

SENATE BILL No. 300

April 10, 2013, Introduced by Senator CASWELL 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 indigent defendants in criminal cases with effective assistance of counsel; to provide standards for the appointment of legal counsel; and to provide for certain appropriations and grants.

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 at the time of the
7 commission of a felony if any of the following conditions apply:

8 (A) During consideration of a petition filed under section 4

1 of chapter XIIA 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 XIIA 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 XIIA 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) "Effective assistance of counsel" or "effective
18 representation" means legal representation that is compliant with
19 standards established by the appellate courts of this state and the
20 appellate courts of the United States.

21 (c) "Indigent" means meeting 1 or more of the conditions
22 described in section 11(3).

23 (d) "Indigent criminal defense services" means local legal
24 defense services provided to a defendant and to which both of the
25 following conditions apply:

26 (i) The defendant is being prosecuted or sentenced for a crime
27 for which an individual may be imprisoned upon conviction,

1 beginning with the defendant's initial appearance in court to
2 answer to the criminal charge.

3 (ii) The defendant is determined to be indigent under section
4 11(3).

5 (e) Indigent criminal defense services do not include services
6 authorized to be provided under the appellate defender act, 1978 PA
7 620, MCL 780.711 to 780.719.

8 (f) "Indigent criminal defense system" or "system" means
9 either of the following:

10 (i) The local unit of government that funds a trial court
11 combined with each and every trial court funded by the local unit
12 of government.

13 (ii) If a trial court is funded by more than 1 local unit of
14 government, those local units of government, collectively, combined
15 with each and every trial court funded by those local units of
16 government.

17 (g) "Local share" or "share" means an indigent criminal
18 defense system's average annual expenditure for indigent criminal
19 defense services in the 3 fiscal years immediately preceding the
20 creation of the MIDC under this act, excluding money reimbursed to
21 the system by individuals determined to be partially indigent.

22 (h) "MIDC" or "commission" means the Michigan indigent defense
23 commission created under section 5.

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

26 (2) The MIDC shall retain as an autonomous entity all
27 statutory authority, powers, duties, functions, records, personnel,

1 property, unexpended balances of appropriations, allocations, and
2 other functions, including the functions of budgeting, personnel,
3 locating offices, and other management functions. Any portion of
4 funds appropriated to the MIDC that is not expended in a state
5 fiscal year shall not lapse to the general fund but shall be
6 carried forward in a work project account that is in compliance
7 with section 451a of the management and budget act, 1984 PA 431,
8 MCL 18.1451a, for use in the following state fiscal year.

9 (3) The MIDC shall propose minimum standards for the local
10 delivery of indigent criminal defense services providing effective
11 assistance of counsel to adults throughout this state. These
12 minimum standards shall be designed to ensure the provision of
13 indigent criminal defense services that meet constitutional
14 requirements for effective assistance of counsel. The commission
15 shall convene a public hearing before a proposed standard is
16 submitted to the supreme court. A minimum standard proposed under
17 this subsection shall be submitted to the supreme court. The
18 supreme court shall approve or disapprove a proposed minimum
19 standard within 180 days of its submission. A proposed minimum
20 standard shall be final when it is approved by the supreme court.
21 If the supreme court neither approves nor disapproves, then the
22 standard is not approved.

23 (4) The MIDC shall identify and encourage best practices for
24 delivering the effective assistance of counsel to indigent
25 defendants charged with crimes.

26 Sec. 7. (1) The MIDC includes 15 voting members and the ex
27 officio member described in subsection (2). The 15 voting members

1 shall be appointed by the governor for terms of 4 years, except as
2 provided in subsection (4). Subject to subsection (3), the governor
3 shall appoint members under this subsection as follows:

4 (a) Two members submitted by the speaker of the house of
5 representatives.

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

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

9 (d) Three members from a list of 9 names submitted by the
10 criminal defense attorney association of Michigan.

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

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

15 (g) One member from a list of 3 names submitted by the state
16 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 of Michigan who is a former
23 county prosecuting attorney or former assistant county prosecuting
24 attorney.

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

26 (k) One member selected to represent local units of
27 government.

1 (2) The supreme court chief justice or his or her designee
2 shall serve as an ex officio member of the MIDC without vote.

