~~government.~~

19 **(K) TWO MEMBERS REPRESENTING THE FUNDING UNIT OF A CIRCUIT**
20 **COURT FROM A LIST OF 6 NAMES SUBMITTED BY THE MICHIGAN ASSOCIATION**
21 **OF COUNTIES.**

22 **(l) ONE MEMBER REPRESENTING THE FUNDING UNIT OF A DISTRICT**
23 **COURT OF THE THIRD CLASS FROM A LIST OF 3 NAMES SUBMITTED BY THE**
24 **MICHIGAN MUNICIPAL LEAGUE.**

25 **(M) ONE MEMBER FROM A LIST OF 3 NAMES SUBMITTED BY THE STATE**
26 **BUDGET OFFICE.**

27 (2) The supreme court chief justice or his or her designee

1 shall serve as an ex officio member of the MIDC without vote.

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

16 (4) MIDC members shall hold office until their successors are
17 appointed. The terms of the members ~~shall~~**MUST** be staggered.
18 Initially, 4 members ~~shall~~**MUST** be appointed for a term of 4 years
19 each, 4 members ~~shall~~**MUST** be appointed for a term of 3 years each,
20 4 members ~~shall~~**MUST** be appointed for a term of 2 years each, and 3
21 members ~~shall~~**MUST** be appointed for a term of 1 year each.

22 (5) The governor shall fill a vacancy occurring in the
23 membership of the MIDC in the same manner as the original
24 appointment, except if the vacancy is for an appointment described
25 in subsection (1)(d), the source of the nomination shall submit a
26 list of 3 names for each vacancy. However, if the senate majority
27 leader or the speaker of the house of representatives is the source

1 of the nomination, 1 name ~~shall~~**MUST** be submitted. If an MIDC
2 member vacates ~~his or her~~**THE** commission before the end of the
3 member's term, the governor shall fill that vacancy for the
4 unexpired term only.

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

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

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

18 (9) A majority of the MIDC voting members constitute a quorum
19 for the transaction of business at a meeting of the MIDC. A
20 majority of the MIDC voting members are required for official
21 action of the commission.

22 (10) Confidential case information, including, but not limited
23 to, client information and attorney work product, is exempt from
24 disclosure under the freedom of information act, 1976 PA 442, MCL
25 15.231 to 15.246.

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

1 (a) The delivery of indigent criminal defense services shall
2 be independent of the judiciary but ensure that the judges of this
3 state are permitted and encouraged to contribute information and
4 advice concerning that delivery of indigent criminal defense
5 services.

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

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

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

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

27 (b) Defense counsel's workload is controlled to permit

1 effective representation. Economic disincentives or incentives that
2 impair defense counsel's ability to provide effective
3 representation ~~shall~~**MUST** be avoided. The MIDC may develop workload
4 controls to enhance defense counsel's ability to provide effective
5 representation.

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

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

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

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

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

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

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

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

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

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

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

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

1 (5) AN INDIGENT CRIMINAL DEFENSE SYSTEM MAY INCLUDE IN ITS
2 COMPLIANCE PLAN A REQUEST THAT THE MIDC SERVE AS A CLEARINGHOUSE
3 FOR EXPERTS AND INVESTIGATORS. IF AN INDIGENT CRIMINAL DEFENSE
4 SYSTEM MAKES A REQUEST UNDER THIS SUBSECTION, THE MIDC MAY DEVELOP
5 AND OPERATE A SYSTEM FOR DETERMINING THE NEED AND AVAILABILITY FOR
6 AN EXPERT OR INVESTIGATOR IN INDIVIDUAL CASES.

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

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

18 (3) No later than 180 days after a standard is approved by the
19 department, each indigent criminal defense system shall submit a
20 plan to the MIDC for the provision of indigent criminal defense
21 services in a manner as determined by the MIDC and shall submit an
22 annual plan for the following state fiscal year on or before
23 ~~February~~ **OCTOBER** 1 of each year. A plan submitted under this
24 subsection shall ~~shall~~ **MUST** specifically address how the minimum
25 standards established by the MIDC under this act shall ~~shall~~ **WILL** be met
26 and shall ~~shall~~ **MUST** include a cost analysis **FOR MEETING THOSE MINIMUM**
27 **STANDARDS**. The standards to be addressed in the annual plan are

1 those approved not less than 60 days before the annual plan
2 submission date. ~~This~~**THE** cost analysis ~~shall~~**MUST** include a
3 statement of the funds in excess of the local share, if any,
4 necessary to allow its system to comply with the MIDC's minimum
5 standards.

