

**SUBSTITUTE FOR
HOUSE BILL NO. 4631**

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
6 defender; to prescribe powers and duties; to provide facilities,
7 personnel, and related assistance and services for the appellate
8 defender and the commission; and to provide for the financing of



1 the administration of this act.

2 Sec. 1a. As used in this act:

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

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

6 (ii) An individual who is eligible to appeal an order issued
7 under section 2d or 4 of chapter XIIIA of the probate code of 1939,
8 1939 PA 288, MCL 712A.2d and 712A.4.

9 (b) "Indigent" means that term as defined in section 3 of the
10 Michigan indigent defense commission act, 2013 PA 93, MCL 780.983.

11 (c) "Indigent defense system" or "system" means either of the
12 following:

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

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

16 (d) "Local contribution" means an indigent defense system's
17 average annual expenditure for attorney fees and expenses during
18 the first 3 full fiscal years in which the system has complied with
19 the standard procedure established under section 8a(2), excluding
20 expenditures reimbursed under section 8a(4). If the Consumer Price
21 Index has increased since November 1 of the prior state fiscal
22 year, the local contribution must be adjusted by that percentage or
23 3%, whichever is less.

24 (e) "Youth" means an individual who is eligible to appeal an
25 order issued under section 2(a), (d), or (h) of chapter XIIIA of the
26 probate code of 1939, 1939 PA 288, MCL 712A.2.

27 Sec. 2. (1) An appellate defender commission is created within
28 the office of the state court administrator. The appellate defender
29 commission consists of 7-9 members appointed by the governor for



1 terms of 4 years. ~~Of the 7~~ **The members, 2 of the commission must**
 2 **be determined as follows:**

3 (a) **Two** members ~~shall~~ **must** be recommended by the supreme court
 4 of this state. ~~1~~

5 (b) **One** member ~~shall~~ **must** be recommended by the court of
 6 appeals of this state. ~~1~~

7 (c) **One** member ~~shall~~ **must** be recommended by the Michigan
 8 ~~judges association,~~ **Judges Association.**

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

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

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

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

20 (2) Initially 4 members of the commission shall be appointed
 21 for terms of 4 years and 1 member each for terms of 1, 2, and 3
 22 years respectively.

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

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

29 (a) **A** system of ~~indigent~~ appellate defense services ~~which~~



1 ~~shall for indigent adults.~~

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

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

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

7 (b) Locally appointed private counsel.

8 (6) ~~(5)~~ The commission shall be responsible for the
9 development of minimum standards to which all indigent ~~criminal~~
10 ~~defense appellate~~ defense services ~~shall for adults and youth shall~~
11 conform. ~~Within 180 days after appointment of the commission and~~
12 ~~whenever~~ Whenever the commission deems it advisable, ~~after that~~
13 ~~period,~~ the commission shall submit proposed standards to the
14 supreme court. Upon approval of the proposed standards by the
15 supreme court, the commission shall adopt the standards.

16 (7) ~~(6)~~ The commission shall compile and keep current ~~a both~~
17 of the following:

18 (a) A statewide roster of attorneys eligible for, and willing
19 to accept, appointment ~~by an appropriate court to serve as criminal~~
20 appellate defense counsel for ~~indigents~~ indigent adults.

21 (b) A statewide roster of attorneys eligible for, and willing
22 to accept, appointment to serve as appellate defense counsel for
23 indigent youth.

24 (8) The appointment of ~~criminal~~ appellate defense services for
25 ~~indigents~~ shall indigent adults and youth must be made by the ~~trial~~
26 court from the applicable roster ~~provided by the commission or~~
27 shall be described in subsection (7), or referred to the office of
28 the state appellate defender.

29 (9) ~~(7)~~ The commission shall provide a continuing legal



1 education training program for its staff and the private attorneys
 2 who appear on the ~~roster for purposes of appointment for indigent~~
 3 ~~criminal defense appellate service.~~ **rosters described in subsection**
 4 **(7).**

5 Sec. 4. (1) ~~The~~ **An individual shall not serve as an** appellate
 6 defender, deputy appellate defender, ~~and each or~~ assistant
 7 appellate defender ~~shall:~~

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

10 **(2) ~~(b)~~ The appellate defender, the deputy appellate defender,**
 11 **and each assistant appellate defender shall do all of the**
 12 **following:**

13 **(a)** Take and subscribe to the oath required by the
 14 constitution before taking office.

15 **(b) ~~(e)~~** Perform duties as may be provided by law.

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

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

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

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

25 **(4) ~~(2)~~** For purposes of this act, the appellate defender, the
 26 deputy appellate defender, ~~the each~~ assistant appellate defender,
 27 and support personnel ~~shall be~~ **are** considered ~~as~~ court employees
 28 and **are** not ~~as~~ classified civil service employees.

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



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

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

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

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

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

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

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

27 (a) **Represent** indigent ~~persons~~ **adults** or ~~to~~ **otherwise** assist
 28 in the representation of ~~an indigent person~~ **adults** at any stage of
 29 appellate or ~~post conviction~~ **postconviction** proceedings, upon rules



1 adopted by the commission. ~~Special~~

2 (b) Represent indigent youth or otherwise assist in the
3 representation of indigent youth at any stage of appellate
4 proceedings, upon rules adopted by the commission.

5 (2) A special assistant appellate ~~defenders~~ defender shall be
6 paid on a contract basis approved by the commission within funds
7 available to the commission. ~~and shall~~

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

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

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

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

19 (b) The reimbursement of indigent defense systems as described
20 in subsection (4).

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

25 (4) Subject to appropriation, if an indigent defense system
26 pays locally appointed private counsel under subsection (2)
27 pursuant to the rates and policies established under subsection
28 (3), the state shall reimburse the system for 1/2 of the
29 expenditures of the system. After a system has complied with



1 subsection (2) for 3 full fiscal years, the state shall reimburse
2 the system for all expenditures exceeding the system's local
3 contribution. It is the intent of the legislature to fully fund
4 this reimbursement.

