

# HOUSE BILL NO. 4620

April 13, 2021, Introduced by Reps. Lightner, Whitsett, Breen, Kuppa, Whiteford and Yancey and referred to the Committee on Judiciary.

A bill to create the Michigan indigent juvenile defense department; to provide for its powers and duties; to provide indigent juveniles in juvenile matters with effective assistance of counsel; to provide standards for the appointment of legal counsel; to provide for and limit certain causes of action; to provide for certain appropriations and grants; and to repeal acts and parts of acts.

## **THE PEOPLE OF THE STATE OF MICHIGAN ENACT:**

**1**           Sec. 1. This act shall be known and may be cited as the

1 "Michigan indigent juvenile defense department act".

2 Sec. 3. As used in this act:

3 (a) "Consumer Price Index" means the annual United States  
4 Consumer Price Index for all urban consumers as defined and  
5 reported by the United States Department of Labor, Bureau of Labor  
6 Statistics.

7 (b) "Department" means the Michigan indigent juvenile defense  
8 department created in section 5.

9 (c) "Director" means the director the department.

10 (d) "Effective assistance of counsel" or "effective  
11 representation" means legal representation that is compliant with  
12 standards established by the appellate courts of this state and the  
13 United States Supreme Court.

14 (e) "Indigent" means meeting 1 or more of the conditions  
15 described in section 11(3).

16 (f) "Indigent juvenile defense services" means local legal  
17 defense services provided to a juvenile and to which both of the  
18 following conditions apply:

19 (i) The juvenile is subject to a petition for an offense for  
20 which proceedings are pending under chapter XIIA of the probate  
21 code of 1939, 1939 PA 288, MCL 712A.1 to 712A.32.

22 (ii) The juvenile is determined to be indigent under section  
23 11(3).

24 (g) Indigent juvenile defense services do not include services  
25 authorized to be provided under the appellate defender act, 1978 PA  
26 620, MCL 780.711 to 780.719.

27 (h) "Indigent juvenile defense system" or "system" means  
28 either of the following:

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

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

3           (i) "Juvenile" means an individual who is less than 18 years  
4 of age who is subject to a petition for an offense for which  
5 proceedings are pending under chapter XIIIA of the probate code of  
6 1939, 1939 PA 288, MCL 712A.1 to 712A.32.

7           (j) "Local share" or "share" means an indigent juvenile  
8 defense system's average annual expenditure for indigent juvenile  
9 defense services in the 3 fiscal years immediately preceding the  
10 creation of the MIJDD under this act, excluding money reimbursed to  
11 the system by individuals determined to be partially indigent.  
12 Beginning on November 1, 2018, if the Consumer Price Index has  
13 increased since November 1 of the prior state fiscal year, the  
14 local share must be adjusted by that number or by 3%, whichever is  
15 less.

16           (k) "MIJDD" means the department.

17           (l) "Partially indigent" means a juvenile who is unable to  
18 afford the complete cost of legal representation but is able to  
19 contribute a monetary amount toward his or her representation.

20           Sec. 5. (1) The Michigan indigent juvenile defense department  
21 is created in the state court administrative office.

22           (2) The department shall carry out the powers, duties,  
23 functions, and responsibilities that are provided in this act and  
24 as otherwise provided by law.

25           (3) The MIJDD shall propose minimum standards for the local  
26 delivery of indigent juvenile defense services providing effective  
27 assistance of counsel to juveniles throughout this state. These  
28 minimum standards must be designed to ensure the provision of  
29 indigent juvenile defense services that meet constitutional

1 requirements for effective assistance of counsel. However, these  
2 minimum standards must not infringe on the supreme court's  
3 authority over practice and procedure in the courts of this state  
4 as set forth in section 5 of article VI of the state constitution  
5 of 1963.

