



Ottawa Public Defender Plan - Approved

Public Defender Plan - Approved
C20 2015-04J; rescinds 2003-06J
D58 2015-09J; rescinds 2003-03J
P70 2015-02J; rescinds 2003-02J

This is to advise that we have reviewed the above referenced administrative order and find that it conforms to the requirements of MCR 8.112(B). This order is being accepted and filed until advised by your court of any change.

Jill Booth
Region V Administrator
P.O. Box 30048
Lansing, MI 48909
517-373-8679

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EDWARD R. POST
CHIEF CIRCUIT JUDGE – TRIAL DIVISION

JON HULSING
CIRCUIT JUDGE – TRIAL DIVISION

JON A. VAN ALLSBURG
CIRCUIT JUDGE – FAMILY DIVISION

KENT D. ENGLE
CIRCUIT JUDGE – FAMILY DIVISION

MARK A. FEYEN
CHIEF PROBATE JUDGE – FAMILY DIVISION

STATE OF MICHIGAN



TWENTIETH JUDICIAL CIRCUIT COURT
OTTAWA COUNTY

KEVIN J. BOWLING, JD
CIRCUIT COURT ADMINISTRATOR

Local Administrative Order

20th Circuit Court 2015-04J
58th District Court 2015-09J
Ottawa County Probate Court 2015-02J

PUBLIC DEFENDER PLAN
(Rev. 10/15)

Rescinds: LAO C20 2003-06J; D58 2003-03J; P70 2003-02J

IT IS ORDERED:

This administrative order is issued in accordance with Michigan Court Rule 8.123, with the purpose of describing the 20th Circuit, 58th District, and Ottawa County Probate Courts' procedures for appointing and compensating counsel who represents indigent parties in Ottawa County. The Public Defender Plan, described below, is structured in accordance with the *Eleven Principles of a Public Defense Delivery System* as adopted by the State Bar of Michigan Representative Assembly, April 2002 (Attachment 1) and is consistent with 93 PA 2013, Michigan Indigent Defense Commission Act (Attachment 2). Further procedural direction for implementation of this plan is contained in the Ottawa County Public Defender Procedures.

Principle 1: The public defense functions, including the selection, funding, and payment of defense counsel is independent.

Due to the size and current caseload of the Ottawa County Courts an independently funded and operated public defender office is not warranted. To ensure the public defense function is independent from political influence and subject to judicial supervision only in the same manner and to the same extent as retained counsel, public defender appointments shall be made by the Public Defender Coordinator in a process which is independent of the judiciary. The actual appointment process implemented by the Public Defender Coordinator will be designed to ensure fair and impartial distribution of cases to appropriately qualified attorneys.

Attorneys interested in representing indigent parties may submit a cover letter and resume to the Public Defender Coordinator. The cover letter should indicate the attorney's interest in appointment in the Circuit Court, District, and/or Probate Court. The cover letter should also state the Ottawa County court locations where the attorney desires appointments (i.e., Grand Haven, West Olive, Hudsonville, and Holland). The resume should clearly indicate counsel's ability; training and experience to provide quality indigent representation (see Principle 6). If additional information is required the Public Defender Coordinator may interview the interested attorney.

Annually, during the September quarterly judges meeting the Public Defender Coordinator will seek the advice and consent of all judges regarding the addition and retention of attorneys to the public defender roster. In preparation for the September quarterly judges meeting, it is anticipated the judges may choose to interview attorney applicants if necessary to determine qualifications. This judicial participation is specifically authorized by 93 PA 2013, Sec. 11. The Public Defender Coordinator may seek the advice and consent of the judges more frequently if necessary to maintain an adequate roster of attorneys.

In addition to the public defender roster maintained for criminal cases, the Family Division of the Circuit Court will negotiate contracts with a lawyer or law firm for the representation of children in delinquency cases, as well as children and parents in child protective proceedings. Representation of children in child protective proceedings may be provided by an attorney Guardian Ad Litem. The competitive bidding process for Family Division contracts will follow Ottawa County policy.

Funding for the public defense function will be provided through the standard Ottawa County budgeting process with a general fund appropriation to each trial court. Payment of defense counsel will be handled by the Public Defender Coordinator in accordance with the Ottawa County Public Defender Procedures.

Principle 2: Where the caseload is sufficiently high, the public defense delivery system consists of both a defender office and the active participation of the private bar.

Due to the current caseload size in Ottawa County it is neither cost effective nor necessary to maintain both a public defender office and a roster of private attorneys to provide public defender services. As noted above, necessary public defender services can be adequately provided by appointment or contractual arrangement through the Public Defender Coordinator.

Principle 3: Clients are screened for eligibility, and defense counsel is assigned and notified of appointment, as soon as feasible after clients' arrest, detention, or request for counsel.

The defendant will be advised of his right to counsel and opportunity will be provided for a defendant to request court appointed counsel, for a court determination of indigency and appointment of counsel no later than arraignment on the charge(s) and early enough for appointed counsel to render effective assistance to the defendant at all subsequent critical stages of the criminal proceedings. Counsel will be immediately notified of the appointment and the next court date and, if defendant remains incarcerated, instructed to meet in a timely fashion as set forth in this order. . Once an appointment is made, financial screening is completed by court staff to determine the client's ability to reimburse all or part of court appointed counsel expenses.

Principle 4: Defense counsel is provided sufficient time and a confidential space with which to meet with the client.

Considering counsel appointments are made upon request (see Principle 3) there is sufficient time for counsel to meet with clients prior to any scheduled hearings/trials. Each court location also has identified attorney/client meeting space, which is confidential while being in close

proximity to assigned courtrooms. In addition, the Ottawa County Jail has confidential attorney/client meeting space that is available to court appointed counsel.

