

# SENATE BILL NO. 425

June 28, 2023, Introduced by Senators SHINK, IRWIN, CHANG, BAYER, WOJNO, GEISS and SANTANA and referred to the Committee on Civil Rights, Judiciary, and Public Safety.

A bill to amend 1978 PA 620, entitled "Appellate defender act," by amending the title and sections 2, 4, 6, and 7 (MCL 780.712, 780.714, 780.716, and 780.717) and by adding sections 1a and 8a.

## THE PEOPLE OF THE STATE OF MICHIGAN ENACT:

1 TITLE  
2 An act relating to ~~criminal procedure;~~ **indigent appellate**  
3 **defense**; to provide for the defense of ~~persons accused or convicted~~  
4 ~~of criminal offenses;~~ **certain indigent individuals**; to create the  
5 appellate defender commission; to provide for an appellate

1 defender; to prescribe powers and duties; to provide facilities,  
 2 personnel, and related assistance and services for the appellate  
 3 defender and the commission; and to provide for the financing of  
 4 the administration of this act.

5 **Sec. 1a. As used in this act:**

6 (a) "Adult" means either of the following:

7 (i) An individual who is eligible to appeal a criminal  
 8 conviction or exercise any other postconviction remedy.

9 (ii) An individual who is eligible to appeal an order issued  
 10 under section 2d or 4 of chapter XIIA of the probate code of 1939,  
 11 1939 PA 288, MCL 712A.2d and 712A.4.

12 (b) "Indigent defense system" or "system" means either of the  
 13 following:

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

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

17 (c) "Youth" means an individual who is eligible to appeal an  
 18 order issued under section 2(a), (d), or (h) of chapter XIIA of the  
 19 probate code of 1939, 1939 PA 288, MCL 712A.2.

20 Sec. 2. (1) An appellate defender commission is created within  
 21 the office of the state court administrator. The appellate defender  
 22 commission consists of ~~7-9~~ members appointed by the governor for  
 23 terms of 4 years. ~~Of the 7-~~**The members ~~7-2~~ of the commission must**  
 24 **be determined as follows:**

25 (a) **Two** members ~~shall~~**must** be recommended by the supreme court  
 26 of this state. ~~7-1~~

27 (b) **One** member ~~shall~~**must** be recommended by the court of  
 28 appeals of this state. ~~7-1~~

29 (c) **One** member ~~shall~~**must** be recommended by the Michigan

1 judges association. ~~2~~

2 (d) **Two** members ~~shall~~**must** be recommended by the ~~state bar~~  
3 **State Bar** of Michigan. ~~and 1 member,~~

4 (e) **One** member **must be recommended by the Michigan Indian**  
5 **Judicial Association.**

6 (f) **Two** members who ~~shall~~**are** not be an attorney, ~~attorneys~~  
7 ~~shall~~**must** be selected from the general public by the governor **to**  
8 **represent the interests of individuals who have been impacted by**  
9 **the youth or adult justice system.**

10 (g) A member ~~of~~**appointed to** the commission **under subdivisions**  
11 **(a) to (f)** shall not be, at the time of appointment, a sitting  
12 judge, a prosecuting attorney, or a law enforcement officer.

13 (2) Initially 4 members of the commission shall be appointed  
14 for terms of 4 years and 1 member each for terms of 1, 2, and 3  
15 years respectively.

16 (3) Members of the commission shall not receive a salary in  
17 that capacity but ~~shall~~**must** be reimbursed for their reasonable  
18 actual and necessary expenses by the state treasurer upon the  
19 warrant of the state treasurer.

20 (4) The commission shall be responsible for the development of  
21 ~~a~~**both of the following:**

22 (a) **A** system of ~~indigent~~ appellate defense services which  
23 ~~shall~~**for indigent adults.**

24 (b) **A system of appellate defense services for indigent youth.**

25 (5) **Both of the systems described in subsection (4) must**  
26 **include services provided by** ~~the~~**both of the following:**

27 (a) **The** office of the state appellate defender, ~~provided for~~  
28 ~~under~~**created in** section 3. ~~and locally~~

29 (b) **Locally** appointed private counsel.

1           (6) ~~(5)~~—The commission shall be responsible for the  
 2 development of minimum standards to which all indigent ~~criminal~~  
 3 ~~defense~~ **defense** services ~~shall for adults and youth shall~~  
 4 conform. ~~Within 180 days after appointment of the commission and~~  
 5 ~~whenever~~ **Whenever** the commission deems it advisable, ~~after that~~  
 6 ~~period,~~ the commission shall submit proposed standards to the  
 7 supreme court. Upon approval of the proposed standards by the  
 8 supreme court, the commission shall adopt the standards.

9           (7) ~~(6)~~—The commission shall compile and keep current ~~a both~~  
 10 **of the following:**

11           (a) **A statewide roster of attorneys eligible for, and willing**  
 12 **to accept, appointment by an appropriate court to serve as criminal**  
 13 **appellate defense counsel for indigents. indigent adults.**

14           (b) **A statewide roster of attorneys eligible for, and willing**  
 15 **to accept, appointment to serve as appellate defense counsel for**  
 16 **indigent youth.**

17           (8) The appointment of ~~criminal~~ appellate defense services for  
 18 ~~indigents shall~~ **indigent adults and youth must** be made by the trial  
 19 court from the **applicable** roster ~~provided by the commission or~~  
 20 ~~shall be~~ **described in subsection (7), or** referred to the office of  
 21 the state appellate defender.