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

23 (5) The MIDC shall submit a report to the governor, the senate
24 majority leader, the speaker of the house of representatives, and
25 the appropriations committees of the senate and house of
26 representatives requesting the appropriation of funds necessary to
27 implement ~~the plan for each system approved by the MIDC.~~ **COMPLIANCE**

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

15 (6) THE MIDC SHALL SUBMIT A REPORT TO THE GOVERNOR, THE SENATE
16 MAJORITY LEADER, THE SPEAKER OF THE HOUSE OF REPRESENTATIVES, AND
17 THE APPROPRIATIONS COMMITTEES OF THE SENATE AND HOUSE OF
18 REPRESENTATIVES NOT LATER THAN OCTOBER 31, 2018 THAT INCLUDES A
19 RECOMMENDATION REGARDING THE APPROPRIATE LEVEL OF LOCAL
20 CONTRIBUTION, EXPRESSED IN BOTH TOTAL DOLLARS AND AS A PERCENTAGE
21 OF THE TOTAL COST OF COMPLIANCE FOR EACH INDIGENT CRIMINAL DEFENSE
22 SYSTEM.

23 (7) ~~(6)~~ Except as provided in subsection ~~(8)~~, (9), an indigent
24 criminal defense system shall maintain not less than its local
25 share. If the MIDC determines that funding in excess of the
26 indigent criminal defense system's share is necessary in order to
27 bring its system into compliance with the minimum standards

1 established by the MIDC, that excess funding ~~shall~~**MUST** be paid by
 2 this state. The legislature shall appropriate to the MIDC the
 3 additional funds necessary for a system to meet and maintain those
 4 minimum standards, which ~~funds shall~~**MUST** be provided to indigent
 5 criminal defense systems through grants as described in subsection
 6 ~~(7)~~**(8)**. **THE LEGISLATURE MAY FUND 1 OR MORE MINIMUM STANDARDS AS**
 7 **CONTAINED IN THE REPORT UNDER SUBSECTION (5). IF THE LEGISLATURE**
 8 **APPROPRIATES FUNDS THAT APPLY TO LESS THAN ALL OF THE MINIMUM**
 9 **STANDARDS AND DOES NOT PROVIDE THE FULL AMOUNT OF FUNDS REQUESTED**
 10 **UNDER SUBSECTION (5), THE LEGISLATURE MUST IDENTIFY WHICH MINIMUM**
 11 **STANDARD OR STANDARDS MUST BE FUNDED BY THE APPROPRIATION.**
 12 **NOTWITHSTANDING THIS SUBSECTION, IT IS THE INTENT OF THE**
 13 **LEGISLATURE TO FUND ALL OF THE MINIMUM STANDARDS CONTAINED IN THE**
 14 **REPORT UNDER SUBSECTION (5) WITHIN 3 YEARS OF THE DATE ON WHICH THE**
 15 **MINIMUM STANDARDS WERE ADOPTED.**

16 **(8)** ~~(7)~~An indigent criminal defense system ~~shall~~**MUST** not be
 17 required to provide funds in excess of its local share. The MIDC
 18 shall provide grants to indigent criminal defense systems to assist
 19 in bringing the systems into compliance with minimum standards
 20 established by the MIDC.

21 **(9)** ~~(8)~~An indigent criminal defense system is not required to
 22 expend its local share if the minimum standards established by the
 23 MIDC may be met for less than that share, but the local share of a
 24 system that expends less than its local share under these
 25 circumstances is not reduced by the lower expenditure.

26 **(10)** ~~(9)~~This state shall appropriate funds to the MIDC for
 27 grants to the local units of government for the reasonable costs

1 associated with data required to be collected under this act that
2 is over and above the local unit of government's data costs for
3 other purposes.

4 **(11)** ~~(10)~~—Within 180 days after receiving funds from the MIDC
5 under subsection ~~(7)~~, **(8)**, an indigent criminal defense system
6 shall comply with the terms of the grant in bringing its system
7 into compliance with the minimum standards established by the MIDC
8 for effective assistance of counsel. **THE TERMS OF A GRANT MAY ALLOW**
9 **AN INDIGENT CRIMINAL DEFENSE SYSTEM TO EXCEED 180 DAYS FOR**
10 **COMPLIANCE WITH A SPECIFIC ITEM NEEDED TO MEET MINIMUM STANDARDS IF**
11 **NECESSITY IS DEMONSTRATED IN THE INDIGENT CRIMINAL DEFENSE SYSTEM'S**
12 **COMPLIANCE PLAN. THE MIDC HAS THE AUTHORITY TO ALLOW AN INDIGENT**
13 **CRIMINAL DEFENSE SYSTEM TO EXCEED 180 DAYS FOR IMPLEMENTATION OF**
14 **ITEMS IF AN UNFORESEEABLE CONDITION PROHIBITS TIMELY COMPLIANCE.**

15 **(12)** ~~(11)~~—If an indigent criminal defense system is awarded no
16 funds for implementation of its plan under this act, the MIDC shall
17 nevertheless issue to the system a zero grant reflecting that it
18 will receive no grant funds.

19 **(13)** ~~(12)~~—The MIDC may apply for and obtain grants from any
20 source to carry out the purposes of this act. All funds received by
21 MIDC, from any source, are state funds and ~~shall~~**MUST** be
22 appropriated as provided by law.

