

HOUSE BILL No. 5842

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

A bill to amend 2013 PA 93, entitled
"Michigan indigent defense commission act,"
by amending sections 3, 5, and 11 (MCL 780.983, 780.985, and
780.991).

THE PEOPLE OF THE STATE OF MICHIGAN ENACT:

1 Sec. 3. As used in this act:

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

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

4 (ii) An individual less than 17 years of age at the time of
5 the commission of a felony if any of the following conditions
6 apply:

7 (A) During consideration of a petition filed under section 4
8 of chapter XIIIA of the probate code of 1939, 1939 PA 288, MCL

1 712A.4, to waive jurisdiction to try the individual as an adult and
2 upon granting a waiver of jurisdiction.

3 (B) The prosecuting attorney designates the case under section
4 2d(1) of chapter XIIIA of the probate code of 1939, 1939 PA 288, MCL
5 712A.2d, as a case in which the juvenile is to be tried in the same
6 manner as an adult.

7 (C) During consideration of a request by the prosecuting
8 attorney under section 2d(2) of chapter XIIIA of the probate code of
9 1939, 1939 PA 288, MCL 712A.2d, that the court designate the case
10 as a case in which the juvenile is to be tried in the same manner
11 as an adult.

12 (D) The prosecuting attorney authorizes the filing of a
13 complaint and warrant for a specified juvenile violation under
14 section 1f of chapter IV of the code of criminal procedure, 1927 PA
15 175, MCL 764.1f.

16 (B) **"DEPARTMENT" MEANS THE DEPARTMENT OF LICENSING AND**
17 **REGULATORY AFFAIRS.**

18 (C) ~~(b)~~-"Effective assistance of counsel" or "effective
19 representation" means legal representation that is compliant with
20 standards established by the appellate courts of this state and the
21 United States supreme court.

22 (D) ~~(e)~~-"Indigent" means meeting 1 or more of the conditions
23 described in section 11(3).

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

27 (i) The defendant is being prosecuted or sentenced for a crime

1 for which an individual may be imprisoned upon conviction,
2 beginning with the defendant's initial appearance in court to
3 answer to the criminal charge.

4 (ii) The defendant is determined to be indigent under section
5 11(3).

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

9 (G) ~~(f)~~—"Indigent criminal defense system" or "system" means
10 either of the following:

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

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

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

23 (I) ~~(h)~~—"MIDC" or "commission" means the Michigan indigent
24 defense commission created under section 5.

25 Sec. 5. (1) The Michigan indigent defense commission is
26 ~~created in the judicial branch of state government.~~ **ESTABLISHED**
27 **WITHIN THE DEPARTMENT.**

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

11 (3) The MIDC shall propose minimum standards for the local
12 delivery of indigent criminal defense services providing effective
13 assistance of counsel to adults throughout this state. These
14 minimum standards shall be designed to ensure the provision of
15 indigent criminal defense services that meet constitutional
16 requirements for effective assistance of counsel. **HOWEVER, THESE**
17 **MINIMUM STANDARDS SHALL NOT INFRINGE ON THE SUPREME COURT'S**
18 **AUTHORITY OVER PRACTICE AND PROCEDURE IN THE COURTS OF THIS STATE**
19 **AS SET FORTH IN SECTION 5 OF ARTICLE VI OF THE STATE CONSTITUTION**
20 **OF 1963.**

21 (4) The commission shall convene a public hearing before a
22 proposed standard is ~~submitted to the supreme court.~~ **RECOMMENDED TO**
23 **THE DEPARTMENT.** A minimum standard proposed under this subsection
24 shall be submitted to the ~~supreme court.~~ **DEPARTMENT FOR APPROVAL OR**
25 **REJECTION.** Opposition to a proposed minimum standard may be
26 submitted to the ~~supreme court~~ **DEPARTMENT** in a manner prescribed by
27 the ~~supreme court, but a minimum standard that is approved by the~~

