

**STATE OF MICHIGAN
IN THE SUPREME COURT**

PEOPLE OF THE STATE OF MICHIGAN,
Plaintiff-Appellee,

v

PAMELA JEAN TAYLOR,
Defendant-Appellant.

Supreme Court No. 168814
Court of Appeals No. 375391
Osceola County Circuit Court
Case No. 24-006832-FH

**AMICI CURIAE BRIEF OF
THE AMERICAN CIVIL LIBERTIES UNION OF MICHIGAN,
THE AMERICAN CIVIL LIBERTIES UNION, AND
THE MICHIGAN STATE PLANNING BODY**

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STATEMENT OF INTEREST OF AMICI CURIAE¹

The American Civil Liberties Union of Michigan (“ACLU of Michigan”) is a non-profit, non-partisan membership organization devoted to protecting civil rights and liberties for all Michiganders. The American Civil Liberties Union (“ACLU”) is among the oldest, largest, and most active civil rights organizations in the United States. For decades, the ACLU of Michigan and the ACLU (together, “ACLU amici”) have litigated questions involving civil liberties in the state and federal courts.

ACLU amici have helped lead efforts to improve and strengthen Michigan’s indigent criminal defense system. In 2007, the ACLU of Michigan filed *Duncan v Granholm*, a class action lawsuit challenging the state’s inadequate system. *Duncan v Michigan*, Ingham Circuit Court No 07-000242-CZ, (filed February 22, 2007). In 2011, ACLU amici, along with the Michigan Campaign for Justice, released *Faces of Failing Public Defense Systems: Portraits of Michigan’s Constitutional Crisis*, detailing how improperly-funded and -designed indigent defense can result in wrongful convictions.² The ACLU of Michigan was also deeply engaged in the legislative work that led to the passage of the Michigan Indigent Defense Commission Act. In addition, ACLU amici have litigated numerous cases in Michigan and nationally regarding the right to appointed counsel for indigent defendants. See *Davis v Nevada*, No 170C02271B (Nev Dist Ct, 2020) (class action lawsuit challenging inadequate funding for indigent public defense); *Kowalski v Tesmer*, 543 US 125; 125 S Ct 564; 160 L Ed 2d 519 (2004); *Halbert v Michigan*, 545 US 605; 125 S Ct

¹ Pursuant to MCR 7.312(H)(5), amici state that no counsel for a party authored this brief in whole or in part, no such counsel or a party made a monetary contribution intended to fund the preparation or submission of this brief, and no person other than the amici curiae, their members, or their counsel made any such monetary contribution.

² ACLU, ACLU of Michigan, & Michigan Campaign for Justice, *Faces of Failing Public Defense Systems: Portraits of Michigan’s Constitutional Crisis* (2011), available at <https://www.aclu.org/files/assets/MI_failedjustice_bookletsm.pdf> (accessed October 2, 2026).

2582; 162 L Ed 2d 552 (2005); *People v James*, 272 Mich App 182; 725 NW2d 71 (2006). ACLU amici have a strong interest in ensuring that Michigan guarantees the right to counsel to all criminal defendants, including those who cannot afford to procure counsel themselves.

The Michigan State Planning Body (MSPB) is an unincorporated association of about 35 individuals who are leaders in the judiciary, the State Bar, state and regional advocacy programs, and community organizations and who are interested in Michigan's indigent civil legal aid and indigent defense systems. MSPB acts as a forum for planning and coordinating the state's efforts to deliver civil and criminal legal services to the poor; its mission is to plan, organize, and coordinate an effective civil legal services delivery system in the State of Michigan.

Beginning in 2009–2010, Planning Body members began to focus advocacy on two fundamental problems in Michigan's criminal legal system—an underfunded and inconsistent indigent defense system; and a court funding structure that funds the court system in significant part through fees, fines, and costs collected from criminal defendants. On the issue of indigent criminal defense, Planning Body members advocated for the creation of the Michigan Indigent Defense Commission (MIDC) and have closely tracked its implementation.³ The Planning Body recognizes and appreciates the tremendous positive contributions that the MIDC has made to the quality of indigent criminal defense in the state.

