

Act No. 299
Public Acts of 2023
Approved by the Governor
December 12, 2023
Filed with the Secretary of State
December 13, 2023
EFFECTIVE DATE: October 1, 2024

**STATE OF MICHIGAN
102ND LEGISLATURE
REGULAR SESSION OF 2023**

Introduced by Senators Shink, Irwin, Chang, Bayer, Wojno, Geiss and Santana

ENROLLED SENATE BILL No. 425

AN ACT to amend 1978 PA 620, entitled “An act relating to criminal procedure; to provide for the defense of persons accused or convicted of criminal offenses; to create the appellate defender commission; to provide for an appellate defender; to prescribe powers and duties; to provide facilities, personnel, and related assistance and services for the appellate defender and the commission; and to provide for the financing of the administration of this act,” by amending the title and sections 2, 4, 6, and 7 (MCL 780.712, 780.714, 780.716, and 780.717) and by adding sections 1a and 8a.

The People of the State of Michigan enact:

TITLE

An act relating to indigent appellate defense; to provide for the defense of certain indigent individuals; to create the appellate defender commission; to provide for an appellate defender; to prescribe powers and duties; to provide facilities, personnel, and related assistance and services for the appellate defender and the commission; and to provide for the financing of the administration of this act.

Sec. 1a. As used in this act:

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

(i) An individual who is eligible to appeal a criminal conviction or exercise any other postconviction remedy.

(ii) An individual who is eligible to appeal an order issued under section 2d or 4 of chapter XIII of the probate code of 1939, 1939 PA 288, MCL 712A.2d and 712A.4.

(b) "Indigent" means that term as defined in section 3 of the Michigan indigent defense commission act, 2013 PA 93, MCL 780.983.

(c) "Indigent defense system" or "system" means either of the following:

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

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

(d) "Local contribution" means an indigent defense system's average annual expenditure for attorney fees and expenses during the first 3 full fiscal years in which the system has complied with the standard procedure established under section 8a(2), excluding expenditures reimbursed under section 8a(4). If the Consumer Price Index has increased since November 1 of the prior state fiscal year, the local contribution must be adjusted by that percentage or 3%, whichever is less.

(e) "Youth" means an individual who is eligible to appeal an order issued under section 2(a), (d), or (h) of chapter XIII A of the probate code of 1939, 1939 PA 288, MCL 712A.2.

Sec. 2. (1) An appellate defender commission is created within the office of the state court administrator. The appellate defender commission consists of 9 members appointed by the governor for terms of 4 years. The members of the commission must be determined as follows:

(a) Two members must be recommended by the supreme court of this state.

(b) One member must be recommended by the court of appeals of this state.

(c) One member must be recommended by the Michigan Judges Association.

(d) Two members must be recommended by the State Bar of Michigan.

(e) One member must be recommended by the Michigan Indian Judicial Association.

(f) Two members who are not attorneys must be selected from the general public by the governor to represent the interests of individuals who have been impacted by the youth or adult justice system.

(g) A member appointed to the commission under subdivisions (a) to (f) shall not be, at the time of appointment, a sitting judge, a prosecuting attorney, or a law enforcement officer.

(2) Initially 4 members of the commission shall be appointed for terms of 4 years and 1 member each for terms of 1, 2, and 3 years respectively.

(3) Members of the commission shall not receive a salary in that capacity but must be reimbursed for their reasonable actual and necessary expenses by the state treasurer upon the warrant of the state treasurer.

(4) The commission shall be responsible for the development of both of the following:

(a) A system of appellate defense services for indigent adults.

(b) A system of appellate defense services for indigent youth.

(5) Both of the systems described in subsection (4) must include services provided by both of the following:

(a) The office of the state appellate defender created in section 3.

(b) Locally appointed private counsel.

(6) The commission shall be responsible for the development of minimum standards to which all indigent appellate defense services for adults and youth shall conform. Whenever the commission deems it advisable, the commission shall submit proposed standards to the supreme court. Upon approval of the proposed standards by the supreme court, the commission shall adopt the standards.

(7) The commission shall compile and keep current both of the following:

(a) A statewide roster of attorneys eligible for, and willing to accept, appointment to serve as appellate defense counsel for indigent adults.