Principle 5: Defense counsel's workload is controlled to permit the rendering of quality representation.

To ensure court appointed counsel is able to render quality representation, the Public Defender Coordinator will monitor all appointments so that total appointments to any single attorney does not exceed the National Advisory Commission Standards regarding public defender workload. These limitations are further described in Standard 13.12 Workload of Public Defenders, see below.

Standard 13.12 Workload of Public Defenders

The caseload of a public defender office should not exceed the following: felonies per attorney per year: not more than 150; misdemeanors (excluding traffic) per attorney per year: not more than 400; juvenile court cases per attorney per year: not more than 200; Mental Health Act cases per attorney per year: not more than 200; and appeals per attorney per year: not more than 25.

For purposes of this standard, the term case means a single charge or set of charges concerning a defendant (or other client) in one court in one proceeding. An appeal or other action for post judgment review is a separate case. If the public defender determines that because of excessive workload the assumption of additional cases or continued representation in previously accepted cases by his office might reasonably be expected to lead to inadequate representation in cases handled by him, he should bring this to the attention of the court. If the court accepts such assertions, the court should direct the public defender to refuse to accept or retain additional cases for representation by his office.

Principle 6: Defense counsel's ability, training, and experience match the complexity of the case.

Minimum standards and qualifications for misdemeanor and non-capital felony court appointed counsel include the following (See Principle 6):

- Licensed to practice law in the State of Michigan;
- Demonstrated skill and knowledge to adequately represent clients;
- Ability to dedicate required time for scheduled court appearances;
- Available office facilities in or near Ottawa County where appointed counsel can meet with clients;
- Understands the obligation to refuse appointment if unable to provide ethical, high quality representation; and
- Accept electronic service and communication from the courts.

In addition to the minimum qualifications, attorneys appointed to capital cases shall demonstrate counsel's ability, training and experience to match the complexity of those cases as required by Principle 6.

Principle 7: The same attorney continuously represents the client until completion of the case.

As appointments are made, the Public Defender Coordinator will ensure vertical representation in all cases unless there is a valid reason for disqualification or substitution of attorney. All court appointed counsel must understand that except for emergencies, substitute counsel should not be used as a routine method to handle assigned cases.

Principle 8: There is parity between defense counsel and the prosecution with respect to resources and defense counsel is included as an equal partner in the justice system.

Historically, defense counsel has been treated as an equal partner in the justice system as evidenced by hourly rates of reimbursement, which are among the highest in the state of Michigan. In addition, judges have reported that requests for reimbursement of extraordinary expenses (e.g., expert and investigative services) are routinely granted. In addition to the roster attorneys, contract attorneys have reasonable expenses and CLE included in their contracts.

Principle 9: Defense counsel is provided with and required to attend continuing legal education.

Since most defense counsel included on the criminal, family division and probate rosters are independent legal professionals it is assumed they will be responsible for their own professional development. Neither the State Bar of Michigan nor the Michigan Supreme Court has instituted compulsory continuing legal education requirements. Consequently, individual attorneys are expected to determine what CLE will be most beneficial to their practice and will schedule a minimum of eight training hours per year. Currently, there are CLE programs available for defense counsel through a number of organizations, including CDAM, ICLE, State Bar of Michigan, MSU Chance at Childhood Program, SCAO, etc. The Ottawa County Courts will support CLE for defense counsel through schedule flexibility that will allow individual participation in appropriate courses. To monitor CLE participation, the Public Defender Coordinator will annually survey all defense counsel regarding continuing education and will maintain records regarding program attendance as part of the attorney evaluation.

Due to the minimum qualification requirements for appointment and the Public Defender Coordinator's annual evaluation process of each attorney (including CLE hours), all attorneys listed on the approved roster will necessarily demonstrate the required knowledge of the law, forensic and scientific issues, technology and advocacy to provide effective assistance of counsel.

Principle 10: Defense counsel is supervised and systematically reviewed for quality and efficiency according to nationally and locally adopted standards.

The Public Defender Coordinator will, on a regular basis, informally solicit feedback from judges and court staff regarding appointed attorney performance. In addition, the Public Defender Coordinator will conduct a formal annual evaluation of all assigned counsel including:

questions regarding timeliness, adequacy of preparation, legal knowledge, communication ability, adherence to court scheduling policies, adequacy of client contact, and efficiency. At a minimum judicial feedback is required for appointed counsel evaluations; however, the Public Defender Coordinator is encouraged to seek additional evaluative comments from other attorneys, court staff, and court users who regularly interact with appointed counsel. The annual evaluation will also include notations regarding any client complaints received by the Public Defender Coordinator within the past year.

This evaluation data will be presented to the judiciary during the regular quarterly judges meeting held in September. Based on evaluation results and the advice/consent of the judges the Public Defender Coordinator may prepare a summary of an attorney's evaluation suggesting improvements and/or comments about performance.

In addition to the evaluation process described above, the Public Defender Coordinator may follow the Public Defender Procedures (Sec. 2.f.) to suspend or remove an attorney from a court appointed counsel roster or a court contract if the attorney no longer meets the qualification standards required by this local administrative order. Any such removal may only be made with the majority approval of the chief judges. Specific causes for removal of an attorney from the roster or contractual service include, but are not limited to, the following:

- Violations of the Michigan Rules of Professional Conduct (as determined by the Attorney Grievance Commission);
- Inappropriate advances or comments of a sexual nature to clients, other attorneys or court staff;
- Inappropriate anger directed to clients, other attorneys or court staff;
- Substance abuse that effects the attorney's ability to represent clients;
- Soliciting payment from clients for professional services paid for by the Court; and
- Poor performance and/or consistent refusal of court appointments.