22           (9) ~~(7)~~—The commission shall provide a continuing legal  
 23 education training program for its staff and the private attorneys  
 24 who appear on the ~~roster for purposes of appointment for indigent~~  
 25 ~~criminal defense appellate service.~~ **rosters described in subsection**  
 26 **(7).**

27           Sec. 4. (1) ~~The~~ **An individual shall not serve as an** appellate  
 28 **defender, deputy appellate defender, and each or** assistant  
 29 **appellate defender shall.**

1       ~~(a) Be~~ **unless the individual is** an attorney licensed to  
2 practice law in this state.

3       (2) ~~(b) The appellate defender, the deputy appellate defender,~~  
4 **and each assistant appellate defender shall do all of the**  
5 **following:**

6       (a) Take and subscribe to the oath required by the  
7 constitution before taking office.

8       (b) ~~(c) Perform~~ duties as may be provided by law.

9       (c) ~~(d) Represent~~ the **following individuals:**

10       (i) **An indigent defendant** ~~adult~~ only subsequent to a conviction  
11 or entry of a guilty plea or plea of nolo contendere at the trial  
12 court level.

13       (ii) **An indigent youth only subsequent to an appealable order.**

14       (3) ~~(e) Not~~ **The appellate defender and the deputy appellate**  
15 **defender shall not** engage in the practice of law or as an attorney  
16 or counselor in a court of this state except in the exercise of ~~his~~  
17 **the duties under this prescribed by this** act.

18       (4) ~~(2) For~~ purposes of this act, the appellate defender, the  
19 deputy appellate defender, ~~the each~~ assistant appellate defender,  
20 and support personnel ~~shall be~~ **are** considered as court employees  
21 and **are** not as classified civil service employees.

22       Sec. 6. The appellate defender shall **do all of the following:**

23       (a) Conduct an appeal of a felony conviction or conduct other  
24 ~~post conviction~~ **postconviction** remedies on behalf of a ~~person~~ **an**  
25 **indigent adult** for whom the appellate defender is assigned as  
26 attorney. ~~by a court of a record.~~

27       (b) **Conduct an appeal of an order or conduct other appropriate**  
28 **postdisposition remedies on behalf of an indigent youth for whom**  
29 **the appellate defender is assigned as attorney.**

1           (c) ~~(b)~~ Provide investigatory and other services necessary for  
 2 a complete appellate review or appropriate ~~post conviction~~  
 3 **postconviction or postdisposition** remedy, **as applicable.**

4           (d) ~~(e)~~ Accept only that number of assignments and maintain a  
 5 caseload which will ~~insure~~ **ensure** quality ~~criminal defense~~  
 6 appellate **defense** services **for indigent adults and youth** consistent  
 7 with the funds appropriated by the state. However, the number of  
 8 cases assigned to the appellate defender office ~~shall~~ **must** not be  
 9 less than 25% of the total ~~criminal defense~~ appellate **defense** cases  
 10 for ~~indigents~~ **indigent adults and youth** pending before the  
 11 appellate courts of this state.

12           (e) ~~(d)~~ Maintain a repository of briefs prepared by the  
 13 appellate defender and make those briefs available to private  
 14 attorneys providing ~~criminal defense~~ appellate **defense** services for  
 15 ~~indigents~~ **indigent adults and youth.**

16           (f) ~~(e)~~ Perform other duties required by law as directed by  
 17 the commission.

18           Sec. 7. **(1)** The appellate defender may appoint special  
 19 assistant appellate defenders to ~~represent~~ **do any of the following:**

20           **(a) Represent** indigent ~~persons~~ **adults** or ~~to~~ **otherwise** assist  
 21 in the representation of ~~an~~ indigent ~~person~~ **adults** at any stage of  
 22 appellate or ~~post conviction~~ **postconviction** proceedings, upon rules  
 23 adopted by the commission. ~~Special~~

24           **(b) Represent indigent youth or otherwise assist in the**  
 25 **representation of indigent youth at any stage of appellate**  
 26 **proceedings, upon rules adopted by the commission.**

27           **(2) A special** assistant appellate ~~defenders~~ **defender** shall be  
 28 paid on a contract basis approved by the commission within funds  
 29 available to the commission. ~~and shall~~

1           (3) A special assistant appellate defender is not ~~be~~ subject  
2 to the restrictions on the practice of law ~~contained in~~ applicable  
3 to the appellate defender, deputy appellate defender, and assistant  
4 appellate defender under section 4.

5           Sec. 8a. (1) An indigent defense system is responsible for the  
6 payment of reasonable fees and expenses for the services provided  
7 by locally appointed private counsel under section 2.

8           (2) The commission shall establish a standard procedure for  
9 both of the following:

10           (a) The payment of locally appointed private counsel by  
11 indigent defense systems as described in subsection (1).

12           (b) The reimbursement of indigent defense systems as described  
13 in subsection (4).

14           (3) The standard procedure established under subsection (2) (a)  
15 must include rates and policies that are consistent with the  
16 standards established under section 11(2) (b) of the Michigan  
17 indigent defense commission act, 2013 PA 93, MCL 780.991.

18           (4) Subject to appropriation, if an indigent defense system  
19 provides payment to locally appointed private counsel under  
20 subsection (2) pursuant to the rates and policies established under  
21 subsection (3), the state shall reimburse the system for 1/2 of the  
22 cost to the system. After a system has complied with subsection (2)  
23 for 3 full fiscal years, the state shall reimburse the system for  
24 all costs exceeding 1/2 of the system's average annual pre-  
25 reimbursement cost during its first 3 years of compliance. It is  
26 the intent of the legislature to fully fund this reimbursement.