(b) A statewide roster of attorneys eligible for, and willing to accept, appointment to serve as appellate defense counsel for indigent youth.

(8) The appointment of appellate defense services for indigent adults and youth must be made from the applicable roster described in subsection (7), or referred to the office of the state appellate defender.

(9) The commission shall provide a continuing legal education training program for its staff and the private attorneys who appear on the rosters described in subsection (7).

Sec. 4. (1) An individual shall not serve as an appellate defender, deputy appellate defender, or assistant appellate defender unless the individual is an attorney licensed to practice law in this state.

(2) The appellate defender, the deputy appellate defender, and each assistant appellate defender shall do all of the following:

(a) Take and subscribe to the oath required by the constitution before taking office.

(b) Perform duties as may be provided by law.

(c) Represent the following individuals:

(i) An indigent adult only subsequent to a conviction or entry of a guilty plea or plea of nolo contendere at the trial court level.

(ii) An indigent youth only subsequent to an appealable order.

(3) The appellate defender and the deputy appellate defender shall not engage in the practice of law or as an attorney or counselor in a court of this state except in the exercise of the duties prescribed by this act.

(4) For purposes of this act, the appellate defender, the deputy appellate defender, each assistant appellate defender, and support personnel are considered court employees and are not classified civil service employees.

Sec. 6. The appellate defender shall do all of the following:

(a) Conduct an appeal of a felony conviction or conduct other postconviction remedies on behalf of an indigent adult for whom the appellate defender is assigned as attorney.

(b) Conduct an appeal of an order or conduct other appropriate postdisposition remedies on behalf of an indigent youth for whom the appellate defender is assigned as attorney.

(c) Provide investigatory and other services necessary for a complete appellate review or appropriate postconviction or postdisposition remedy, as applicable.

(d) Accept only that number of assignments and maintain a caseload which will ensure quality appellate defense services for indigent adults and youth consistent with the funds appropriated by the state. However, the number of cases assigned to the appellate defender office must not be less than 25% of the total appellate defense cases for indigent adults and youth pending before the appellate courts of this state.

(e) Maintain a repository of briefs prepared by the appellate defender and make those briefs available to private attorneys providing appellate defense services for indigent adults and youth.

(f) Perform other duties required by law as directed by the commission.

Sec. 7. (1) The appellate defender may appoint special assistant appellate defenders to do any of the following:

(a) Represent indigent adults or otherwise assist in the representation of indigent adults at any stage of appellate or postconviction proceedings, upon rules adopted by the commission.

(b) Represent indigent youth or otherwise assist in the representation of indigent youth at any stage of appellate proceedings, upon rules adopted by the commission.

(2) A special assistant appellate defender shall be paid on a contract basis approved by the commission within funds available to the commission.

(3) A special assistant appellate defender is not subject to the restrictions on the practice of law applicable to the appellate defender, deputy appellate defender, and assistant appellate defender under section 4.

Sec. 8a. (1) An indigent defense system is responsible for the payment of reasonable fees and expenses for the services provided by locally appointed private counsel under section 2.

(2) The commission shall establish a standard procedure for both of the following:

(a) The payment of locally appointed private counsel by indigent defense systems as described in subsection (1).

(b) The reimbursement of indigent defense systems as described in subsection (4).

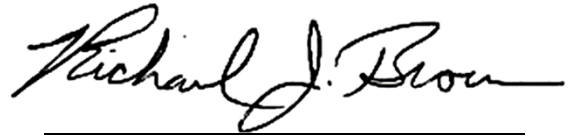
(3) The standard procedure established under subsection (2)(a) must include rates and policies that are consistent with the standards established under section 11(2)(b) of the Michigan indigent defense commission act, 2013 PA 93, MCL 780.991.

(4) Subject to appropriation, if an indigent defense system pays locally appointed private counsel under subsection (2) pursuant to the rates and policies established under subsection (3), the state shall reimburse the system for 1/2 of the expenditures of the system. After a system has complied with subsection (2) for 3 full fiscal years, the state shall reimburse the system for all expenditures exceeding the system's local contribution. It is the intent of the legislature to fully fund this reimbursement.

Enacting section 1. This amendatory act takes effect October 1, 2024.



Secretary of the Senate



Clerk of the House of Representatives

Approved _____

Governor