

## Indigent Defense S-1 Changes

- With regard to dispute resolution in section 15 the bill was amended to create the following dispute resolution process:
  - As in the version previously before the committee, if an agreement hasn't been reached between the MIDC and a system after three attempts then a mutually agreed upon mediator will be appointed by SCAO, or if one cannot be agreed to the parties, SCAO shall appoint a mediator. Should mediation fail then the MIDC shall consider any recommendation of the mediator and then will approve a final plan or cost analysis or both.
  - In the S-1 after the MIDC approves a final plan any indigent criminal defense system that is aggrieved by the final plan, cost analysis or both may file a lawsuit under the following conditions:
    - Within 60 days after the MIDC's issuance of an approved plan and cost analysis , or both;
    - Within 60 days after the system receives grant funds if the plan, cost analysis or both required a grant award for implementation of the plan; or
    - Within 30 days of the MIDC's determination that the indigent criminal defense system has breached its duty to comply with an approved plan
  - The lawsuit must be filed in the judicial circuit where the aggrieved system is located and an active or retired visiting judge assigned by SCAO will hear the case. Costs will be paid equally by the parties
  - A lawsuit may not challenge the validity, legality or appropriateness of the minimum standards approved by the Supreme Court
  - If the court is hearing a case on the plan, cost analysis or the terms of the grant then the court shall issue orders necessary to obtain compliance with this act but may not require a system to expend more than its local share
  - If a system refuses to comply with a previous court order the court may enforce the previous order through contempt powers, a state takeover of the system or any other remedy at the court's discretion
  - If the court determines that a system has breached its duty it may order the MIDC to provide indigent criminal defense on behalf of that system
  - If the court orders a takeover the system shall be required to pay
    - 10% of the state's costs in the first year

- 20% of the state's costs in the second year
  - 30% of the state's costs in the third year
  - 40% of the state's costs in the fourth year
  - The amount paid in the fourth year would be the maximum amount a system would be required to pay in the 5<sup>th</sup> and each subsequent year
- A system may resume providing indigent criminal defense services at any time its plan and cost analysis is in compliance with the process laid out in section 13. The system no longer pays any portion of the state costs once they have reclaimed providing indigent criminal defense services
- The S-1 adds new Section 17 language that does the following:
  - Requires every local unit of government and trial court that is part of a system to comply with an approved plan
  - Makes compliance with the approved plan contingent upon receipt of a grant in the amount contained in the plan and cost analysis approved by the MIDC
  - Clarifies that if a system breaches its duty of compliance the MIDC may address the breach by proceeding under section 15.

Other changes included in the S-1 include:

- Page 13, line 14 which creates a rebuttable presumption of indigence for individuals in a substance abuse facility. Previous versions only mentioned individuals in a mental health facility.
- Page 14, line 17 – which changes the date by which a plan must be submitted by a local unit to the MIDC from June 1 to February 1
- Page 15, line 6 – which states that if the MIDC rejects a plan, cost analysis, or both then the system will submit a new plan within 30 days instead of 60 days
- Page 15, line 6 – which clarifies that the 30 days to submit the new plan begins on the date which the MIDC mails a letter rejecting the previous plan, cost analysis, or both.
- Page 17, line 10-11 – which clarifies that a mediator shall be appointed by SCAO within 30 calendar days of the mailing date of official notification of the third disapproval by the MIDC.
- Page 17, line 13-15 – Inserts new language requiring the MIDC to immediately send the state court administrative office a copy of a third disapproval.

- Page 17, line 24-26 – Clarifies that a mediator may submit a recommendation of how the dispute should be resolved within 30 calendar days “of the conclusion of mediation”
- Page 20, line 20-23 – Clarifies that a system’s duty of compliance with the terms of the plan is contingent upon receipt of a grant in the amount “contained in the plan and cost analysis approved by the MIDC.”