Principle 11: When there is a defender office, one function of the office will be to explore and advocate for programs that improve the system and reduce recidivism.

Since a public defender office is not envisioned in this plan, this principle is not directly applicable. However, the Ottawa County Community Corrections Advisory Board (which includes court, prosecutor, and public defender members) regularly explores and advocates for programs that improve the criminal justice system and aim at reducing recidivism.

In addition to the details outlined in the Eleven Principles noted above, this Public Defender Plan is intended to fully comply with Michigan Court Rule 8.123, including the maintenance of electronic reports of "total public funds paid to each attorney for appointments by that court", which will be available at the trial court for inspection by the public, without charge.

Effective Date:

Date: 12-11-15



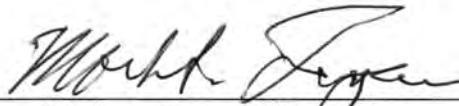
Hon. Edward R. Post, Chief Judge
20th Circuit Court

Date: 12/11/15



Hon. Bradley S. Knoll, Chief Judge
58th District Court

Date: 12-11-15



Hon. Mark A. Feyen, Chief Judge
Ottawa County Probate Court

Attachments

1. SMB, Eleven Principles of a Public Defense Delivery System, April 2002
2. 93 PA 2013, Michigan Indigent Defense Commission Act

Attachment 1

SBM, Eleven Principles of a Public Defense
Delivery System, April 2002

ELEVEN PRINCIPLES

of a Public Defense Delivery System

Adopted by the State Bar of Michigan Representative Assembly, April 2002



State Bar of Michigan
www.michbar.org

Michigan Public Defense Taskforce
www.mipublicdefense.org

Campaign for Justice
403 Seymour, Suite 201
Lansing, MI 48933
info@mijustice.org
www.mijustice.org

Eleven Principles of a Public Defense Delivery System¹

1 The public defense function, including the selection, funding, and payment of defense counsel,² is independent.

2 Where the caseload is sufficiently high,⁸ the public defense delivery system consists of both a defender office⁹ and the active participation of the private bar.

3 Clients are screened for eligibility,¹³ and defense counsel is assigned and notified of appointment, as soon as feasible after clients' arrest, detention, or request for counsel.

4 Defense counsel is provided sufficient time and a confidential space with which to meet with the client.

5 Defense counsel's workload is controlled to permit the rendering of quality representation.

6 Defense counsel's ability, training, and experience match the complexity of the case.

7 The same attorney continuously represents the client until completion of the case.

8 There is parity between defense counsel and the prosecution with respect to resources and defense counsel is included as an equal partner in the justice system.

9 Defense counsel is provided with and required to attend continuing legal education.

10 Defense counsel is supervised and systematically reviewed for quality and efficiency according to nationally and locally adopted standards.

11 When there is a defender office, one function of the office will be to explore and advocate for programs that improve the system and reduce recidivism.

Eleven Principles of a Public Defense Delivery System¹

With Commentary

1. The public defense function, including the selection, funding, and payment of defense counsel,² is independent. The public defense function should be independent from political influence and subject to judicial supervision only in the same manner and to the same extent as retained counsel.³ To safeguard independence and to promote efficiency and quality of services, an independent board composed of attorneys and non-attorneys should oversee defender, assigned counsel, or contract systems.⁴ Removing oversight from the judiciary ensures judicial independence from undue political pressures and is an important means of furthering the independence of public defense.⁵ Where there is a defender office, the selection of the chief defender and staff should be made on the basis of merit, and recruitment of attorneys should involve special efforts aimed at achieving diversity in attorney staff.⁶ Since the responsibility to provide defense services rests with the state, there should be state funding and a statewide structure responsible for ensuring uniform quality statewide.⁷

2. Where the caseload is sufficiently high,⁸ the public defense delivery system consists of both a defender office⁹ and the active participation of the private bar. Historically, Michigan's private bar participation has included part time defenders, assigned counsel plan, or contracts for services.¹⁰ However, a "mixed system" of a defender office and an appointed counsel system provides the most effective and stable system over time. The defender office can provide a base for training programs, motion banks, investigators, and other support services. Substantial involvement of the private bar increases independence, provides support for and information about the system outside the defender office, and is a relief valve for conflicts and overload in the system. The appointment process of the attorneys should never be ad hoc,¹¹ but should be according to a coordinated plan directed by an administrator who is also an attorney familiar with the varied requirements of practice in the jurisdiction.¹²

3. Clients are screened for eligibility,¹³ and defense counsel is assigned and notified of appointment, as soon as feasible after clients' arrest, detention, or request for counsel. Counsel should be furnished and counsel notified of the appointment, usually within 24 hours of¹⁴ the arrest, detention or request.¹⁵

4. Defense counsel is provided sufficient time and a confidential space with which to meet with the client. Counsel should interview the client as soon as practicable before the preliminary examination or the trial date.¹⁶ Counsel should have confidential access to the client for the full exchange of legal, procedural and factual information between counsel and client.¹⁷ To ensure confidential communications, private meeting space should be available in jails, prisons, courthouses and other places where defendants must confer with counsel.¹⁸