6 (4) The department shall convene a public hearing before a  
7 proposed minimum standard is recommended by the department. A  
8 minimum standard proposed under this subsection must be submitted  
9 to the department for approval or rejection. Opposition to a  
10 proposed minimum standard may be submitted to the department in a  
11 manner prescribed by the department. An indigent juvenile defense  
12 system that objects to a recommended minimum standard on the  
13 grounds that the recommended minimum standard would exceed the  
14 MIJDD's statutory authority shall state specifically how the  
15 recommended minimum standard would exceed the MIJDD's statutory  
16 authority. A proposed minimum standard is final when it is approved  
17 by the MIJDD. An approved minimum standard for the local delivery  
18 of indigent juvenile defense services within an indigent juvenile  
19 defense system is not a rule as that term is defined in section 7  
20 of the administrative procedures act of 1969, 1969 PA 306, MCL  
21 24.207.

22 (5) Approval of a minimum standard proposed by the MIJDD is  
23 considered a final department action subject to judicial review  
24 under section 28 of article VI of the state constitution of 1963 to  
25 determine whether the approved minimum standard is authorized by  
26 law. Jurisdiction and venue for judicial review are vested in the  
27 court of claims. An indigent juvenile defense system may file a  
28 petition for review in the court of claims within 60 days after the  
29 date of mailing notice of the department's final decision on the

1 recommended minimum standard. The filing of a petition for review  
2 does not stay enforcement of an approved minimum standard, but the  
3 MIJDD may grant, or the court of claims may order, a stay upon  
4 appropriate terms.

5 (6) The MIJDD shall identify and encourage best practices for  
6 delivering the effective assistance of counsel to indigent  
7 juveniles against whom a petition is pending under chapter XIIIA of  
8 the probate code of 1939, 1939 PA 288, MCL 712A.1 to 712A.32.

9 (7) The MIJDD shall identify and implement a system of  
10 performance metrics to assess the provision of indigent juvenile  
11 defense services in this state relative to national standards and  
12 benchmarks. The MIJDD shall provide an annual report to the  
13 governor, legislature, supreme court, and state budget director on  
14 the performance metrics not later than December 15 of each year.

15 Sec. 7. (1) The MIJDD is headed by a director who must be  
16 appointed by and serve at the pleasure of the governor.

17 (2) The director may delegate to an individual within the  
18 department a power, duty, function, or responsibility conferred on  
19 the director by this act or other state law.

20 (3) The director shall administer the powers, duties,  
21 functions, and responsibilities of the department in a manner that  
22 promotes efficient administration. The director may make internal  
23 organizational changes within the department as the director  
24 considers administratively necessary to complete the  
25 responsibilities under this act.

26 (4) Confidential case information in the possession of the  
27 department, including, but not limited to, client information and  
28 attorney work product, is exempt from disclosure under the freedom  
29 of information act, 1976 PA 442, MCL 15.231 to 15.246.

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

2           (a) Developing and overseeing the implementation, enforcement,  
3 and modification of minimum standards, rules, and procedures to  
4 ensure that indigent juvenile defense services providing effective  
5 assistance of counsel are consistently delivered to all indigent  
6 juveniles in this state consistent with the safeguards of the  
7 United States Constitution, the state constitution of 1963, and  
8 this act.

9           (b) Investigating, auditing, and reviewing the operation of  
10 indigent juvenile defense services to ensure compliance with the  
11 department's minimum standards, rules, and procedures. However, an  
12 indigent juvenile defense service that is in compliance with the  
13 department's minimum standards, rules, and procedures must not be  
14 required to provide indigent juvenile defense services in excess of  
15 those standards, rules, and procedures.

16           (c) The director has the following duties:

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

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

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

28           (e) Establishing procedures for the mandatory collection of  
29 data concerning the operation of the MIJDD, each indigent juvenile

1 defense system, and the operation of indigent juvenile defense  
2 services.

3 (f) Establishing rules and procedures for indigent juvenile  
4 defense systems to apply to the MIJDD for grants to bring the  
5 system's delivery of indigent juvenile defense services into  
6 compliance with the minimum standards established by the MIJDD.

7 (g) Establishing procedures for annually reporting to the  
8 governor, the legislature, and the supreme court. The report  
9 required under this subdivision must include, but not be limited  
10 to, recommendations for improvements and further legislative  
11 action.

