

# HOUSE BILL No. 5804

August 15, 2012, Introduced by Reps. McMillin, Constan, Heise, Lipton, Haveman, Dillon, Walsh, Irwin, Switalski, Graves, Somerville, Cotter, Muxlow, Jacobsen, Damrow, Greimel, Haines, Hobbs, Liss, Callton, Kandrevas, McCann, Rutledge, Horn, Nesbitt, Lund, Franz, Hughes, Meadows, Cavanagh, Olumba, Tlaib, Geiss, Darany, Haugh, Stapleton, Lane, Ananich, Townsend, Durhal, Santana, LeBlanc, Jackson, Bauer, Howze, Goike, Barnett, Price, Kowall, Rogers, Knollenberg, Forlini, Oakes, Brown, Nathan, Hooker, Bumstead, Yonker, Jenkins, Kurtz, MacMaster, Opsommer, Bledsoe, Slaven, Gilbert, Foster, Ouimet, Womack, Wayne Schmidt, Lyons, Pscholka, Crawford, Shirkey, Stallworth, Stanley and Olson and referred to the Committee on Judiciary.

A bill to create the Michigan indigent defense commission and to provide for its powers and duties; to provide for constitutionally effective assistance of counsel to represent indigent defendants in criminal cases; to provide standards for the appointment of legal counsel; and to provide for certain appropriations.

## THE PEOPLE OF THE STATE OF MICHIGAN ENACT:

1       Sec. 1. This act shall be known and may be cited as the  
2 "Michigan indigent defense commission act".

3       Sec. 3. As used in this act:

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

5       (i) An individual 17 years of age or older.

6       (ii) An individual less than 17 years of age who is charged in  
7 the family division of the circuit court or in the general division

1 of the circuit court with violating a criminal law under section 4  
2 of chapter XIIIA of the probate code of 1939, 1939 PA 288, MCL  
3 712A.4.

4 (b) "Criminal law" means a law of this state that provides for  
5 the possibility of imprisonment upon conviction.

6 (c) "Criminal trial defense services" means criminal law  
7 defense services other than those authorized to be provided under  
8 the appellate defender act, 1978 PA 620, MCL 780.711 to 780.719.

9 (d) "MIDC" or "commission" means the Michigan indigent defense  
10 commission created under section 5.

11 Sec. 5. (1) The Michigan indigent defense commission is  
12 created in the judicial branch of state government.

13 (2) The MIDC shall retain as an autonomous entity all  
14 statutory authority, powers, duties, functions, records, personnel,  
15 property, unexpended balances of appropriations, allocations, and  
16 other functions, including the functions of budgeting, personnel,  
17 locating offices, and other management functions.

18 (3) The MIDC shall establish and enforce minimum standards for  
19 the local delivery of criminal trial defense services providing  
20 constitutionally effective assistance of counsel to indigent adults  
21 throughout this state and shall identify and encourage best  
22 practices for delivering that assistance.

23 (4) Local units of government shall comply with the standards  
24 established by the MIDC under this act and shall cooperate with the  
25 MIDC in carrying out its duties under this act.

26 Sec. 7. (1) The MIDC consists of 14 members, 13 of whom shall  
27 be appointed by the governor for terms of 4 years. Subject to

1 subsection (3), the governor shall appoint members under this  
2 subsection as 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) Two members from a list of 6 names submitted by the  
9 criminal defense attorney association of Michigan.

10 (e) One member from a list of 3 names submitted by the  
11 Michigan judges association.

12 (f) One member from a list of 3 names submitted by the  
13 Michigan district judges association.

14 (g) One member from a list of 3 names submitted by the state  
15 bar of Michigan.

16 (h) One member from names submitted by bar associations whose  
17 primary mission or purpose is to advocate for minority interests.

18 (i) One member selected to represent the general public.

19 (j) One member selected to represent local units of  
20 government.

21 (2) The supreme court chief justice shall serve as an ex  
22 officio member of the MIDC.

23 (3) Individuals nominated for service on the MIDC shall have  
24 significant experience in the defense or prosecution of criminal  
25 proceedings or have demonstrated a strong commitment to high-  
26 quality representation in indigent criminal trial defense matters.