5. Defense counsel's workload is controlled to permit the rendering of quality representation. Counsel's workload, including appointed and other work, should never be so large as to interfere with the rendering of quality representation or lead to the breach of ethical obligations, and counsel is obligated to decline appointments above such levels.¹⁹ In the absence of

local standards, national caseload standards should not be exceeded,²⁰ but the concept of workload (i.e., caseload adjusted by factors such as case complexity, support services, and an attorney's nonrepresentational duties) is a more accurate measurement.²¹

6. Defense counsel's ability, training, and experience match the complexity of the case.

Counsel should never be assigned a case that counsel lacks the experience or training to handle competently, and counsel is obligated to refuse appointment if unable to provide ethical, high quality representation.²²

7. The same attorney continuously represents the client until completion of the case. Often referred to as "vertical representation," the same attorney should continuously represent the client from initial assignment through the trial and sentencing.²³ The attorney assigned for the direct appeal should represent the client throughout the direct appeal. Except for emergencies, substitute or stand-in counsel should not be used as a routine method to handle additional cases. The client and the court are entitled to have the approved attorney prepare and handle the case.

8. There is parity between defense counsel and the prosecution with respect to resources and defense counsel is included as an equal partner in the justice system. Public defense should participate as an equal partner in improving the justice system.²⁴ There should be parity of workload, salaries and other resources between prosecution and defense in criminal cases in which the accused has been provided counsel at public expense.²⁵ Assigned counsel should be paid a reasonable fee, taking overhead into consideration, and should be reimbursed for expenses.²⁶ Where they exist, contracts with private attorneys for public defense services must never be let primarily on the basis of cost; and should specify performance requirements and the anticipated workload, and provide for contingencies such as excess cases, high profile or complex cases,²⁷ and funding for expert and investigative services.²⁸

9. Defense counsel is provided with and required to attend continuing legal education.

Counsel and staff providing defense services should have systematic and comprehensive training appropriate to their areas of practice and at least equal to that received by prosecutors.²⁹

10. Defense counsel is supervised and systematically reviewed for quality and efficiency according to nationally and locally adopted standards. The defender office (both professional and support staff), assigned counsel, or contract defenders should be supervised and periodically evaluated for competence and efficiency.³⁰

11. When there is a defender office, one function of the office will be to explore and advocate for programs that improve the system and reduce recidivism. The defense attorney is in a unique place to assist clients, communities and the system by becoming involved in the design, implementation and review of local programs suited to both repairing the harm and restoring the defendant to a productive, crime free life in society.

NOTES

1 The Representative Assembly of the State Bar of Michigan adopted the bold letters of the "Eleven Principles" (i.e., not including commentary) on April 27, 2002.

2 "Counsel" as used herein includes a defender office, a criminal defense attorney in a defender office, a contract attorney in private practice accepting appointments. "Defense" as used herein relates to both the juvenile and adult public defense systems.

3 National Advisory Commission on Criminal Justice Standards and Goals, Task Force on Courts, Chapter 13, *The Defense* (1973) [hereinafter "NAC"], Standards 13.8, 13.9; National Study Commission on Defense Services, *Guidelines for Legal Defense Systems in the United States* (1976) [hereinafter "NSC"], Guidelines 2.8, 2.18, 5.13; American Bar Association Standards for Criminal Justice, *Providing Defense Services* (3rd ed. 1992) [hereinafter "ABA"], Standards 5-1.3, 5-1.6, 5-4.1; *Standards for the Administration of Assigned Counsel Systems* (NLADA 1989) [hereinafter "Assigned Counsel"], Standard 2.2; NLADA *Guidelines for Negotiating and Awarding Contracts for Criminal Defense Services*, (1984) [hereinafter "Contracting"], Guidelines II-1, 2; National Conference of Commissioners on Uniform State Laws, *Model Public Defender Act* (1970) [hereinafter "Model Act"], § 10(d); Institute for Judicial Administration/American Bar Association, *Juvenile Justice Standards Relating to Counsel for Private Parties* (1979) [hereinafter "ABA Counsel for Private Parties"], Standard 2.1 (D).

4 Each board should be consistent with national standards. NSC, *supra* note 2, Guidelines 2.10-2.13; ABA, *supra* note 2, Standard 5-1.3 (b); Assigned Counsel, *supra* note 2, Standards 3.2.1, 2, Contracting, *supra* note 2, Guidelines II-1, II-3, IV-2; Institute for Judicial Administration/American Bar Association, *Juvenile Justice Standards Relating to Monitoring* (1979) [hereinafter "ABA Monitoring"], Standard 3.2.

5 Judicial independence is "the most essential character of a free society" (American Bar Association Standing Committee on Judicial Independence, 1997).

6 ABA, *supra* note 2, Standard 5-4.1

7 NSC, *supra* note 2, Guideline 2.4; Model Act, *supra* note 2, § 10; ABA, *supra* note 2, Standard 5-1.2(c); *Gideon v. Wainwright*, 372 U.S. 335 (1963) (provision of indigent defense services is obligation of state).

8 "Sufficiently high" is described in detail in NAC Standard 13.5 and ABA Standard 5-1.2. The phrase can generally be understood to mean that there are enough assigned cases to support a full-time public defender (taking into account distances, caseload diversity, etc.), and the remaining number of cases are enough to support meaningful involvement of the private bar.

9 NAC, *supra* note 2, Standard 13.5; ABA, *supra* note 2, Standard 5-1.2; ABA Counsel for Private Parties, *supra* note 2, Standard 2.2. "Defender office" means a full-time public defender office and includes a private nonprofit organization operating in the same manner as a full-time public defender office under a contract with a jurisdiction.

10 ABA, *supra* note 2, Standard 5-1.2(a) and (b); NSC, *supra* note 2, Guideline 2.3; ABA, *supra* note 2, Standard 5-2.1.