12 (2) Upon the appropriation of sufficient funds, the MIJDD  
13 shall establish minimum standards to carry out the purpose of this  
14 act and collect data from all indigent juvenile defense systems.  
15 The MIJDD shall propose goals for compliance with the minimum  
16 standards established under this act consistent with the metrics  
17 established under this section and appropriations by this state.

18 (3) In establishing and overseeing the minimum standards,  
19 rules, and procedures described in subsection (1), the MIJDD shall  
20 emphasize the importance of indigent criminal defense services  
21 provided to juveniles under the age of 18 who are tried in the same  
22 manner as adults or who may be sentenced in the same manner as  
23 adults and to adults with mental impairments.

24 (4) The MIJDD must be mindful that defense attorneys who  
25 provide indigent juvenile defense services are partners with the  
26 prosecution, law enforcement, and the judiciary in the criminal  
27 justice system.

28 (5) The MIJDD shall establish procedures for the conduct of  
29 its affairs and promulgate policies necessary to carry out its

1 powers and duties under this act.

2 (6) MIJDD policies must be placed in an appropriate manual, be  
3 made publicly available on a website, and be made available to all  
4 attorneys and professionals providing indigent juvenile defense  
5 services, the supreme court, the governor, the senate majority  
6 leader, the speaker of the house of representatives, the senate and  
7 house appropriations committees, and the senate and house fiscal  
8 agencies.

9 Sec. 11. (1) The MIJDD shall establish minimum standards,  
10 rules, and procedures to effectuate the following:

11 (a) The delivery of indigent juvenile defense services must be  
12 independent of the judiciary but ensure that the judges of this  
13 state are permitted and encouraged to contribute information and  
14 advice concerning that delivery of indigent juvenile defense  
15 services.

16 (b) If the caseload is sufficiently high, indigent juvenile  
17 defense services may consist of both an indigent juvenile defender  
18 office and the active participation of other members of the state  
19 bar.

20 (c) Trial courts shall ensure that each juvenile is advised  
21 that he or she is entitled to counsel. All juveniles, except those  
22 appearing with retained counsel or those who have made an informed  
23 waiver of counsel, must be screened for eligibility under this act,  
24 and counsel must be assigned as soon as an indigent juvenile is  
25 determined to be eligible for indigent juvenile defense services.

26 (2) The MIJDD shall implement minimum standards, rules, and  
27 procedures to guarantee the rights of indigent juveniles. In  
28 establishing minimum standards, rules, and procedures, the MIJDD  
29 shall adhere to the following principles:



1 (a) Defense counsel is provided sufficient time and a space  
2 where attorney-client confidentiality is safeguarded for meetings  
3 with a juvenile.

4 (b) Defense counsel's workload is controlled to permit  
5 effective representation. Economic disincentives or incentives that  
6 impair defense counsel's ability to provide effective  
7 representation must be avoided. The MIJDD may develop workload  
8 controls to enhance defense counsel's ability to provide effective  
9 representation.

10 (c) Defense counsel's ability, training, and experience match  
11 the nature and complexity of the case to which he or she is  
12 appointed, and that defense counsel has training specifically  
13 directed at effective representation of a juvenile.

14 (d) The same defense counsel continuously represents and  
15 personally appears at every court appearance throughout the  
16 pendency of the case. However, indigent juvenile defense systems  
17 may exempt ministerial, nonsubstantive tasks, and hearings from  
18 this prescription.

19 (e) Indigent juvenile defense systems employ only defense  
20 counsel who has attended continuing legal education relevant to  
21 counsel's indigent juvenile defense clients.

22 (f) Indigent juvenile defense systems systematically review  
23 defense counsel at the local level for efficiency and for effective  
24 representation according to MIJDD standards.