However, the second structural problem—the court funding structure—is essentially unchanged since 2010. See *People v Johnson*, 511 Mich 1047; 992 NW2d 247 (2023); *People v Ormsbee*, Docket No. 168539 (pending appeal). As the Planning Body and others have noted, local court fee assessments are disproportionately collected from low-income and minority persons. The

³ The Planning Body notes the leadership in this area provided by other groups, including the State Bar of Michigan, the ACLU, and the National Legal Aid and Defender Association.

system creates fundamental and pervasive problems: (a) such a system lacks credibility in the communities that it preys upon, and (b) judicial officers in such a system have incentives—subtle or overt—to find defendants guilty in order to fund their own courts.

This case demonstrates the tension between the MIDCA and the current court funding system. The MIDCA reflects a vision of a criminal justice system where indigent persons charged with crimes have access to quality legal representation. In the case at bar, this vision conflicts with MCL 769.1k—which authorizes local funding units to fund their courts through cost assessments on indigent criminal defendants. These assessments include the cost of appointed counsel. The Planning Body urges the Court to decide this case in a way that affirms and expands the vision of the MIDCA and limits the ability of local courts to fund their operations through assessments against defendants.

QUESTIONS PRESENTED⁴

1. Whether attorney fees can be assessed against an indigent criminal defendant?

Amici answer:	No
Ms. Taylor answers:	No
The prosecution answers:	Yes

⁴ Amici address only the first question from this Court's Order granting oral argument on the application, dated May 27, 2026.

INTRODUCTION AND SUMMARY OF ARGUMENT

The right to counsel is a foundational constitutional right. For decades, Michigan failed to adequately protect that right. But in 2013, the Legislature sought to remedy this failure by enacting the Michigan Indigent Defense Commission Act (MIDCA), a comprehensive scheme which transformed the provision of indigent criminal defense across the state. The core question in this case is whether MIDCA, together with its 2018 amendments, abrogated provisions of a pre-MIDCA law allowing trial courts to issue unfettered orders requiring fully indigent defendants to pay attorney fees. The answer to that question is yes.

MIDCA created the Michigan Indigent Defense Commission (MIDC) and tasked it with creating minimum standards for constitutionally adequate indigent criminal defense. To fund that mandate, MIDCA also created a tightly regulated system that provides trial courts across Michigan with millions of state dollars for indigent defense. As part of this system, MIDCA carefully circumscribes when trial courts can collect money from indigent defendants and, just as important, what can be done with that money. Specifically, MIDCA authorizes trial courts to order payments from defendants who are found to be only *partially* indigent; it authorizes courts to order those defendants to pay attorney fees only in amounts *they can pay*; and it specifies *how such repayments will be disbursed* (80% to the local indigent defense system, and 20% to the state). MCL 780.991(3)(a) and MCL 780.993(17).

Yet the trial court below issued an order containing none of those features. It required Ms. Taylor to pay \$1,420 in attorneys' fees, even though she is fully indigent, even though the court made no finding that she can pay anything, and even though the order is not subject to MIDCA's prescribed 80–20% split between the local system and the state. In issuing that order, the court seemingly relied upon MCL 769.1k(1)(b)(iv), a pre-MIDCA law providing that a trial court “may

impose” the “expenses of providing legal assistance to the defendant.” The prosecution contends that this provision authorizes trial courts to impose attorney fees against fully indigent defendants.

The prosecution is mistaken. Properly construed, MIDCA’s provisions bar trial courts from issuing orders, under MCL 769.1k(1)(b)(iv) or otherwise, requiring a defendant who is presently fully indigent from repaying any portion of the cost of their appointed counsel. This is so for two reasons.

First, under fundamental principles of statutory construction, MIDCA necessarily abrogated any authority that previously existed under MCL 769.1k(1)(b)(iv) to order attorney fees against fully indigent defendants, because such orders would undermine MIDCA’s text, structure, and purpose. If this Court were to hold otherwise, then trial courts could treat fully indigent defendants more harshly than partially indigent defendants, order fully indigent defendants to pay the full cost of their attorney fees even after the county has determined that they have no ability to pay, and divert fees actually collected away from the indigent defense systems that MIDCA sought to strengthen and fund. This cannot be what the Legislature intended.