11 NSC, *supra* note 2, Guideline 2.3; ABA, *supra* note 2, Standard 5-2.1.

12 ABA, *supra* note 2, Standard 5-2.1 and commentary; Assigned Counsel, *supra* note 2, Standard 3.3.1 and commentary n.5 (duties of Assigned Counsel Administrator such as supervision of attorney work cannot ethically be performed by a non-attorney, citing ABA Model Code of Professional Responsibility and Model Rules of Professional Conduct).

13 For screening approaches, see NSC, *supra* note 2, Guideline 1.6 and ABA, *supra* note 2, Standard 5-7.3.

14 NSC, *supra* note 2, Guideline 1.3.

15 NAC, *supra* note 2, Standard 13.3; ABA, *supra* note 2, Standard 5-6.1; Model Act, *supra* note 2, § 3; NSC, *supra* note 2, Guidelines 1.2-1.4; ABA Counsel for Private Parties, *supra* note 2, Standard 2.4 (A).

16 NSC, *supra* note 2, Guideline 1.3.

17 American Bar Association Standards for Criminal Justice, *Defense Function* (3rd ed. 1993) [hereinafter "ABA Defense Function"], Standard 4-3.2; *Performance Guidelines for Criminal Defense Representation* (NLADA 1995) [hereinafter "Performance Guidelines"], Guidelines 2.1-4.1; ABA Counsel for Private Parties, *supra* note 2, Standard 4.2.

18 ABA Defense Function, *supra* note 15, Standard 4-3.1.

19 NSC, *supra* note 2, Guideline 5.10, ABA Defense Function, *supra* note 15, Standards 4-2.3, 4-3.1, 4-3.2; Performance Guidelines, *supra* note 15, Guideline 2.2.

20 Numerical caseload limits are specified in NAC Standard 13.12 (maximum cases per year: 150 felonies, 400 misdemeanors, 200 juvenile, 200 mental health, or 25 appeals), and other national standards state that caseloads should "reflect" (NSC Guideline 5.1) or "under no circumstances exceed" (Contracting Guideline III-6) these numerical limits. The workload demands of capital cases are unique: the duty to investigate, prepare and try both the guilt/innocence and mitigation phases today requires an average of almost 1,900 hours, and over 1,200 hours even where a case is resolved by guilty plea. *Federal Death Penalty Cases: Recommendations Concerning the Cost and Quality of Defense Representation* (Judicial Conference of the United States, 1998). See also *ABA Guidelines for the Appointment and Performance of Counsel in Death Penalty Cases* (1989) [hereinafter "Death Penalty"].

21 ABA, *supra* note 2, Standard 5-5.3; NSC, *supra* note 2, Guideline 5.1; *Standards and Evaluation Design for Appellate Defender Offices* (NLADA 1980) [hereinafter "Appellate"], Standard 1-F.

22 Performance Guidelines, *supra* note 11, Guidelines 1.2, 1.3(a); Death Penalty, *supra* note 15, Guideline 5.1.

23 NSC, *supra* note 2, Guidelines 5.11, 5.12; ABA, *supra* note 2, Standard 5-6.2; NAC, *supra* note 2, Standard 13.1; Assigned Counsel, *supra* note 2, Standard 2.6; Contracting, *supra* note 2, Guidelines III-12, III-23; ABA Counsel for Private Parties, *supra* note 2, Standard 2.4 (B) (i).

24 ABA Defense Function, *supra* note 15, Standard 4-1.2(d).

25 Support services include benefits, technology, facilities, legal research, support staff, paralegals, investigators, and access to forensic services and expert witnesses. NSC, *supra* note 2, Guideline 3.4; ABA, *supra* note 2, Standards 5-4.1, 5-4.3; Contracting, *supra* note 2, Guideline III-10; Assigned Counsel, *supra* note 2, Standard 4.71; Appellate, *supra* note 20 (Performance); ABA Counsel for Private Parties, *supra* note 2, Standard 2.1 (B) (iv). See NSC, *supra* note 2, Guideline 4.1 (includes numerical staffing ratios, e.g., there must be one supervisor for every 10 attorneys, or one part-time supervisor for every 5 attorneys; there must be one investigator for every three attorneys, and at least one investigator in every defender office). Cf. NAC, *supra* note 2, Standards 13.7, 13.11 (chief defender salary should be at parity with chief judge; staff attorneys at parity with private bar.)

26 ABA, *supra* note 2, Standard 5-2.4; Assigned Counsel, *supra* note 2, Standard 4.7.3.

27 NSC, *supra* note 2, Guideline 2.6; ABA, *supra* note 2, Standards 5-3.1, 5-3.2, 5-3.3; Contracting, *supra* note 2, Guidelines III-6, III-12, and *passim*.

28 ABA, *supra* note 2, Standard 5-3.3(b)(x); Contracting, *supra* note 2, Guidelines III-8, III-9.

29 NAC, *supra* note 2, Standards 13.15, 13.16; NSC, *supra* note 2, Guidelines 2.4(4), 5.6-5.8; ABA, *supra* note 2, Standards 5-1.5; Model Act, *supra* note 2, § 10(e); Contracting, *supra* note 2, Guideline III-17; Assigned Counsel, *supra* note 2, Standards 4.2, 4.3.1, 4.3.2, 4.4.1; *NLADA Defender Training and Development Standards* (1997); ABA Counsel for Private Parties, *supra* note 2, Standard 2.1 (A).