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

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

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

1 leader or the speaker of the house of representatives is the source
2 of the nomination, 1 name shall be submitted. If an MIDC member
3 vacates his or her commission before the end of the member's term,
4 the governor shall fill that vacancy for the 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 be reimbursed for their reasonable actual and
14 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. 9. (1) The MIDC has the following authority and duties:

27 (a) Developing and overseeing the implementation, enforcement,

1 and modification of minimum standards, rules, and procedures to
2 ensure that indigent criminal defense services providing effective
3 assistance of counsel are consistently delivered to all indigent
4 adults in this state consistent with the safeguards of the United
5 States constitution, the state constitution of 1963, and this act.

6 (b) Investigating, auditing, and reviewing the operation of
7 indigent criminal defense services to assure compliance with the
8 commission's minimum standards, rules, and procedures. However, an
9 indigent criminal defense service that is in compliance with the
10 commission's minimum standards, rules, and procedures shall not be
11 required to provide indigent criminal defense services in excess of
12 those standards, rules, and procedures.

13 (c) Hiring an executive director and determining the
14 appropriate number of staff needed to accomplish the purpose of the
15 MIDC consistent with annual appropriations.

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

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

19 (ii) Assisting the MIDC in developing, implementing, and
20 regularly reviewing the MIDC's standards, rules, and procedures,
21 including, but not limited to, recommending to the MIDC suggested
22 changes to the criteria for an indigent adult's eligibility for
23 receiving criminal trial defense services under this act.

24 (e) Establishing procedures for the receipt and resolution of
25 complaints, and the implementation of recommendations from the
26 courts, other participants in the criminal justice system, clients,
27 and members of the public.

1 (f) Establishing procedures for the mandatory collection of
2 data concerning the operation of the MIDC, each individual attorney
3 providing indigent criminal defense services, each indigent
4 criminal defense system, and the operation of indigent criminal
5 defense services.

6 (g) Establishing rules and procedures for indigent criminal
7 defense systems to apply to the MIDC for grants to bring the
8 system's delivery of indigent criminal defense services into
9 compliance with the minimum standards established by the MIDC.

10 (h) Establishing procedures for annually reporting to the
11 governor, legislature, and supreme court. The report required under
12 this subdivision shall include, but not be limited to,
13 recommendations for improvements and further legislative action.

14 (2) Upon the appropriation of sufficient funds, the MIDC shall
15 establish minimum standards to carry out the purpose of this act,
16 and collect data from all indigent criminal defense systems and
17 individual attorneys providing indigent criminal defense services
18 to adults. The MIDC shall propose goals for compliance with the
19 minimum standards established under this act consistent with the
20 metrics established under this section and appropriations by this
21 state.

22 (3) In establishing and overseeing the minimum standards,
23 rules, and procedures described in subsection (1), the MIDC shall
24 emphasize the importance of indigent criminal defense services
25 provided to juveniles under the age of 17 who are tried in the same
26 manner as adults or who may be sentenced in the same manner as
27 adults and to adults with mental impairments.

1 (4) The MIDC shall be mindful that defense attorneys who
2 provide indigent criminal defense services are partners with the
3 prosecution, law enforcement, and the judiciary in the criminal
4 justice system.

5 (5) The commission shall establish procedures for the conduct
6 of its affairs and promulgate policies necessary to carry out its
7 powers and duties under this act.

8 (6) Commission policies shall be placed in an appropriate
9 manual, made publicly available on a website, and made available to
10 all attorneys and professionals providing indigent criminal defense
11 services, the supreme court, the governor, the senate majority
12 leader, the speaker of the house of representatives, the senate and
13 house appropriations committees, and the senate and house fiscal
14 agencies.

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

17 (a) The delivery of indigent criminal defense services shall
18 be independent of the judiciary but ensure that the judges of this
19 state are permitted and encouraged to contribute information and
20 advice concerning that delivery of indigent criminal defense
21 services.

22 (b) If the caseload is sufficiently high, indigent criminal
23 defense services may consist of both an indigent criminal defender
24 office and the active participation of other members of the state
25 bar.

26 (c) Trial courts shall assure that each criminal defendant is
27 advised of his or her right to counsel. All adults, except those

1 appearing with retained counsel or those who have made an informed
2 waiver of counsel, shall be screened for eligibility under this
3 act, and counsel shall be assigned as soon as an indigent adult is
4 determined to be eligible for indigent criminal defense services.