Second, MIDCA must be construed to have abrogated MCL 769.1k(1)(b)(iv) in this way under the canon of constitutional doubt. Under that canon, “if a serious doubt of constitutionality is raised, . . . this Court will first ascertain whether a construction of the statute is fairly possible by which the question may be avoided.” *Sole v Mich Economic Dev Corp*, 509 Mich 406, 419–420; 983 NW2d 733 (2022) (citation omitted). Here, construing MCL 769.1k(1)(b)(iv)—despite MIDCA—to allow for the imposition of attorney fees against fully indigent defendants would raise serious doubts about whether MCL 769.1k(1)(b)(iv) unconstitutionally chills the right to counsel or creates unconstitutional taxes and fines. Because the construction amici suggest in Part I of the

argument is the best reading of the statute, and certainly clears the low bar of being “fairly possible,” the canon of constitutional doubt requires the statutory scheme to be so interpreted.

FACTS AND PROCEDURAL HISTORY⁵

In 2024, defendant Pamela Jean Taylor was charged with two drug counts. Pursuant to MIDCA and Osceola County’s compliance plan, the county appointed counsel for Ms. Taylor after finding she was indigent. Ms. Taylor was not ordered to contribute any amount towards the cost of her defense when counsel was appointed, nor was she determined to be partially indigent—a necessary predicate finding for the imposition of attorney fees under MIDCA. MCL 780.993(17).

On August 19, 2024, Ms. Taylor pleaded no contest to a lesser offense. At sentencing, the trial court imposed a prison sentence of one year and one day to four years, with 33 days of credit for time served. The court also imposed attorney fees of \$1,420, seemingly relying on MCL 769.1k(1)(b)(iv). In doing so, the court made no factual findings concerning Ms. Taylor’s ability to pay them.

Ms. Taylor sought review in the Court of Appeals, which denied leave to appeal. Ms. Taylor then sought leave to appeal from this Court. On May 27, 2026, this Court ordered oral argument and requested supplemental briefing on three questions: (1) whether attorney fees can be assessed against an indigent criminal defendant; (2) whether the trial court in this case made adequate factual findings to support the fees imposed; and (3) whether the trial court was required to hold an evidentiary hearing to assess the factual basis for the fee or the defendant’s ability to pay. Amici address only the first question: since the answer to that question is no, the Court need not reach the other questions.

⁵ The facts are drawn from appellant’s application and supplemental brief.

LEGAL BACKGROUND

I. The Pre-MIDCA System.

The Sixth Amendment of the U.S. Constitution and Article 1, § 20 of the 1963 Michigan Constitution both guarantee the right to counsel to criminal defendants. *Gideon v Wainwright*, 372 US 335; 83 S Ct 792; 9 L Ed 2d 799 (1963); *People v Jackson*, 483 Mich 271; 769 NW2d 630 (2009). Indeed, well before the U.S. Supreme Court's decision in *Gideon*, this Court has required the appointment of counsel for those who could not afford it. Court Rule No. 35-A (1945); see *People v Parshay*, 379 Mich 7, 11–12; 148 NW2d 869 (1967).

For years, Michigan delegated the responsibility of funding and administering indigent defense services to Michigan counties, with little to no state funding or oversight.⁶ Each county was required by statute to appoint counsel for indigent defendants and pay counsel's fees from the county budget.⁷ Consequently, counties varied widely in how they appointed and paid defense counsel.⁸

Under this system, courts could sometimes order defendants to pay some amount towards the cost of their defense, either as contribution or reimbursement. Contribution payments were paid during the representation, while reimbursement payments were ordered to be paid after the

⁶ *Report of the Michigan Advisory Committee on Indigent Defense* (June 12, 2012), p 5, available at <<https://michiganidc.gov/wp-content/uploads/2015/05/Final-Report-Advisory-Commission.pdf>> (accessed October 2, 2026) (hereinafter "Advisory Committee Report").