30 NSC, *supra* note 2, Guidelines 5.4, 5.5; Contracting, *supra* note 2, Guidelines III-16; Assigned Counsel, *supra* note 2, Standard 4.4; ABA Counsel for Private Parties, *supra* note 2, Standards 2.1 (A), 2.2; ABA Monitoring, *supra* note 3, Standards 3.2, 3.3. Examples of performance standards applicable in conducting these reviews include NLADA Performance Guidelines, ABA Defense Function, and NLADA/ABA Death Penalty.

Attachment 2
93 PA 2013, “Michigan Indigent Defense
Commission Act”

Act No. 93
Public Acts of 2013
Approved by the Governor
July 1, 2013
Filed with the Secretary of State
July 1, 2013
EFFECTIVE DATE: July 1, 2013

**STATE OF MICHIGAN
97TH LEGISLATURE
REGULAR SESSION OF 2013**

Introduced by Reps. McMillin, Lipton, Heise, Lyons, Haveman, Yonker, Muxlow, Walsh, Callton, Cavanagh, Roberts, Townsend, Darany, Irwin, Singh, Howrylak, Somerville, Dillon, Hovey-Wright, Brown, Ananich, Hobbs, Durhal, Switalski and Oakes

ENROLLED HOUSE BILL No. 4529

AN ACT 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; to provide for and limit certain causes of action; and to provide for certain appropriations and grants.

The People of the State of Michigan enact:

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

Sec. 3. As used in this act:

(a) “Adult” means either of the following:

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

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

(A) During consideration of a petition filed under section 4 of chapter XIIA of the probate code of 1939, 1939 PA 288, MCL 712A.4, to waive jurisdiction to try the individual as an adult and upon granting a waiver of jurisdiction.

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

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

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

(b) “Effective assistance of counsel” or “effective representation” means legal representation that is compliant with standards established by the appellate courts of this state and the United States supreme court.

(c) “Indigent” means meeting 1 or more of the conditions described in section 11(3).

(d) “Indigent criminal defense services” means local legal defense services provided to a defendant and to which both of the following conditions apply:

(i) The defendant is being prosecuted or sentenced for a crime for which an individual may be imprisoned upon conviction, beginning with the defendant’s initial appearance in court to answer to the criminal charge.

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

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

(f) “Indigent criminal defense system” or “system” means either of the following:

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

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

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

(h) “MIDC” or “commission” means the Michigan indigent defense commission created under section 5.

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

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

(3) The MIDC shall propose minimum standards for the local delivery of indigent criminal defense services providing effective assistance of counsel to adults throughout this state. These minimum standards shall be designed to ensure the provision of indigent criminal defense services that meet constitutional requirements for effective assistance of counsel. The commission shall convene a public hearing before a proposed standard is submitted to the supreme court. A minimum standard proposed under this subsection shall be submitted to the supreme court. Opposition to a proposed minimum standard may be submitted to the supreme court in a manner prescribed by the supreme court, but a minimum standard that is approved by the supreme court is not subject to challenge through the appellate procedures under section 15. A proposed minimum standard shall be final when it is approved by the supreme court. If the supreme court neither approves nor disapproves a proposed minimum standard within 180 days of its submission, then the standard is not approved.

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

Sec. 7. (1) The MIDC includes 15 voting members and the ex officio member described in subsection (2). The 15 voting members shall be appointed by the governor for terms of 4 years, except as provided in subsection (4). Subject to subsection (3), the governor shall appoint members under this subsection as follows:

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

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

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

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

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

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

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

(h) One member from a list of names submitted by bar associations whose primary mission or purpose is to advocate for minority interests. Each bar association described in this subdivision may submit 1 name.

(i) One member from a list of 3 names submitted by the prosecuting attorney's association of Michigan who is a former county prosecuting attorney or former assistant county prosecuting attorney.

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

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

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

(3) Individuals nominated for service on the MIDC as provided in subsection (1) shall have significant experience in the defense or prosecution of criminal proceedings or have demonstrated a strong commitment to providing effective representation in

indigent criminal defense services. Of the members appointed under this section, the governor shall appoint no fewer than 2 individuals who are not licensed attorneys. Any individual who receives compensation from this state or an indigent criminal defense system for providing prosecution of or representation to indigent adults in state courts is ineligible to serve as a member of the MIDC. Not more than 3 judges, whether they are former judges or sitting judges, shall serve on the MIDC at the same time. The governor may reject the names submitted under subsection (1) and request additional names.

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

(5) The governor shall fill a vacancy occurring in the membership of the MIDC in the same manner as the original appointment, except if the vacancy is for an appointment described in subsection (1)(d), the source of the nomination shall submit a list of 3 names for each vacancy. However, if the senate majority leader or the speaker of the house of representatives is the source of the nomination, 1 name shall be submitted. If an MIDC member vacates his or her commission before the end of the member's term, the governor shall fill that vacancy for the unexpired term only.

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

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

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

(9) A majority of the MIDC voting members constitute a quorum for the transaction of business at a meeting of the MIDC. A majority of the MIDC voting members are required for official action of the commission.