23 **(14) THE MIDC SHALL ENSURE PROPER FINANCIAL PROTOCOLS IN**
24 **ADMINISTERING AND OVERSEEING GRANTS TO INDIGENT CRIMINAL DEFENSE**
25 **SYSTEMS, INCLUDING, BUT NOT LIMITED TO, ALL OF THE FOLLOWING:**

26 **(A) REQUIRING DOCUMENTATION OF EXPENDITURES.**

27 **(B) REQUIRING EACH INDIGENT CRIMINAL DEFENSE SYSTEM TO HOLD**

1 ALL GRANT FUNDS IN A FUND THAT IS SEPARATE FROM OTHER FUNDS HELD BY
2 THE INDIGENT CRIMINAL DEFENSE SYSTEM.

3 (C) REQUIRING EACH INDIGENT CRIMINAL DEFENSE SYSTEM TO COMPLY
4 WITH THE STANDARDS PROMULGATED BY THE GOVERNMENTAL ACCOUNTING
5 STANDARDS BOARD.

6 (15) IF AN INDIGENT CRIMINAL DEFENSE SYSTEM DOES NOT FULLY
7 EXPEND A GRANT TOWARD ITS COSTS OF COMPLIANCE, ITS GRANT IN THE
8 SECOND SUCCEEDING FISCAL YEAR MUST BE REDUCED BY THE AMOUNT EQUAL
9 TO THE UNEXPENDED FUNDS. IDENTIFIED UNEXPENDED GRANT FUNDS MUST BE
10 REPORTED BY INDIGENT CRIMINAL DEFENSE SYSTEMS ON OR BEFORE OCTOBER
11 31 OF EACH YEAR. FUNDS SUBJECT TO EXTENSION UNDER SUBSECTION (11)
12 MUST BE REPORTED BUT NOT INCLUDED IN THE REDUCTIONS DESCRIBED IN
13 THIS SUBSECTION. ANY GRANT MONEY THAT IS DETERMINED TO HAVE BEEN
14 USED FOR A PURPOSE OUTSIDE OF THE COMPLIANCE PLAN MUST BE REPAYED TO
15 THE MIDC, OR IF NOT REPAYED, MUST BE DEDUCTED FROM FUTURE GRANT
16 AMOUNTS. THE DIRECTOR OF THE DEPARTMENT HAS VETO POWER OVER
17 INDIVIDUAL COMPLIANCE PLANS IN THE EVENT THAT THE INDIGENT CRIMINAL
18 DEFENSE SYSTEM FAILS TO COMPLY WITH SUBSECTION (3).

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

25 (17) AN INDIGENT CRIMINAL DEFENSE SYSTEM SHALL ASSESS AND
26 COLLECT CONTRIBUTION OR REIMBURSEMENT FROM INDIVIDUALS DETERMINED
27 TO BE PARTIALLY INDIGENT UNDER APPLICABLE COURT RULES AND STATUTES.

1 A COURT MAY ASSIST ITS LOCAL INDIGENT CRIMINAL DEFENSE SYSTEM IN AN
2 ASSESSMENT AND COLLECTION AT THE DIRECTION OF THE SUPREME COURT.
3 TWENTY PERCENT OF THE FUNDS RECEIVED UNDER THIS SUBSECTION MUST BE
4 REMITTED BY AN INDIGENT CRIMINAL DEFENSE SYSTEM TO THE DEPARTMENT
5 IN A MANNER PRESCRIBED BY THE DEPARTMENT AND REPORTED TO THE MIDC
6 BY OCTOBER 31 OF EACH YEAR. THE FUNDS RECEIVED BY THE DEPARTMENT
7 UNDER THIS SUBSECTION MUST BE EXPENDED BY THE MIDC IN SUPPORT OF
8 INDIGENT CRIMINAL DEFENSE SYSTEMS IN THIS STATE. THE REMAINING 80%
9 OF THE FUNDS COLLECTED UNDER THIS SUBSECTION MAY BE RETAINED BY THE
10 INDIGENT CRIMINAL DEFENSE SYSTEM FOR PURPOSES OF FUNDING THE COURT
11 AND MUST NOT COUNT TOWARD THE LOCAL SHARE.

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

1 within 30 calendar days after the mediator is appointed and
2 terminate within 60 calendar days of its commencement. Mediation
3 costs associated with mediation of the dispute ~~shall~~**MUST** be paid
4 equally by the parties.

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

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

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

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

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

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

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

26 (c) Within 30 days of the MIDC's determination that the
27 indigent criminal defense system has breached its duty to comply

1 with an approved plan.

2 (d) The action ~~shall~~**MUST** be brought in the judicial circuit
3 where the indigent criminal defense service is located. The state
4 court administrator, as authorized by the supreme court, shall
5 assign an active or retired judge from a judicial circuit other
6 than the judicial circuit where the action was filed to hear the
7 case. Costs associated with the assignment of the judge ~~shall~~**MUST**
8 be paid equally by the parties.

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

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

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

26 (6) If the court determines that an indigent criminal defense
27 system has breached its duty under section 17(1), the court may

1 order the MIDC to provide indigent criminal defense on behalf of
2 that system.

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

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

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

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

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

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

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

21 Enacting section 1. This amendatory act takes effect 90 days
22 after the date it is enacted into law.