⁷ See MCL 775.16 (effective January 22, 1981 to June 30, 2013); Michigan Indigent Defense Commission, *Position Paper on Attorney Fees after the Passage of the MIDC Act* (2016), p 1–2, available at <<https://michiganidc.gov/wp-content/uploads/2015/04/MIDC-Position-Paper-on-Attorney-Fees.pdf>> (accessed October 2, 2026).

⁸ See, e.g., Siegel, *Snapshot of Indigent Defense Representation in Michigan's Adult Criminal Courts: The MIDC's First Survey of Local Court Systems* (2016), p 9–13, available at <<https://michiganidc.gov/wp-content/uploads/2015/04/MIDC-Court-Survey-Report-Feb-16.pdf>> (accessed October 2, 2026).

representation. See *People v Jose*, 318 Mich App 290, 298; 896 NW2d 491 (2016) (citing *People v Nowicki*, 213 Mich App 383, 386–387 n 3; 539 NW2d 590 (1995)).

With respect to contribution, trial courts could order defendants to contribute some amount towards the cost of their defense under MCR 6.005(C) in cases of “partial indigency,” when the defendant had the ability to pay some amount. With respect to reimbursement, when imposing a sentence or judgment, under MCL 769.1k(1)(b)(iv) trial courts could order any defendant—partially indigent or not—to reimburse the county “[t]he expenses of providing legal assistance to the defendant.”⁹ In 2009, this Court held that issuing these fee orders under MCL 769.1k without considering a defendant’s ability to pay did not violate the Sixth Amendment to the U.S. Constitution, so long as courts considered the defendant’s ability to pay before imposing penalties for failure to pay. *Jackson*, 483 Mich at 290–293.

Over time, pressure grew to change Michigan’s indigent defense system. In 2007, indigent criminal defendants represented by the ACLU of Michigan filed a class action lawsuit seeking to enforce the right to counsel under the federal and state Constitutions.¹⁰ In 2008, the National Legal Aid and Defender Association published a report surveying ten Michigan counties and finding that none supplied constitutionally adequate representation.¹¹

⁹ This requirement was previously in MCL 769.1k(1)(b)(iii) but, pursuant to amendments enacted in 2014 (prior to MIDCA’s 2018 amendments), the provision now lives in MCL 769.1k(1)(b)(iv). See 2014 PA 352. Amici cite to the latter for consistency.

¹⁰ Civil Rights Litigation Clearinghouse, *Case Summary of Duncan v State of Michigan* (2023), available at <<https://clearinghouse.net/case/10659/>> (accessed October 2, 2026).

¹¹ National Legal Aid & Defender Association, *A Race to the Bottom: Speed & Savings Over Due Process: A Constitutional Crisis* (June 2008), available at <<https://michiganidc.gov/wp-content/uploads/2021/03/NLADA-Race-to-the-Bottom.pdf>> (accessed October 2, 2026) (hereinafter “2008 NLADA Report”).

In 2011, Governor Rick Snyder issued an executive order establishing the Indigent Defense Advisory Commission to study and make recommendations for the state’s indigent defense providers.¹² The Commission issued its advisory report in June 2012, recommending that the State “create a system that requires and insures full, consistent, and state-wide implementation” of minimum standards for indigent defense, with “adequate funding” from the Legislature.¹³

II. The Creation of the Michigan Indigent Defense Commission System.

In 2013, following the Advisory Commission’s report, the Legislature passed MIDCA to remedy constitutional defects in the state’s public defense system.¹⁴ The Act served “to provide indigent defendants in criminal cases with effective assistance of counsel.”¹⁵ MIDCA created the Michigan Indigent Defense Commission (MIDC) within the judicial branch, and tasked the MIDC with creating minimum standards for indigent criminal defense systems.¹⁶ These standards cover the determination of indigency, attorney compensation, attorney training and education, attorney workload limitations, initial client interviews, and the use of experts and investigators.¹⁷

¹² Executive Order No. 2011-12, available at <https://www.michigan.gov/-/media/Project/Websites/formergovernors/Folder8/EO_2011-12.pdf>.