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

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

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

- (b) Investigating, auditing, and reviewing the operation of indigent criminal defense services to assure compliance with the commission's minimum standards, rules, and procedures. However, an indigent criminal defense service that is in compliance with the commission's minimum standards, rules, and procedures shall not be required to provide indigent criminal defense services in excess of those standards, rules, and procedures.
- (c) Hiring an executive director and determining the appropriate number of staff needed to accomplish the purpose of the MIDC consistent with annual appropriations.
- (d) Assigning the executive director the following duties:
- (i) Establishing an organizational chart, preparing an annual budget, and hiring, disciplining, and firing staff.
- (ii) Assisting the MIDC in developing, implementing, and regularly reviewing the MIDC's standards, rules, and procedures, including, but not limited to, recommending to the MIDC suggested changes to the criteria for an indigent adult's eligibility for receiving criminal trial defense services under this act.
- (e) Establishing procedures for the receipt and resolution of complaints, and the implementation of recommendations from the courts, other participants in the criminal justice system, clients, and members of the public.
- (f) Establishing procedures for the mandatory collection of data concerning the operation of the MIDC, each individual attorney providing indigent criminal defense services, each indigent criminal defense system, and the operation of indigent criminal defense services.
- (g) Establishing rules and procedures for indigent criminal defense systems to apply to the MIDC for grants to bring the system's delivery of indigent criminal defense services into compliance with the minimum standards established by the MIDC.
- (h) Establishing procedures for annually reporting to the governor, legislature, and supreme court. The report required under this subdivision shall include, but not be limited to, recommendations for improvements and further legislative action.
- (2) Upon the appropriation of sufficient funds, the MIDC shall establish minimum standards to carry out the purpose of this act, and collect data from all indigent criminal defense systems and individual attorneys providing indigent criminal defense services to adults. The MIDC shall propose goals for compliance with the minimum standards established under this act consistent with the metrics established under this section and appropriations by this state.
- (3) In establishing and overseeing the minimum standards, rules, and procedures described in subsection (1), the MIDC shall emphasize the importance of indigent criminal defense services provided to juveniles under the age of 17 who are tried in the same manner as adults or who may be sentenced in the same manner as adults and to adults with mental impairments.
- (4) The MIDC shall be mindful that defense attorneys who provide indigent criminal defense services are partners with the prosecution, law enforcement, and the judiciary in the criminal justice system.

- (5) The commission shall establish procedures for the conduct of its affairs and promulgate policies necessary to carry out its powers and duties under this act.
- (6) Commission policies shall be placed in an appropriate manual, made publicly available on a website, and made available to all attorneys and professionals providing indigent criminal defense services, the supreme court, the governor, the senate majority leader, the speaker of the house of representatives, the senate and house appropriations committees, and the senate and house fiscal agencies.

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

- (a) The delivery of indigent criminal defense services shall be independent of the judiciary but ensure that the judges of this state are permitted and encouraged to contribute information and advice concerning that delivery of indigent criminal defense services.
- (b) If the caseload is sufficiently high, indigent criminal defense services may consist of both an indigent criminal defender office and the active participation of other members of the state bar.
- (c) Trial courts shall assure that each criminal defendant is advised of his or her right to counsel. All adults, except those appearing with retained counsel or those who have made an informed waiver of counsel, shall be screened for eligibility under this act, and counsel shall be assigned as soon as an indigent adult is determined to be eligible for indigent criminal defense services.
- (2) The MIDC shall implement minimum standards, rules, and procedures to guarantee the right of indigent defendants to the assistance of counsel as provided under amendment VI of the constitution of the United States and section 20 of article I of the state constitution of 1963. In establishing minimum standards, rules, and procedures, the MIDC shall adhere to the following principles:
- (a) Defense counsel is provided sufficient time and a space where attorney-client confidentiality is safeguarded for meetings with defense counsel's client.
- (b) Defense counsel's workload is controlled to permit effective representation. Economic disincentives or incentives that impair defense counsel's ability to provide effective representation shall be avoided. The MIDC may develop workload controls to enhance defense counsel's ability to provide effective representation.
- (c) Defense counsel's ability, training, and experience match the nature and complexity of the case to which he or she is appointed.
- (d) The same defense counsel continuously represents and personally appears at every court appearance throughout the pendency of the case. However, indigent criminal defense systems may exempt ministerial, nonsubstantive tasks, and hearings from this prescription.
- (e) Defense counsel is required to attend continuing legal education relevant to counsel's indigent defense clients.
- (f) Defense counsel is systematically reviewed at the local level for efficiency and for effective representation according to MIDC standards.

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

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

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

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

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

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

(2) An indigent criminal defense system may submit to the MIDC an estimate of the cost of developing the plan and cost analysis for implementing the plan under subsection (3) to the MIDC for approval. Upon approval, the MIDC shall award the indigent criminal defense system a grant to pay the approved costs for developing the plan and cost analysis under subsection (3).

(3) No later than 180 days after a standard is approved by the supreme court, each indigent criminal defense system shall submit a plan to the MIDC for the provision of indigent criminal defense services in a manner as determined by the MIDC and shall submit an annual plan for the following state fiscal year on or before February 1 of each year. A plan submitted under this subsection shall specifically address how the minimum standards established by the MIDC under this act shall be met and shall include a cost analysis. The standards to be addressed in the annual plan are those that the supreme court approved not less than 60 days before the annual plan submission date. This cost analysis shall include a statement of the funds in excess of the local share, if any, necessary to allow its system to comply with the MIDC's minimum standards.

(4) The MIDC shall approve or disapprove a plan or cost analysis, or both a plan and cost analysis, submitted under subsection (3), and shall do so within 60 calendar days of the submission of the plan and cost analysis. If the MIDC disapproves the plan, the cost analysis, or both the plan and the cost analysis, the indigent criminal defense system shall consult with the MIDC and submit a new plan, a new cost analysis, or both within 30 calendar days of the mailing date of the official notification of the MIDC's disapproval. If after 3 submissions a compromise is not reached, the dispute shall be resolved as provided in section 15.