25 (3) The following requirements apply to the application for,  
26 and appointment of, indigent juvenile defense services under this  
27 act:

28 (a) A preliminary inquiry regarding, and the determination of,  
29 the indigency of any juvenile, including a determination regarding

1 whether a juvenile is partially indigent, for purposes of this act  
2 must be made as determined by the indigent juvenile defense system  
3 not later than at the juvenile's first appearance in court. The  
4 determination may be reviewed by the indigent juvenile defense  
5 system at any other stage of the proceedings. In determining  
6 whether a juvenile is entitled to the appointment of counsel, the  
7 indigent juvenile defense system shall consider whether the  
8 juvenile is indigent and the extent of his or her ability to pay.  
9 Factors to be considered include, but are not limited to, income or  
10 funds from employment or any other source, including personal  
11 public assistance, to which the juvenile is entitled, property  
12 owned by the juvenile or in which he or she has an economic  
13 interest, outstanding obligations, the number and ages of the  
14 juvenile's dependents, employment and job training history, and his  
15 or her level of education. A trial court may play a role in this  
16 determination as part of any indigent juvenile defense system's  
17 compliance plan under the direction and supervision of the supreme  
18 court, consistent with section 4 of article VI of the state  
19 constitution of 1963. If an indigent juvenile defense system  
20 determines that a juvenile is partially indigent, the indigent  
21 juvenile defense system shall determine the amount of money the  
22 juvenile must contribute to his or her defense. An indigent  
23 juvenile defense system's determination regarding the amount of  
24 money a partially indigent juvenile must contribute to his or her  
25 defense is subject to judicial review. Nothing in this act prevents  
26 a court from making a determination of indigency for any purpose  
27 consistent with article VI of the state constitution of 1963.

28 (b) A juvenile is considered to be indigent if he or she is  
29 unable, without substantial financial hardship to himself or

1 herself or to his or her dependents, to obtain competent, qualified  
2 legal representation on his or her own. Substantial financial  
3 hardship is rebuttably presumed if the juvenile receives personal  
4 public assistance, including under the food assistance program,  
5 temporary assistance for needy families, Medicaid, or disability  
6 insurance, resides in public housing, or earns an income less than  
7 140% of the federal poverty guideline. A juvenile is also  
8 rebuttably presumed to have a substantial financial hardship if he  
9 or she is currently serving a sentence in a correctional  
10 institution or is receiving residential treatment in a mental  
11 health or substance abuse facility.

12 (c) A juvenile not falling below the presumptive thresholds  
13 described in subdivision (b) must be subjected to a more rigorous  
14 screening process to determine if his or her particular  
15 circumstances, including the seriousness of the allegations being  
16 faced, his or her monthly expenses, and local private counsel rates  
17 would result in a substantial hardship if he or she were required  
18 to retain private counsel.

19 (d) A determination that a juvenile is partially indigent may  
20 only be made if the indigent juvenile defense system determines  
21 that a juvenile is not fully indigent. An indigent juvenile defense  
22 system that determines a juvenile is not fully indigent but may be  
23 partially indigent must utilize the screening process under  
24 subdivision (c). The provisions of subdivision (e) apply to a  
25 partially indigent juvenile.

26 (e) The MIJDD shall promulgate objective standards for  
27 indigent juvenile defense systems to determine whether a juvenile  
28 is indigent or partially indigent. These standards must include  
29 availability of prompt judicial review, under the direction and

1 supervision of the supreme court, if the indigent juvenile defense  
2 system is making the determination regarding a juvenile's indigency  
3 or partial indigency.

4 (f) The MIJDD shall promulgate objective standards for  
5 indigent juvenile defense systems to determine the amount a  
6 partially indigent juvenile must contribute to his or her defense.  
7 The standards must include availability of prompt judicial review,  
8 under the direction and supervision of the supreme court, if the  
9 indigent juvenile defense system is making the determination  
10 regarding how much a partially indigent juvenile must contribute to  
11 his or her defense.

12 (g) A juvenile is responsible for applying for indigent  
13 juvenile defense counsel and for establishing his or her indigency  
14 and eligibility for appointed counsel under this act. Any oral or  
15 written statements made by the juvenile in or for use in the  
16 juvenile proceeding and material to the issue of his or her  
17 indigency must be made under oath or an equivalent affirmation.

