

Indigent Defense Legislation Introduced

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In the August edition of *LACHES* I reported that the Indigent Defense Advisory Commission had issued its recommendations on revamping indigent defense

services in Michigan. The commission was established to study existing indigent defense delivery systems and make recommendations to ensure that qualified and cost-effective legal representation is made available to indigent criminal defendants.

It didn't take long for the recommendations to find their way into legislation in the form of House Bill 5804, introduced on August 15 and referred to the Judiciary Committee where it awaits action. The legislation goes a step further by determining how funding for indigent defense will be calculated for each local unit of government. More on this in a moment.

If enacted into law, the bill would create an autonomous Michigan Indigent Defense Commission (MIDC) and establish its powers and duties. I use the word "autonomous" (which is also used in the bill) because the MIDC would not report to any entity and it would have significant statutory authority and power to establish and enforce standards for indigent defense services.

Here's a summary of the bill: The MIDC will set forth minimum standards, rules and procedures to which all indigent defense systems must adhere. In so doing it hopes to ensure that criminal defense services are delivered in a consistent manner. To ensure compliance, the MIDC will be given power to investigate, audit and review the operation of indigent defense systems.

The commission will be empowered to review complaints and resolve them. It will have authority to determine the criteria for an indigent defendant's eligibility to receive a court-appointed attorney. It will determine the data each system must provide so that the MIDC may evaluate whether local indigent defense systems and court-appointed legal counsel are in compliance. The MIDC will also develop metrics to determine the resources necessary

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for each indigent defense system to comply with the minimum standards set forth by the MIDC.

Buried in the middle of the bill is a statement that appears to be the foundation upon which the legislation was constructed. It reads:

“The MIDC shall be mindful that defense attorneys who represent indigent adults are equal partners with the prosecution, law enforcement and the judiciary in the criminal justice system, and should be adequately funded in order to fulfill their role.”

The remainder of the bill contains principles to ensure the defense’s equal standing. While judges are to have input regarding the delivery of indigent defense services, the selection, funding and payment of defense counsel is to be independent of the judiciary. Defense attorneys must be provided sufficient time and space to engage in confidential attorney-client meetings.

The workload of defense counsel must not be excessive and the governmental unit must not create economic incentives or disincentives that could impair a defense lawyer’s ability to effectively represent his or her client. The defense attorney’s ability and qualifications must be appropriate for the type and complexity of the cases to which he or she is appointed. Appointed attorneys must

continuously represent their clients from the start of the cases to their finish.

Defense attorneys will be required to participate in continuing legal education. Their performance will be reviewed and evaluated for quality and efficiency of representation.

The types of indigent defense systems in this state are varied – some counties have a public defender’s office, some utilize independent attorneys, some contract with a law firm. The bill would allow each county to continue with its system of choice so long as it complies with the principles of equal standing for the defense as referenced above. To that end, each unit of government must cooperate and participate in the investigation, audit and review of their indigent defense systems conducted by the MIDC.

And now we come to the topic of funding. I’m not editorializing on the merits of the bill. No one disputes that the defense is an equal player in the administration of justice and should have sufficient resources to fulfill its duties. But this section is dicey strictly in a budgetary sense.

The bill requires that the county maintain a level of funding for indigent defense that is **the greater of** the average of the last three years of expenditures for indigent defense adjusted for inflation or a rate of \$7.25 per capita. Oakland County’s annual expenditure for indigent defense is about \$4 million and Oakland County’s population is north of 1.2 million. So the former yields a funding threshold of about \$4 million; the latter a threshold of \$8.7 million. Should the bill be adopted with this provision intact, Oakland County must more than double its indigent defense budget.

Some would say this proves the budget for indigent defense was too low all along. I’m not arguing. Just pointing out that the county’s expenditure for indigent defense will need to be augmented by some \$4.7 million. Quite a challenge given that more budget cuts are on the way.

That’s the bill in a nutshell. Considering the number and varied type of indigent defense systems in Michigan, the MIDC will have quite a chore on its hands to fulfill its mission. To help it do just that, the MIDC will be empowered to hire an executive director and as many employees as necessary. The Legislature will provide it with an operating budget.

To read HB 5804 and keep abreast of its progress go to the Legislature’s website at <http://bit.ly/MI-HB5804> or scan the QR code with your smartphone or tablet.



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