1 ~~supreme court is not subject to challenge through the appellate~~
2 ~~procedures under section 15.~~ DEPARTMENT. AN INDIGENT CRIMINAL
3 DEFENSE SYSTEM THAT OBJECTS TO A RECOMMENDED MINIMUM STANDARD ON
4 THE GROUND THAT THE RECOMMENDED MINIMUM STANDARD WOULD EXCEED THE
5 MIDC'S STATUTORY AUTHORITY SHALL STATE SPECIFICALLY HOW THE
6 RECOMMENDED MINIMUM STANDARD WOULD EXCEED THE MIDC'S STATUTORY
7 AUTHORITY. A proposed minimum standard ~~shall be~~ IS final when it is
8 approved by the ~~supreme court.~~ If the ~~supreme court~~ neither
9 ~~approves nor disapproves a proposed minimum standard within 180~~
10 ~~days of its submission, then the standard is not~~
11 ~~approved.~~ DEPARTMENT. A MINIMUM STANDARD THAT IS APPROVED BY THE
12 DEPARTMENT IS NOT SUBJECT TO CHALLENGE THROUGH THE APPELLATE
13 PROCEDURES IN SECTION 15. AN APPROVED MINIMUM STANDARD FOR THE
14 LOCAL DELIVERY OF INDIGENT CRIMINAL DEFENSE SERVICES WITHIN AN
15 INDIGENT CRIMINAL DEFENSE SYSTEM IS NOT A RULE AS DEFINED IN
16 SECTION 7 OF THE ADMINISTRATIVE PROCEDURES ACT OF 1969, 1969 PA
17 306, MCL 24.207.

18 (5) APPROVAL OF A MINIMUM STANDARD PROPOSED BY THE MIDC IS
19 CONSIDERED A FINAL DEPARTMENT ACTION SUBJECT TO JUDICIAL REVIEW
20 UNDER SECTION 28 OF ARTICLE VI OF THE STATE CONSTITUTION OF 1963 TO
21 DETERMINE WHETHER THE APPROVED MINIMUM STANDARD IS AUTHORIZED BY
22 LAW. JURISDICTION AND VENUE FOR JUDICIAL REVIEW ARE VESTED IN THE
23 COURT OF CLAIMS. AN INDIGENT CRIMINAL DEFENSE SYSTEM MAY FILE A
24 PETITION FOR REVIEW IN THE COURT OF CLAIMS WITHIN 60 DAYS AFTER THE
25 DATE OF MAILING NOTICE OF THE DEPARTMENT'S FINAL DECISION ON THE
26 RECOMMENDED MINIMUM STANDARD. THE FILING OF A PETITION FOR REVIEW
27 DOES NOT STAY ENFORCEMENT OF AN APPROVED MINIMUM STANDARD, BUT THE

1 DEPARTMENT MAY GRANT, OR THE COURT OF CLAIMS MAY ORDER, A STAY UPON
2 APPROPRIATE TERMS.

3 (6) ~~(4)~~—The MIDC shall identify and encourage best practices
4 for delivering the effective assistance of counsel to indigent
5 defendants charged with crimes.

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

8 (a) The delivery of indigent criminal defense services shall
9 be independent of the judiciary but ensure that the judges of this
10 state are permitted and encouraged to contribute information and
11 advice concerning that delivery of indigent criminal defense
12 services.

13 (b) If the caseload is sufficiently high, indigent criminal
14 defense services may consist of both an indigent criminal defender
15 office and the active participation of other members of the state
16 bar.

17 (c) Trial courts shall assure that each criminal defendant is
18 advised of his or her right to counsel. All adults, except those
19 appearing with retained counsel or those who have made an informed
20 waiver of counsel, shall be screened for eligibility under this
21 act, and counsel shall be assigned as soon as an indigent adult is
22 determined to be eligible for indigent criminal defense services.

23 (2) The MIDC shall implement minimum standards, rules, and
24 procedures to guarantee the right of indigent defendants to the
25 assistance of counsel as provided under amendment VI of the
26 ~~constitution~~—**CONSTITUTION** of the United States and section 20 of
27 article I of the state constitution of 1963. In establishing

1 minimum standards, rules, and procedures, the MIDC shall adhere to
2 the following principles:

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

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

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

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

20 ~~(e) Defense counsel is required to attend~~ **INDIGENT CRIMINAL**
21 **DEFENSE SYSTEMS EMPLOY ONLY DEFENSE COUNSEL WHO HAVE ATTENDED**
22 continuing legal education relevant to ~~counsel's~~ **COUNSELS'** indigent
23 defense clients.