18 (4) The MIJDD shall establish standards for trainers and  
19 organizations conducting training that receive MIJDD funds for  
20 training and education. The standards established under this  
21 subsection must require that the MIJDD analyze the quality of the  
22 training and must require that the effectiveness of the training be  
23 capable of being measured and validated.

24 (5) An indigent juvenile defense system may include in its  
25 compliance plan a request that the MIJDD serve as a clearinghouse  
26 for experts and investigators. If an indigent juvenile defense  
27 system makes a request under this subsection, the MIJDD may develop  
28 and operate a system for determining the need and availability for  
29 an expert or investigator in individual cases.

1       Sec. 13. (1) All indigent juvenile defense systems and, at the  
2 direction of the supreme court, attorneys engaged in providing  
3 indigent juvenile defense services shall cooperate and participate  
4 with the MIJDD in the investigation, audit, and review of their  
5 indigent juvenile defense services.

6       (2) An indigent juvenile defense system may submit to the  
7 MIJDD an estimate of the cost of developing the plan and cost  
8 analysis for implementing the plan under subsection (3) to the  
9 MIJDD for approval. If approved, the MIJDD shall award the indigent  
10 juvenile defense system a grant to pay the approved costs for  
11 developing the plan and cost analysis under subsection (3).

12       (3) No later than 180 days after a standard is approved by the  
13 department, each indigent juvenile defense system shall submit a  
14 plan to the MIJDD for the provision of indigent juvenile defense  
15 services in a manner as determined by the MIJDD and shall submit an  
16 annual plan for the following state fiscal year on or before  
17 October 1 of each year. A plan submitted under this subsection must  
18 specifically address how the minimum standards established by the  
19 MIJDD under this act will be met and must include a cost analysis  
20 for meeting those minimum standards. The standards to be addressed  
21 in the annual plan are those approved not less than 180 days before  
22 the annual plan submission date. The cost analysis must include a  
23 statement of the funds in excess of the local share, if any,  
24 necessary to allow its system to comply with the MIJDD's minimum  
25 standards.

26       (4) The MIJDD shall approve or disapprove all or any portion  
27 of a plan or cost analysis, or both a plan and cost analysis,  
28 submitted under subsection (3), and shall do so within 90 calendar  
29 days of the submission of the plan and cost analysis. If the MIJDD

disapproves any part of the plan, the cost analysis, or both the plan and the cost analysis, the indigent juvenile defense system shall consult with the MIJDD and, for any disapproved portion, submit a new plan, a new cost analysis, or both within 60 calendar days of the mailing date of the official notification of the MIJDD's disapproval. If after 3 submissions a compromise is not reached, the dispute must be resolved as provided in section 15. All approved provisions of an indigent juvenile defense system's plan and cost analysis must not be delayed by any disapproved portion and must proceed as provided in this act. The MIJDD shall not approve a cost analysis or portion of a cost analysis unless it is reasonably and directly related to an indigent juvenile defense function.

(5) The MIJDD shall submit a report to the governor, the senate majority leader, the speaker of the house of representatives, and the appropriations committees of the senate and house of representatives requesting the appropriation of funds necessary to implement compliance plans after all the systems compliance plans are approved by the MIJDD. The MIJDD shall include a cost analysis for each minimum standard in the report. The amount requested under this subsection must be equal to the total amount required to achieve full compliance as agreed upon by the MIJDD and the indigent juvenile defense systems under the approval process provided in subsection (4). The information used to create this report must be made available to the governor, the senate majority leader, the speaker of the house of representatives, and the appropriations committees of the senate and house of representatives.

(6) The MIJDD shall submit a report to the governor, the

1 senate majority leader, the speaker of the house of  
2 representatives, and the appropriations committees of the senate  
3 and house of representatives not later than October 31, 2021 that  
4 includes a recommendation regarding the appropriate level of local  
5 share, expressed in both total dollars and as a percentage of the  
6 total cost of compliance for each indigent juvenile defense system.