27 Of the members appointed under this section, the governor shall

1 appoint no fewer than 2 individuals who are not licensed attorneys.  
2 An individual who receives compensation from this state or a local  
3 unit of government for providing representation to indigent adults  
4 in state courts is ineligible to serve as a member of the MIDC. Not  
5 more than 3 judges, whether they are former judges or sitting  
6 judges, shall serve on the MIDC at the same time. The governor may  
7 reject the names submitted under subsection (1) and request  
8 additional names.

9 (4) MIDC members shall hold office until their successors are  
10 appointed. The terms of the members shall be staggered. Initially,  
11 4 members shall be appointed for a term of 4 years each, 3 members  
12 shall be appointed for a term of 3 years each, 3 members shall be  
13 appointed for a term of 2 years each, and 3 members shall be  
14 appointed for a term of 1 year each.

15 (5) The governor shall fill a vacancy occurring in the  
16 membership of the MIDC in the same manner as the original  
17 appointment, except that the source of the nomination shall submit  
18 a list of 3 names for each vacancy. If an MIDC member vacates his  
19 or her commission before the end of the member's term, the governor  
20 shall fill that vacancy for the unexpired term only.

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

1           (7) MIDC members shall not receive a salary in that capacity  
2 but shall be reimbursed for their reasonable actual and necessary  
3 expenses by the state treasurer.

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

7           (9) A majority of the MIDC members constitutes a quorum for  
8 the transaction of business at a meeting of the MIDC. A majority of  
9 the members present and serving are required for official action of  
10 the commission.

11           (10) Confidential case information, including, but not limited  
12 to, client information and attorney work product, is exempt from  
13 disclosure under the freedom of information act, 1976 PA 442, MCL  
14 15.231 to 15.246.

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

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

23           (b) Investigating, auditing, and reviewing the operation of  
24 local indigent criminal trial defense delivery systems to assure  
25 compliance with the commission's standards, rules, and procedures.

26           (c) Hiring an executive director and determining the  
27 appropriate number of staff needed to accomplish the purpose of the

1 MIDC consistent with annual appropriations.

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

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

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

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

14 (f) Establishing procedures for the mandatory collection of  
15 data concerning the operation of the MIDC, each individual attorney  
16 representing indigent criminal trial defense services, and each  
17 local indigent criminal trial defense services system.

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

22 (2) Upon the appropriation of sufficient funds, the MIDC shall  
23 hire staff, establish minimum standards to carry out the purpose of  
24 this act, and begin collecting data from all local units of  
25 government and individual attorneys providing criminal trial  
26 defense services to indigent adults. To the extent feasible, the  
27 MIDC shall establish metrics for determining the resources

1 necessary for each local unit of government to comply with the  
2 minimum standards established by the MIDC and for the MIDC to  
3 fulfill its role. The MIDC shall establish a timeline for local  
4 units of government to comply with the minimum standards  
5 established under this act consistent with the metrics established  
6 under this section and appropriations by this state.

7 (3) In establishing and overseeing the minimum requirements,  
8 rules, and procedures described in subsection (1), the MIDC shall  
9 emphasize the importance of criminal trial defense services  
10 provided to juveniles charged under section 4 of chapter XIIIA of  
11 the probate code of 1939, 1939 PA 288, MCL 712A.4, and to indigent  
12 adults with mental impairments.

13 (4) The MIDC shall be mindful that defense attorneys who  
14 represent indigent adults are equal partners with the prosecution,  
15 law enforcement, and the judiciary in the criminal justice system,  
16 and should be adequately funded in order to fulfill their role.

17 Sec. 11. (1) The MIDC shall establish minimum requirements,  
18 rules, and procedures to effectuate the following:

19 (a) The delivery of indigent criminal trial defense services,  
20 including, but not limited to, the selection, funding, and payment  
21 of defense counsel, shall be independent of the judiciary but  
22 ensure that the judges of this state are permitted and encouraged  
23 to contribute information and advice concerning that delivery of  
24 indigent criminal trial defense services.

25 (b) If the caseload is sufficiently high, indigent criminal  
26 trial defense services shall consist of both an indigent criminal  
27 defender office and the active participation of other members of

1 the state bar.

2 (c) Indigent adults shall be screened for eligibility under  
3 this act, and counsel shall be assigned as soon as feasible after  
4 formal charges are filed against the indigent adult.