(5) The MIDC 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 the plan for each system approved by the MIDC. The information used to create this report shall 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) Except as provided in subsection (8), an indigent criminal defense system shall maintain not less than its local share. If the MIDC determines that funding in excess of the indigent criminal defense system's share is necessary in order to bring its system into compliance with the minimum standards established by the MIDC, that excess funding shall be paid by this state. The legislature shall appropriate to the MIDC the additional funds necessary for a system to meet and maintain those minimum standards, which funds shall be provided to indigent criminal defense systems through grants as described in subsection (7).

(7) An indigent criminal defense system shall not be required to provide funds in excess of its local share. The MIDC shall provide grants to indigent criminal defense systems to assist in bringing the systems into compliance with minimum standards established by the MIDC.

(8) An indigent criminal defense system is not required to expend its local share if the minimum standards established by the MIDC may be met for less than that share, but the local share of a system that expends less than its local share under these circumstances is not reduced by the lower expenditure.

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

(10) Within 180 days after receiving funds from the MIDC under subsection (7), an indigent criminal defense system shall comply with the terms of the grant in bringing its system into compliance with the minimum standards established by the MIDC for effective assistance of counsel.

(11) If an indigent criminal defense system is awarded no funds for implementation of its plan under this act, the MIDC shall nevertheless issue to the system a zero grant reflecting that it will receive no grant funds.

(12) The MIDC may apply for and obtain grants from any source to carry out the purposes of this act. All funds received by MIDC, from any source, are state funds and shall be appropriated as provided by law.

Sec. 15. (1) If a dispute arises between the MIDC and an indigent criminal defense system concerning the requirements of this act, including a dispute concerning the approval of an indigent criminal defense system's plan, cost analysis, or compliance with section 13 or 17, the parties shall attempt to resolve the dispute by mediation. The state court administrator, as authorized by the supreme court, shall appoint a mediator agreed to by the parties within 30 calendar days of the mailing date of the official notification of the third disapproval by the MIDC under section 13(4) to mediate the dispute and shall facilitate the mediation process. The MIDC shall immediately send the state court administrative office a copy of the official notice of that third disapproval. If the parties do not agree on the selection of the mediator, the state court administrator, as authorized by the supreme court, shall appoint a mediator of his or her choosing. Mediation shall commence within 30 calendar days after the mediator is appointed and terminate within 60 calendar days of its commencement. Mediation costs associated with mediation of the dispute shall be paid equally by the parties.

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

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

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

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

- (3) The MIDC, or an indigent criminal defense system may bring an action seeking equitable relief in the circuit court only as follows:
- (a) Within 60 days after the MIDC's issuance of an approved plan and cost analysis under subsection (2)(b).
 - (b) Within 60 days after the system receives grant funds under section 13(7), if the plan, cost analysis, or both, required a grant award for implementation of the plan.
 - (c) Within 30 days of the MIDC's determination that the indigent criminal defense system has breached its duty to comply with an approved plan.
 - (d) The action shall be brought in the judicial circuit where the indigent criminal defense service is located. The state court administrator, as authorized by the supreme court, shall assign an active or retired judge from a judicial circuit other than the judicial circuit where the action was filed to hear the case. Costs associated with the assignment of the judge shall be paid equally by the parties.
 - (e) The action shall not challenge the validity, legality, or appropriateness of the minimum standards approved by the supreme court.
- (4) If the dispute involves the indigent criminal defense system's plan, cost analysis, or both, the court may approve, reject, or modify the submitted plan, cost analysis, or the terms of a grant awarded under section 13(7) other than the amount of the grant, determine whether section 13 has been complied with, and issue any orders necessary to obtain compliance with this act. However, the system shall not be required to expend more than its local share in complying with this act.
- (5) If a party refuses or fails to comply with a previous order of the court, the court may enforce the previous order through the court's enforcement remedies, including, but not limited to, its contempt powers, and may order that the state undertake the provision of indigent criminal defense services in lieu of the indigent criminal defense system.
- (6) If the court determines that an indigent criminal defense system has breached its duty under section 17(1), the court may order the MIDC to provide indigent criminal defense on behalf of that system.
- (7) If the court orders the MIDC to provide indigent criminal defense services on behalf of an indigent criminal defense system, the court shall order the system to pay the following amount of the state's costs that the MIDC determines are necessary in order to bring the indigent criminal defense system into compliance with the minimum standards established by the MIDC:
- (a) In the first year, 10% of the state's costs.
 - (b) In the second year, 20% of the state's costs.
 - (c) In the third year, 30% of the state's costs.
 - (d) In the fourth year, 40% of the state's costs.
 - (e) In the fifth year, and any subsequent year, not more than the dollar amount that was calculated under subdivision (d).
- (8) An indigent criminal defense system may resume providing indigent criminal defense services at any time as provided under section 13. When a system resumes

providing indigent criminal defense services, it is no longer required to pay an assessment under subsection (7) but shall be required to pay no less than its share.

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

(2) A system's duty of compliance with the terms of the plan as prescribed under subsection (1) is contingent upon receipt of a grant in the amount contained in the plan and cost analysis approved by the MIDC.

(3) The MIDC may proceed under section 15 if an indigent criminal defense system breaches its duty of compliance under subsection (1).

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

Sec. 21. Both of the following apply to the MIDC:

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

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

Sec. 23. (1) Nothing in this act shall be construed to overrule, expand, or extend, either directly or by analogy, any decisions reached by the United States supreme court or the supreme court of this state regarding the effective assistance of counsel.

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

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

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

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

This act is ordered to take immediate effect.

Clerk of the House of Representatives
Secretary of the Senate
Approved
Governor