7 (7) Except as provided in subsection (9), an indigent juvenile  
8 defense system shall maintain not less than its local share. If the  
9 MIJDD determines that funding in excess of the indigent juvenile  
10 defense system's share is necessary in order to bring its system  
11 into compliance with the minimum standards established by the  
12 MIJDD, that excess funding must be paid by this state. The  
13 legislature shall appropriate to the MIJDD the additional funds  
14 necessary for a system to meet and maintain those minimum  
15 standards, which must be provided to indigent juvenile defense  
16 systems through grants as described in subsection (8). The  
17 legislature may appropriate funds that apply to less than all of  
18 the minimum standards and may provide less than the full amount of  
19 the funds requested under subsection (5). Notwithstanding this  
20 subsection, it is the intent of the legislature to fund all of the  
21 minimum standards contained in the report under subsection (5)  
22 within 3 years of the date on which the minimum standards were  
23 adopted.

24 (8) An indigent juvenile defense system must not be required  
25 to provide funds in excess of its local share. The MIJDD shall  
26 provide grants to indigent juvenile defense systems to assist in  
27 bringing the systems into compliance with minimum standards  
28 established by the MIJDD.

29 (9) An indigent juvenile defense system is not required to

1 expend its local share if the minimum standards established by the  
2 MIJDD may be met for less than that share, but the local share of a  
3 system that expends less than its local share under these  
4 circumstances is not reduced by the lower expenditure.

5 (10) This state shall appropriate funds to the MIJDD for  
6 grants to the local units of government for the reasonable costs  
7 associated with data required to be collected under this act that  
8 is over and above the local unit of government's data costs for  
9 other purposes.

10 (11) Within 180 days after receiving funds from the MIJDD  
11 under subsection (8), an indigent juvenile defense system shall  
12 comply with the terms of the grant in bringing its system into  
13 compliance with the minimum standards established by the MIJDD for  
14 effective assistance of counsel. The terms of a grant may allow an  
15 indigent juvenile defense system to exceed 180 days for compliance  
16 with a specific item needed to meet minimum standards if necessity  
17 is demonstrated in the indigent juvenile defense system's  
18 compliance plan. The MIJDD has the authority to allow an indigent  
19 juvenile defense system to exceed 180 days for implementation of  
20 items if an unforeseeable condition prohibits timely compliance.

21 (12) If an indigent juvenile defense system is awarded no  
22 funds for implementation of its plan under this act, the MIJDD  
23 shall nevertheless issue to the system a zero grant reflecting that  
24 it will receive no grant funds.

25 (13) The MIJDD may apply for and obtain grants from any source  
26 to carry out the purposes of this act. All funds received by the  
27 MIJDD, from any source, are state funds and must be appropriated as  
28 provided by law.

29 (14) The MIJDD shall ensure proper financial protocols in



1 administering and overseeing funds utilized by indigent juvenile  
2 defense systems, including, but not limited to, all of the  
3 following:

4 (a) Requiring documentation of expenditures.

5 (b) Requiring each indigent juvenile defense system to hold  
6 all grant funds in a fund that is separate from other funds held by  
7 the indigent juvenile defense system.

8 (c) Requiring each indigent juvenile defense system to comply  
9 with the standards promulgated by the governmental accounting  
10 standards board.

11 (15) If an indigent juvenile defense system does not fully  
12 expend a grant toward its costs of compliance, its grant in the  
13 second succeeding fiscal year must be reduced by the amount equal  
14 to the unexpended funds. Identified unexpended grant funds must be  
15 reported by indigent juvenile defense systems on or before October  
16 31 of each year. Funds subject to extension under subsection (11)  
17 must be reported but not included in the reductions described in  
18 this subsection. Any grant money that is determined to have been  
19 used for a purpose outside of the compliance plan must be repaid to  
20 the MIJDD, or, if not repaid, must be deducted from future grant  
21 amounts.