¹³ Advisory Committee Report, *supra* note 6, p 6.

¹⁴ See House Legislative Analysis, *Michigan Indigent Defense Commission Act: House Bill 4529 as Enrolled* (August 20, 2013), p 2, available at <<https://legislature.mi.gov/documents/2013-2014/billanalysis/House/pdf/2013-HLA-4529-4569088C.pdf>> (accessed October 2, 2026) (discussing the history of the bill, which adopted many of the Indigent Defense Advisory Commission’s recommendations).

¹⁵ 2013 PA 93, title.

¹⁶ 2013 PA 93, §§ 5–13; MCL 780.985 through MCL 780.993. “System” means “the local unit[s] of government that fund[] a trial court.” MCL 780.983(h).

¹⁷ See 2013 PA 93, § 9(1)(a); MCL 780.989(1)(a); Michigan Indigent Defense Commission, *Minimum Standards for Indigent Criminal Defense Services* (2023), available at <<https://michiganidc.gov/wp-content/uploads/2023/10/MIDC-Standards-Complete-October-2023.pdf>> (hereinafter “MIDC Standards”).

In 2017, the Legislature moved the MIDC from the judicial branch to within the Department of Licensing and Regulatory Affairs (LARA).¹⁸ MIDCA was also significantly amended in 2018. MIDCA's provisions regarding partial indigency, contribution, and reimbursement, which will be discussed in more detail later, were all part of the 2018 amendments.¹⁹

MIDCA, together with its 2018 amendments, transformed the funding of public defense in Michigan by replacing the prior system, under which funding varied significantly from county to county, with one that promoted not only greater but standardized funding from the state to each county. Because adoption of this comprehensive, tightly regulated system supports the argument set out below that MIDCA abrogated the authority of judges to issue ad hoc attorney fee orders under MCL 769.1k, amici describe it here.

A. MIDCA's funding system.

Under MIDCA, each system pays a "local share" of funds towards indigent criminal defense services each year. MCL 780.993(7).²⁰ Each system is also required to submit an annual plan detailing how it will ensure compliance with MIDC's minimum standards. MCL 780.993(3). This plan must include a cost estimate and, to the extent the local share is not enough, a request for funds necessary to ensure compliance. *Id.* For instance, if a system's local share is \$50,000,

¹⁸ See 2016 PA 439; Michigan Indigent Defense Commission, *Governor Signs Legislation Improving Michigan's Indigent Criminal Defense System* (January 4, 2017), available at <<https://michiganidc.gov/page/18/?tribe-bar-date=2017-06-19&eventDisplay=past>>.

¹⁹ See 2018 PA 214 (approved June 25, 2018) (effective December 23, 2018), available at <<https://www.legislature.mi.gov/documents/2017-2018/publicact/pdf/2018-PA-0214.pdf>> (accessed October 2, 2026).

²⁰ This local share is based on the system's "average annual expenditure for indigent criminal defense services in the 3 fiscal years immediately preceding the creation of the MIDC, . . . excluding money reimbursed to the system by individuals determined to be partially indigent." MCL 780.983(i).

but the system determines it will cost \$300,000 to meet the MIDC’s minimum standards, the system must request a \$250,000 grant from the MIDC. MCL 780.993. If approved, the system receives the grant. Because “[a]n indigent criminal defense system must not be required to provide funds in excess of its local share[, t]he MIDC *shall* provide grants to indigent criminal defense systems” to enable compliance with MIDC standards. MCL 780.993(8) (emphasis added).