5 (2) In establishing minimum requirements, rules, and  
6 procedures, the MIDC shall adhere to the following principles:

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

10 (b) Defense counsel's workload is controlled to permit high-  
11 quality representation. A local unit of government shall not create  
12 economic disincentives or incentives that may impair defense  
13 counsel's ability to provide effective representation, and may  
14 develop workload controls to enhance defense counsel's ability to  
15 provide effective representation.

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

19 (d) The same defense counsel continuously represents and  
20 personally appears at every court appearance throughout the  
21 pendency of the case. However, local units of government may exempt  
22 ministerial, nonsubstantive tasks, and hearings from this  
23 prescription.

24 (e) Defense counsel is provided with and required to attend  
25 relevant continuing legal education.

26 (f) Defense counsel is systematically reviewed for quality and  
27 efficiency of representation according to MIDC standards.



1           (3) The MIDC shall permit a local indigent criminal trial  
2 defense service system to continue to operate if it complies with  
3 the principles listed in subsection (2).

4           Sec. 13. (1) It is the duty of this state to ensure criminal  
5 trial defense services providing constitutionally effective  
6 assistance of counsel to indigent adult defendants through this  
7 state. All local units of government shall cooperate and  
8 participate in the investigation, audit, and review of their local  
9 indigent criminal trial defense systems conducted by the MIDC under  
10 section 11.

11           (2) A local unit of government shall maintain not less than  
12 the level of funding for indigent criminal trial defense services,  
13 adjusted for inflation as reported by the Detroit consumer price  
14 index, as its average annual expenditure in the 3 fiscal years  
15 immediately preceding the creation of the MIDC under this act, or a  
16 rate of \$7.25 per capita, whichever is greater. If additional  
17 funding is necessary in order to bring a local unit of government's  
18 delivery of indigent criminal trial defense services into  
19 compliance with the standards established by the MIDC, that  
20 additional funding shall be paid by this state. The legislature  
21 shall appropriate the funds necessary to a local unit of government  
22 to allow that local unit of government to meet the demonstrated and  
23 quantified requirements of a local unit of government to meet those  
24 standards.

25           (3) The MIDC shall directly provide criminal trial defense  
26 services to indigent adults if, or to the extent that, a local  
27 indigent criminal trial defense system fails or is unable to meet

1 the minimum standards necessary for the delivery of  
2 constitutionally effective assistance of counsel established by the  
3 MIDC under section 11. Upon request, a local unit of government  
4 shall be afforded an opportunity to be heard by the MIDC prior to  
5 the MIDC's determination that it is not in compliance.

6 (4) If a local unit of government requests a hearing under  
7 subsection (3), the MIDC shall identify the local unit of  
8 government's areas of noncompliance and allow sufficient time for  
9 the local unit of government to come into compliance.

10 (5) If, after the time allowed under subsection (4), a local  
11 unit of government fails to comply, the MIDC shall provide direct  
12 indigent criminal trial defense services at state cost to that  
13 local unit of government.

14 (6) Upon the MIDC's determination that a local unit of  
15 government has failed or is unable to meet the minimum standards  
16 established by the MIDC under this act, the MIDC shall direct the  
17 state treasurer to withhold an amount equal to the cost of  
18 providing criminal trial defense services to indigent adults from  
19 any state payments to that local unit of government.

20 (7) The MIDC may apply for and obtain grants from any source  
21 to carry out the purposes of this act.

22 Sec. 15. (1) The commission shall establish procedures for the  
23 conduct of its affairs and promulgate policies necessary to carry  
24 out its powers and duties under this act.

25 (2) The commission shall convene a public hearing before a  
26 proposed policy becomes effective.

27 (3) Commission policies shall be placed in an appropriate

1 manual, made publicly available on a website, and made available to  
2 all attorneys and professionals providing public defense services,  
3 the supreme court, the senate and house appropriations committees,  
4 and the senate and house fiscal agencies.

5 Sec. 17. Both of the following apply to the MIDC:

6 (a) The freedom of information act, 1976 PA 442, MCL 15.231 to  
7 15.246.

8 (b) The open meetings act, 1976 PA 267, MCL 15.261 to 15.275.