22 (16) If an indigent juvenile defense system expends funds in  
23 excess of its local share and the approved MIJDD grant to meet  
24 unexpected needs in the provision of indigent juvenile defense  
25 services, the MIJDD shall recommend the inclusion of the funds in a  
26 subsequent year's grant if all expenditures were reasonably and  
27 directly related to indigent juvenile defense functions.

28 (17) The court shall collect contribution or reimbursement  
29 from juveniles determined to be partially indigent under applicable

1 court rules and statutes. Reimbursement under this subsection is  
2 subject to section 22 of chapter XV of the code of criminal  
3 procedure, 1927 PA 175, MCL 775.22. The court shall remit 100% of  
4 the funds it collects under this subsection to the indigent  
5 juvenile defense system in which the court is sitting. Twenty  
6 percent of the funds received under this subsection by an indigent  
7 juvenile defense system must be remitted to the department in a  
8 manner prescribed by the department and reported to the department  
9 by October 31 of each year. The funds received by the department  
10 under this subsection must be expended by the department in support  
11 of indigent juvenile defense systems in this state. The remaining  
12 80% of the funds collected under this subsection may be retained by  
13 the indigent juvenile defense system for purposes of reimbursing  
14 the costs of collecting the funds under this subsection and funding  
15 indigent juvenile defense in the subsequent fiscal year. The funds  
16 collected under this subsection must not alter the calculation of  
17 the local share.

18       Sec. 15. (1) Except as provided in section 5, if a dispute  
19 arises between the MIJDD and an indigent juvenile defense system  
20 concerning the requirements of this act, including a dispute  
21 concerning the approval of an indigent juvenile defense system's  
22 plan, cost analysis, or compliance with section 13 or 17, the  
23 parties shall attempt to resolve the dispute by mediation. The  
24 state court administrator, as authorized by the supreme court,  
25 shall appoint a mediator agreed to by the parties within 30  
26 calendar days of the mailing date of the official notification of  
27 the third disapproval by the MIJDD under section 13(4) to mediate  
28 the dispute and shall facilitate the mediation process. The MIJDD  
29 shall immediately send the state court administrative office a copy

1 of the official notice of that third disapproval. If the parties do  
2 not agree on the selection of the mediator, the state court  
3 administrator, as authorized by the supreme court, shall appoint a  
4 mediator of his or her choosing. Mediation must commence within 30  
5 calendar days after the mediator is appointed and terminate within  
6 60 calendar days of its commencement. Mediation costs associated  
7 with mediation of the dispute must be paid equally by the parties.

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

10 (a) The mediator may submit his or her recommendation of how  
11 the dispute should be resolved to the MIJDD within 30 calendar days  
12 of the conclusion of mediation for the MIJDD's consideration.

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

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

21 (3) The MIJDD, or an indigent juvenile defense system may  
22 bring an action seeking equitable relief in the circuit court only  
23 as follows:

24 (a) Within 60 days after the MIJDD's issuance of an approved  
25 plan and cost analysis under subsection (2)(b).

26 (b) Within 60 days after the system receives grant funds under  
27 section 13(8), if the plan, cost analysis, or both, required a  
28 grant award for implementation of the plan.

29 (c) Within 30 days of the MIJDD's determination that the

1 indigent juvenile defense system has breached its duty to comply  
2 with an approved plan.

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

10 (e) The action must not challenge the validity, legality, or  
11 appropriateness of the minimum standards approved by the  
12 department.

13 (4) If the dispute involves the indigent juvenile defense  
14 system's plan, cost analysis, or both, the court may approve,  
15 reject, or modify the submitted plan, cost analysis, or the terms  
16 of a grant awarded under section 13(8) other than the amount of the  
17 grant, determine whether section 13 has been complied with, and  
18 issue any orders necessary to obtain compliance with this act.  
19 However, the system must not be required to expend more than its  
20 local share in complying with this act.

21 (5) If a party refuses or fails to comply with a previous  
22 order of the court, the court may enforce the previous order  
23 through the court's enforcement remedies, including, but not  
24 limited to, its contempt powers, and may order that the state  
25 undertake the provision of indigent juvenile defense services in  
26 lieu of the indigent juvenile defense system.