MIDC grants come from the state’s General Fund. MCL 780.993(7). In Fiscal Year 2025, the MIDC provided local systems with more than \$295,000,000 in grant funding.²¹ In comparison, the local shares of all local systems combined is around \$38,000,000, meaning that MIDC grants, paid for by the state, account for almost 90% of all funds spent on indigent criminal defense services each year.²² In Osceola County, for example, the Fiscal Year 2025 local share was \$70,857.82 and the MIDC grant was \$629,142.18, accounting for 89% of the county’s \$700,000 indigent defense services budget.²³

If a system ends up spending more on indigent defense services than the amount covered by the local share and MIDC grant in a given year, the grant will be increased the following year to reimburse the system. MCL 780.993(16). If a system ends up not spending the full grant amount, its grant will be decreased the following year. MCL 780.993(15). Any unexpended grant funds must be reported and returned to MIDC. *Id.*; MIDC 2025 Report, *supra* note 21, at 13. And if a system uses any grant money “for a purpose outside of the compliance plan,” the system must

²¹ Michigan Indigent Defense Commission, *Annual Impact Report 2025* (2026), appendix, available at <<https://michiganidc.gov/wp-content/uploads/2026/02/MIDC-2025-Annual-Report-FINAL.pdf>> (accessed October 2, 2026) (hereinafter “MIDC 2025 Report”); Michigan Indigent Defense Commission, *MIDC Funding FY2025* (2025), available at <<https://michiganidc.gov/wp-content/uploads/2025/07/MIDC-Funding-FY2025-as-of-April-2025.pdf>> (accessed October 2, 2026) (hereinafter “MIDC FY2025 Budget”).

²² See MIDC 2025 Report, *supra* note 21; MIDC FY2025 Budget, *supra* note 21.

²³ See MIDC 2025 Report, *supra* note 21; MIDC FY2025 Budget, *supra* note 21.

either repay that amount to the MIDC or that money will “be deducted from future grant amounts.” MCL 780.993(15).

B. Indigency determinations.

Under MIDCA, potentially indigent adult criminal defendants are screened for eligibility no later than their first court appearance. MCL 780.991(1)(c) and (3)(a). In determining a defendant’s eligibility for appointed counsel, “the indigent criminal defense system shall consider whether the defendant is indigent and the extent of his or her ability to pay.” MCL 780.991(3)(a). “A trial court may play a role in this determination as part of any indigent criminal defense system’s compliance plan.” *Id.* A system can revisit a determination of indigency “at any other stage of the proceedings.” *Id.*

Indigency determinations under MIDCA are highly regulated. A defendant is rebuttably presumed to be indigent if they “receive[] personal public assistance, earn[] a net income less than 200% of the federal poverty guidelines, [are] currently serving a sentence in a correctional institution, [are] less than 18 years of age, and/or [are] receiving residential treatment in a mental health or substance abuse facility.” MIDC Standards, *supra* note 17, at 14 (Standard for Determining Indigency and Contribution) (citing MCL 780.991(3)(b)). Defendants shall also be found indigent if they cannot obtain “competent, qualified” representation “without substantial financial hardship to himself or herself or to his or her dependents.” *Id.*; MCL 780.991(3)(b). Factors bearing on this determination include income, property owned by the defendant, outstanding obligations, number and ages of a defendant’s dependents, employment and job training history, the defendant’s level of education, the seriousness of the charges, whether defendant has other pending cases, and local private counsel rates. MIDC Standards, *supra* note 17, at 14; MCL 780.991(3)(a).

Partial indigency determinations are also highly regulated. MIDCA, as amended in 2018, allows systems to make a determination of “partial indigency” if a defendant is “unable to afford the complete costs of legal representation” but is “able to contribute a monetary amount toward[s] his or her representation.” MCL 780.983(k); MIDC Standards, *supra* note 17, at 13. “A determination that a defendant is partially indigent may only be made if the indigent criminal defense system determines that a defendant is not fully indigent.” MCL 780.991(3)(d). In other words, indigent defendants are presumed to be fully indigent unless and until there has been a determination of partial indigency.

C. Defendant contribution and reimbursement.

Like determinations of indigency and partial indigency, MIDCA also carefully regulates the recoupment of money from criminal defendants. MIDCA and the MIDC standards differentiate between contribution and reimbursement. Contribution is “an ongoing payment obligation for one’s defense costs during the term of the appointment” whereas “reimbursement” is “a repayment obligation arising after the term of appointment has ended.” MIDC Standards, *supra* note 17, at 13–14 (citing *People v Jose*, 318 Mich App 290, 298; 896 NW2d 491(2016) (cleaned up)). Two provisions, both added in 2018, govern contribution and reimbursement: Sections 780.991(3) and 780.993(17). Both require, as a predicate to ordering repayment, a determination that the defendant is partially indigent which, as explained above, necessarily means that there has been a determination that the defendant is not fully indigent. MCL 780.991(3)(d).

