

HOUSE BILL No. 5845

September 8, 2016, Introduced by Rep. Guerra and referred to the Committee on Criminal Justice.

A bill to amend 2013 PA 93, entitled
"Michigan indigent defense commission act,"
by amending section 15 (MCL 780.995).

THE PEOPLE OF THE STATE OF MICHIGAN ENACT:

1 Sec. 15. (1) ~~If~~**EXCEPT AS PROVIDED IN SECTION 5, IF** a dispute
2 arises between the MIDC and an indigent criminal defense system
3 concerning the requirements of this act, including a dispute
4 concerning the approval of an indigent criminal defense system's
5 plan, cost analysis, or compliance with section 13 or 17, the
6 parties shall attempt to resolve the dispute by mediation. The
7 state court administrator, as authorized by the supreme court,
8 shall appoint a mediator agreed to by the parties within 30
9 calendar days of the mailing date of the official notification of

1 the third disapproval by the MIDC under section 13(4) to mediate
2 the dispute and shall facilitate the mediation process. The MIDC
3 shall immediately send the state court administrative office a copy
4 of the official notice of that third disapproval. If the parties do
5 not agree on the selection of the mediator, the state court
6 administrator, as authorized by the supreme court, shall appoint a
7 mediator of his or her choosing. Mediation shall commence within 30
8 calendar days after the mediator is appointed and terminate within
9 60 calendar days of its commencement. Mediation costs associated
10 with mediation of the dispute shall be paid equally by the parties.

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

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

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

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

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

27 (a) Within 60 days after the MIDC's issuance of an approved

1 plan and cost analysis under subsection (2)(b).

2 (b) Within 60 days after the system receives grant funds under
3 section 13(7), if the plan, cost analysis, or both, required a
4 grant award for implementation of the plan.

5 (c) Within 30 days of the MIDC's determination that the
6 indigent criminal defense system has breached its duty to comply
7 with an approved plan.

8 (d) The action shall be brought in the judicial circuit where
9 the indigent criminal defense service is located. The state court
10 administrator, as authorized by the supreme court, shall assign an
11 active or retired judge from a judicial circuit other than the
12 judicial circuit where the action was filed to hear the case. Costs
13 associated with the assignment of the judge shall be paid equally
14 by the parties.

15 (e) The action shall not challenge the validity, legality, or
16 appropriateness of the minimum standards approved by the ~~supreme~~
17 ~~court~~. **DEPARTMENT.**

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

26 (5) If a party refuses or fails to comply with a previous
27 order of the court, the court may enforce the previous order

1 through the court's enforcement remedies, including, but not
2 limited to, its contempt powers, and may order that the state
3 undertake the provision of indigent criminal defense services in
4 lieu of the indigent criminal defense system.

5 (6) If the court determines that an indigent criminal defense
6 system has breached its duty under section 17(1), the court may
7 order the MIDC to provide indigent criminal defense on behalf of
8 that system.

9 (7) If the court orders the MIDC to provide indigent criminal
10 defense services on behalf of an indigent criminal defense system,
11 the court shall order the system to pay the following amount of the
12 state's costs that the MIDC determines are necessary in order to
13 bring the indigent criminal defense system into compliance with the
14 minimum standards established by the MIDC:

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

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

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

18 (d) In the fourth year, 40% of the state's costs.

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

21 (8) An indigent criminal defense system may resume providing
22 indigent criminal defense services at any time as provided under
23 section 13. When a system resumes providing indigent criminal
24 defense services, it is no longer required to pay an assessment
25 under subsection (7) but shall be required to pay no less than its
26 share.

27 Enacting section 1. This amendatory act takes effect 90 days

1 after the date it is enacted into law.

2 Enacting section 2. This amendatory act does not take effect
3 unless all of the following bills of the 98th Legislature are
4 enacted into law:

5 (a) Senate Bill No. ____ or House Bill No. ____ (request no.
6 06080'16).

7 (b) Senate Bill No. ____ or House Bill No. ____ (request no.
8 06474'16).

9 (c) Senate Bill No. ____ or House Bill No. ____ (request no.
10 06475'16).

11 (d) Senate Bill No. ____ or House Bill No. ____ (request no.
12 06477'16).