27 (6) If the court determines that an indigent juvenile defense  
28 system has breached its duty under section 17(1), the court may  
29 order the MIJDD to provide indigent juvenile defense services on

1   behalf of that system.

2           (7) If the court orders the MIJDD to provide indigent juvenile  
3   defense services on behalf of an indigent juvenile defense system,  
4   the court shall order the system to pay the following amount of the  
5   state's costs that the MIJDD determines are necessary in order to  
6   bring the indigent juvenile defense system into compliance with the  
7   minimum standards established by the MIJDD:

8           (a) In the first year, 20% of the state's costs.

9           (b) In the second year, 40% of the state's costs.

10          (c) In the third year, 60% of the state's costs.

11          (d) In the fourth year, 80% of the state's costs.

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

14          (8) An indigent juvenile defense system may resume providing  
15   indigent juvenile defense services at any time as provided under  
16   section 13. When a system resumes providing indigent juvenile  
17   defense services, it is no longer required to pay an assessment  
18   under subsection (7) but must be required to pay no less than its  
19   local share.

20          Sec. 17. (1) Except as provided in subsection (2), every local  
21   unit of government that is part of an indigent juvenile defense  
22   system shall comply with an approved plan under this act.

23          (2) A system's duty of compliance with 1 or more standards  
24   within the plan under subsection (1) is contingent upon receipt of  
25   a grant in the amount sufficient to cover that particular standard  
26   or standards contained in the plan and cost analysis approved by  
27   the MIJDD.

28          (3) The MIJDD may proceed under section 15 if an indigent  
29   juvenile defense system breaches its duty of compliance under

1 subsection (1).

2       Sec. 19. The MIJDD shall publish and make available to the  
3 public on a website its annual report, its budget, and a listing of  
4 all expenditures. Publication and availability of the listing of  
5 expenditures must be on a quarterly basis, except for the annual  
6 report and salary information, which may be published and made  
7 available on an annual basis. As used in this section,  
8 "expenditures" means all payments or disbursements of MIJDD funds,  
9 received from any source, made by the MIJDD.

10       Sec. 21. Both of the following apply to the MIJDD:

11       (a) The freedom of information act, 1976 PA 442, MCL 15.231 to  
12 15.246, except as provided in section 7.

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

14       Sec. 23. (1) The Michigan indigent juvenile defense fund is  
15 created within the state treasury.

16       (2) The state treasurer may receive money or other assets from  
17 any source for deposit into the fund, including private gifts,  
18 bequests, and donations. The state treasurer shall direct the  
19 investment of the fund. The state treasurer shall credit to the  
20 fund interest and earnings from fund investments.

21       (3) Money in the fund at the close of the fiscal year lapses  
22 to the general fund.

23       (4) The department shall be the administrator of the fund for  
24 auditing purposes.

25       (5) The department shall expend money from the fund to carry  
26 out its responsibilities under this act.

27       Sec. 25. (1) Nothing in this act overrules, expands, or  
28 extends, either directly or by analogy, any decisions reached by  
29 the United States Supreme Court or the supreme court of this state

1 regarding the effective assistance of counsel.

2 (2) Nothing in this act overrides section 29 or 30 of article  
3 IX of the state constitution of 1963.

4 (3) Except as otherwise provided in this act, the failure of  
5 an indigent juvenile defense system to comply with statutory duties  
6 imposed under this act does not create a cause of action against  
7 the government or a system.

8 (4) Statutory duties imposed that create a higher standard  
9 than that imposed by the United States Constitution or the state  
10 constitution of 1963 do not create a cause of action against a  
11 local unit of government, an indigent juvenile defense system, or  
12 this state.

13 (5) Violations of MIJDD rules that do not constitute  
14 ineffective assistance of counsel under the United States  
15 Constitution or the state constitution of 1963 do not constitute  
16 grounds for a conviction to be reversed or a judgment to be  
17 modified for ineffective assistance of counsel.