24 ~~(f) Defense counsel is systematically reviewed~~ **INDIGENT**
25 **CRIMINAL DEFENSE SYSTEMS SYSTEMATICALLY REVIEW DEFENSE COUNSEL** at
26 the local level for efficiency and for effective representation
27 according to MIDC standards.

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

4 (a) A preliminary inquiry regarding, and the determination of,
5 the indigency of any defendant **FOR PURPOSES OF THIS ACT** shall be
6 made ~~by the court~~ **AS DETERMINED BY THE INDIGENT CRIMINAL DEFENSE**
7 **SYSTEM** not later than at the defendant's first appearance in court.
8 The determination may be reviewed by the ~~court~~ **INDIGENT CRIMINAL**
9 **DEFENSE SYSTEM** at any other stage of the proceedings. In
10 determining whether a defendant is entitled to the appointment of
11 counsel, the ~~court~~ **INDIGENT CRIMINAL DEFENSE SYSTEM** shall consider
12 whether the defendant is indigent and the extent of his or her
13 ability to pay. ~~The court may consider such factors as~~ **FACTORS TO**
14 **BE CONSIDERED INCLUDE, BUT ARE NOT LIMITED TO,** income or funds from
15 employment or any other source, including personal public
16 assistance, to which the defendant is entitled, property owned by
17 the defendant or in which he or she has an economic interest,
18 outstanding obligations, the number and ages of the defendant's
19 dependents, employment and job training history, and his or her
20 level of education. **A TRIAL COURT MAY PLAY A ROLE IN THIS**
21 **DETERMINATION AS PART OF ANY INDIGENT CRIMINAL DEFENSE SYSTEM'S**
22 **COMPLIANCE PLAN UNDER THE DIRECTION AND SUPERVISION OF THE SUPREME**
23 **COURT, CONSISTENT WITH SECTION 4 OF ARTICLE VI OF THE STATE**
24 **CONSTITUTION OF 1963. NOTHING IN THIS ACT SHALL PREVENT A COURT**
25 **FROM MAKING A DETERMINATION OF INDIGENCY FOR ANY PURPOSE CONSISTENT**
26 **WITH ARTICLE VI OF THE STATE CONSTITUTION OF 1963.**

27 (b) A defendant is considered to be indigent if he or she is

House Bill No. 5842 as amended September 21, 2016

1 unable, without substantial financial hardship to himself or
2 herself or to his or her dependents, to obtain competent, qualified
3 legal representation on his or her own. Substantial financial
4 hardship shall be rebuttably presumed if the defendant receives
5 personal public assistance, including under the food assistance
6 program, temporary assistance for needy families, medicaid, or
7 disability insurance, resides in public housing, or earns an income
8 less than 140% of the federal poverty guideline. A defendant is
9 also rebuttably presumed to have a substantial financial hardship
10 if he or she is currently serving a sentence in a correctional
11 institution or is receiving residential treatment in a mental
12 health or substance abuse facility.

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

20 (d) A defendant shall be responsible for applying for indigent
21 defense counsel and for establishing his or her indigency and
22 eligibility for appointed counsel under this act. Any oral or
23 written statements made by the defendant in or for use in the
24 criminal proceeding and material to the issue of his or her
25 indigency shall be made under oath or an equivalent affirmation.

26 [

27]

House Bill No. 5842 as amended September 21, 2016

1 Enacting section [1]. This amendatory act does not take effect
2 unless all of the following bills of the 98th Legislature are
3 enacted into law:

4 (a) Senate Bill No. ____ or House Bill No. 5843 (request no.
5 06474'16).

6 (b) Senate Bill No. ____ or House Bill No. 5844 (request no.
7 06475'16).

8 (c) Senate Bill No. ____ or House Bill No. 5845 (request no.
9 06476'16).

10 (d) Senate Bill No. ____ or House Bill No. 5846 (request no.
11 06477'16).