5 (2) The MIDC shall implement minimum standards, rules, and
6 procedures to guarantee the right of indigent defendants to the
7 assistance of counsel as provided under amendment VI of the
8 constitution of the United States and section 20 of article I of
9 the state constitution of 1963. In establishing minimum standards,
10 rules, and procedures, the MIDC shall adhere to the following
11 principles:

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

15 (b) Defense counsel's workload is controlled to permit
16 effective representation. Economic disincentives or incentives that
17 impair defense counsel's ability to provide effective
18 representation shall be avoided. The MIDC may develop workload
19 controls to enhance defense counsel's ability to provide effective
20 representation.

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

24 (d) The same defense counsel continuously represents and
25 personally appears at every court appearance throughout the
26 pendency of the case. However, indigent criminal defense systems
27 may exempt ministerial, nonsubstantive tasks, and hearings from

1 this prescription.

2 (e) Defense counsel is required to attend continuing legal
3 education relevant to counsel's indigent defense clients.

4 (f) Defense counsel is systematically reviewed at the local
5 level for efficiency and for effective representation according to
6 MIDC standards.

7 (3) The following requirements apply to the application for,
8 and appointment of, indigent criminal defense services under this
9 act:

10 (a) A preliminary inquiry regarding, and the determination of,
11 the indigency of any defendant shall be made by the court not later
12 than at the defendant's first appearance in court. The
13 determination may be reviewed by the court at any other stage of
14 the proceedings. In determining whether a defendant is entitled to
15 the appointment of counsel, the court shall consider whether the
16 defendant is indigent and the extent of his or her ability to pay.
17 The court may consider such factors as income or funds from
18 employment or any other source, including personal public
19 assistance, to which the defendant is entitled, property owned by
20 the defendant or in which he or she has an economic interest,
21 outstanding obligations, the number and ages of the defendant's
22 dependents, employment and job training history, and his or her
23 level of education.

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

10 (c) A defendant not falling below the presumptive thresholds
11 described in subdivision (b) shall be subjected to a more rigorous
12 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 defendant shall be responsible for applying for indigent
18 defense counsel and for establishing his or her indigency and
19 eligibility for appointed counsel under this act. Any oral or
20 written statements made by the defendant in or for use in the
21 criminal proceeding and material to the issue of his or her
22 indigency shall be made under oath or an equivalent affirmation.

23 Sec. 13. (1) All indigent criminal defense systems and, at the
24 direction of the supreme court, attorneys engaged in providing
25 indigent criminal defense services shall cooperate and participate
26 with the MIDC in the investigation, audit, and review of their
27 indigent criminal defense services.

1 (2) A local unit of government may submit to the MIDC an
2 estimate of the cost of developing the plan and cost analysis for
3 implementing the plan under subsection (3) to the MIDC for
4 approval. Upon approval, the MIDC shall award the local unit of
5 government a grant to pay the approved costs for developing the
6 plan and cost analysis under subsection (3).

7 (3) No later than 180 days after a standard is approved by the
8 supreme court, each indigent criminal defense system shall submit a
9 plan to the MIDC for the provision of indigent criminal defense
10 services in a manner as determined by the MIDC. A plan submitted
11 under this subsection shall specifically address how the minimum
12 standards established by the MIDC under this act shall be met and
13 shall include a cost analysis. This cost analysis shall include a
14 statement of the funds in excess of the local share, if any,
15 necessary to allow its system to comply with the MIDC's minimum
16 standards.

17 (4) The MIDC may approve or disapprove a plan or cost
18 analysis, or both a plan and cost analysis, submitted under
19 subsection (3), and shall do so within 60 calendar days of the
20 submission of the plan and cost analysis. If the MIDC disapproves
21 the plan, the cost analysis, or both the plan and the cost
22 analysis, the indigent criminal defense system shall consult with
23 the MIDC and submit a new plan, a new cost analysis, or both within
24 60 calendar days of the new submission. If after 3 submissions a
25 compromise is not reached, the state court administrative office
26 shall appoint a mediator agreed to by the MIDC and the indigent
27 criminal defense system within 30 calendar days to mediate the

1 dispute as provided under subsection (5). Any mediation costs
2 associated with mediation of the dispute shall be paid equally by
3 the parties.

4 (5) Mediation of the dispute shall commence within 30 calendar
5 days after the mediator is appointed and finish within 60 calendar
6 days of its commencement. If the parties do not come to a dispute
7 of the dispute, both of the following apply:

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

11 (b) The MIDC shall consider the recommendation of the
12 mediator, if any, and shall determine the final parameters of the
13 plan or the cost analysis, or both within 30 calendar days, and the
14 indigent criminal defense system shall implement the plan and cost
15 analysis as determined by the MIDC.