Section 780.991(3) provides that “[i]f an indigent criminal defense system determines that a defendant is partially indigent, the indigent criminal defense system shall determine the amount of money the defendant must contribute to his or her defense” based on objective standards promulgated by the MIDC. MCL 780.991(3)(a) and (f). MIDC standards, in turn, allow local

systems to seek contribution only from partially indigent defendants (not fully indigent), and only if doing so would not “cause defendant a substantial financial hardship.” MIDC Standards, *supra* note 17, at 16. The standards also provide a specific formula for determining how much a defendant must pay. *Id.* Both determinations—whether the defendant is partially indigent and how much a partially indigent defendant can afford to pay—are subject to judicial review. MCL 780.991(3)(a), (e), and (f); MIDC Standards, *supra* note 17, at 17.

Section 780.993(17) makes contribution or reimbursement automatic for defendants assessed to be partially indigent, and it precisely regulates where monies collected in this fashion must go. It provides that “[t]he court shall collect contribution or reimbursement from individuals determined to be partially indigent.” MCL 780.993(17). There is no similar requirement for individuals who are fully indigent. See *id.* Section 780.993(17) then commands:

The court shall remit 100% of the funds it collects under this subsection to the indigent criminal defense system in which the court is sitting. Twenty percent of the funds received under this subsection by an indigent criminal defense system must be remitted to the department in a manner prescribed by the department and reported to the MIDC by October 31 of each year. The funds received by the department under this subsection must be expended by the MIDC in support of indigent criminal defense systems in this state. The remaining 80% of the funds collected under this subsection may be retained by the indigent criminal defense system for purposes of reimbursing the costs of collecting the funds under this subsection and funding indigent defense in the subsequent fiscal year.

These requirements—directing the precise use of each dollar collected—expressly apply only to contribution and reimbursement payments collected “from individuals determined to be partially indigent.” *Id.*

ARGUMENT

Properly construed, MIDCA’s provisions, as amended in 2018, bar trial courts from issuing an order—under either MIDCA itself or any pre-MIDCA law—requiring a defendant who is fully

indigent from repaying any portion of the cost of their appointed counsel. This is so for two reasons. First, under fundamental principles of statutory construction, MIDCA's 2018 amendments necessarily abrogated any authority that might previously have existed under MCL 769.1k(1)(b)(iv) to order attorney fees against fully indigent defendants, because any money collected would undermine MIDCA's purpose and impermissibly circumvent MIDCA's careful instructions about when fees should be ordered and where fees should be sent. Second, under the canon of constitutional doubt, MIDCA should not be construed to have left in place any authority to order attorney fees against fully indigent defendants under MCL 769.1k(1)(b)(iv), because such an interpretation would raise serious questions about whether MCL 769.1k(1)(b)(iv) violates the Michigan Constitution.

I. MIDCA abrogated any prior authority that may have existed, under MCL 769.1k(1)(b)(iv), to order attorney fees against fully indigent defendants.

Before MIDCA's enactment, MCL 769.1k(1)(b)(iv) had been interpreted to allow courts to impose attorney fees orders against fully indigent defendants who lacked any present ability to pay. See *People v Jackson*, 483 Mich 271, 278; 769 NW2d 630 (2009). But MIDCA, together with its 2018 amendments, changed the status quo. It is a comprehensive statutory scheme that permits imposition of attorney fees only as to partially indigent defendants, who can afford to pay them at least in part. True, MIDCA contains no express commands prohibiting imposing fee awards on fully indigent defendants, and two unpublished decisions of the Court of Appeals have relied on that fact to conclude that MIDCA does not conflict with MCL 769.1k(1)(b)(iv).²⁴ But that