16 (6) If an indigent criminal defense system fails to comply
17 with the requirements of subsection (5)(b), the MIDC shall proceed
18 under section 15.

19 (7) The MIDC shall submit a report to the governor, the senate
20 majority leader, the speaker of the house of representatives, and
21 the appropriations committees of the senate and house of
22 representatives requesting the appropriation of funds necessary to
23 implement the plan for each system approved by the MIDC. The
24 information used to create this report shall be made available to
25 the governor, the senate majority leader, the speaker of the house
26 of representatives, and the appropriations committees of the senate
27 and house of representatives.

1 (8) An indigent criminal defense system shall maintain not
2 less than its local share. If the MIDC determines that funding in
3 excess of the indigent criminal defense system's share is necessary
4 in order to bring its system into compliance with the minimum
5 standards established by the MIDC, that excess funding shall be
6 paid by this state. The legislature shall appropriate to the MIDC
7 the additional funds necessary for a system to meet and maintain
8 those minimum standards, which funds shall be provided to indigent
9 criminal defense systems through grants as described in subsection
10 (9).

11 (9) Except as provided in section 15, an indigent criminal
12 defense system shall not be required to provide funds in excess of
13 its local share. The MIDC shall provide grants to indigent criminal
14 defense systems to assist in bringing the systems into compliance
15 with minimum standards established by the MIDC.

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

21 (11) Within 180 days after receiving funds from the MIDC under
22 subsection (9), an indigent criminal defense system shall comply
23 with the terms of the grant in bringing its system into compliance
24 with the minimum standards established by the MIDC for effective
25 assistance of counsel.

26 (12) The MIDC may apply for and obtain grants from any source
27 to carry out the purposes of this act. All funds received by MIDC,

1 from any source, are state funds and shall be appropriated as
2 provided by law.

3 Sec. 15. (1) If an indigent criminal defense system fails to
4 comply with section 13 within 60 calendar days, the MIDC shall
5 undertake the administration of indigent criminal defense services
6 for the indigent criminal defense system, and in addition to paying
7 its local share, the indigent criminal defense system shall pay the
8 following assessments as the MIDC determines are necessary in order
9 to bring the indigent criminal defense system into compliance with
10 the minimum standards established by the MIDC:

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

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

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

14 (d) In the fourth year, or any subsequent year, 40% of the
15 state's costs.

16 (2) An indigent criminal defense system may resume the
17 administration of indigent criminal defense services at any time
18 upon approval by the MIDC of its plan for the provision of indigent
19 crime defense services and cost analysis. When a system resumes
20 that administration, it is no longer required to pay an assessment
21 under subsection (1) but shall be required to pay no less than its
22 share.

23 Sec. 17. The MIDC shall publish and make available to the
24 public on a website its annual report, its budget, and a listing of
25 all expenditures. Publication and availability of the listing of
26 expenditures shall be on a quarterly basis, except for the annual
27 report and salary information, which may be published and made

1 available on an annual basis. As used in this section,
2 "expenditures" means all payments or disbursements of MIDC funds,
3 received from any source, made by the MIDC.

4 Sec. 19. Both of the following apply to the MIDC:

5 (a) The freedom of information act, 1976 PA 442, MCL 15.231 to
6 15.246, except as provided in section 7(10).

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

8 Sec. 21. (1) Nothing in this act should be construed to
9 overrule, expand, or extend, either directly or by analogy, any
10 decisions reached by the United States supreme court or the supreme
11 court of this state regarding the effective assistance of counsel.

12 (2) Nothing in this act shall be construed to override section
13 29 or 30 of article IX of the state constitution of 1963.

14 (3) The failure of an indigent criminal defense system to
15 comply with statutory duties imposed under this act does not create
16 a cause of action against the government or system.

17 (4) Statutory duties imposed that create a higher standard
18 than that imposed by the United States constitution or the state
19 constitution of 1963 do not create a cause of action against a
20 local unit of government, an indigent criminal defense system, or
21 this state.

22 (5) Violations of MIDC rules that do not constitute
23 ineffective assistance of counsel under the United States
24 constitution or the state constitution of 1963 do not constitute
25 grounds for a conviction to be reversed or a judgment to be
26 modified for ineffective assistance of counsel.