²⁴ See *People v Williams*, unpublished per curiam opinion of the Court of Appeals, issued April 11, 2024 (Docket No. 362305); *People v Ivey*, unpublished per curiam opinion of the Court of Appeals, issued November 18, 2024 (Docket No. 366838), p 8; but see *People v Sedgeman*, unpublished per curiam opinion of the Court of Appeals, issued November 3, 2022 (Docket No. 356351), p 7 n 3. Neither *Williams* nor *Ivey* addressed the arguments that amici make here.

conclusion is incorrect. As explained below, traditional tools of statutory interpretation demonstrate that any authority that may have previously existed to order fully indigent defendants to pay attorney fees under MCL 769.1k(1)(b)(iv) did not survive MIDCA.²⁵

A. This Court uses ordinary tools of statutory interpretation to decide whether a comprehensive statute abrogated a prior statute.

In interpreting statutes, this Court’s “ultimate goal” is “to ascertain and give effect to the Legislature’s intent.” *Milne v Robinson*, 513 Mich 1, 12; 6 NW3d 40 (2024) (citation omitted). “The foremost indicator” of that intent “is the statutory language.” *People v Madison*, __ Mich __; __ NW3d __ (2026) (Docket No. 167120); slip op at 5 (citing *ACLU of Mich v Calhoun Co Sheriff’s Off*, 509 Mich 1, 8; 983 NW2d 300 (2022)). But this Court does not read statutory language in a vacuum. It construes statutory language “as a whole, in view of its structure and of the physical and logical relation of its many parts.” *TOMRA of North America, Inc v Dep’t of Treasury*, 505 Mich 333, 349; 952 NW2d 384 (2020) (citation omitted). “If the meaning of a statute is unclear, a court must consider the object of the statute and apply a reasonable construction that best accomplishes the Legislature’s purpose.” *Rowell v Security Steel Processing Co*, 445 Mich 347, 354; 518 NW2d 409 (1994); see also *Soaring Pine Capital Real Estate & Debt Fund II v Park Street Group Realty Servs*, 511 Mich 89, 129; 999 NW2d 8 (2023) (when deciding between two

²⁵ Amici curiae Prosecuting Attorneys Association of Michigan (PAAM) argues that MIDCA and its provisions are “irrelevant” and “inapposite” to the question of whether trial courts may impose attorney fees against fully indigent defendants, because MIDCA regulates indigent criminal defense systems but not trial courts themselves. See PAAM Amicus Br., at 13, 23.

As a threshold matter, PAAM is incorrect about MIDCA’s scope; it does regulate trial courts. See MCL 780.993(17) (providing that “[t]he court shall collect contribution or reimbursement from individuals determined to be partially indigent” and “[t]he court shall remit 100% of the funds it collects under this subsection to the indigent criminal defense system”) (emphasis added). But regardless, MIDCA fundamentally transformed how indigent criminal defense services are provided and funded. It is thus directly relevant to the question of if and when trial courts may order defendants to reimburse the government for the cost of their criminal defense.

potential interpretations of a law, this Court considers “which interpretation is more consistent with the general legislative plan and purpose” (citation omitted)). Additionally, courts may also “refer to the history of the legislation in order to determine the underlying intent of [the] Legislature.” *Luttrell v Dep’t of Corrections*, 421 Mich 93, 103; 365 NW2d 74 (1984).

Crucially, in applying these principles to statutes that arguably conflict, this Court determines “how the Legislature intended for” the statutes to interact. *Milne*, 513 Mich at 12. Sometimes, this analysis leads courts to read statutes as partially amending or limiting others by implication. For example, in *Milne v Robinson*, this Court held that the Recreational Land Use Act (RUA) was best construed “as a de facto amendment of, or limitation upon,” Michigan’s owner-liability statute. *Id.* at 11. The Court focused on legislative intent and relied on three factors to read RUA as limiting the older statute: the timing of the statutes (with RUA passed years after the owner-liability statute), the overall structure of the RUA, and the fact that the limiting construction “would not *entirely eliminate*” the owner-liability statute. *Id.* at 17–19.

In fact, “[w]hen the intention of the legislature is clear,” courts may read statutes as having fully repealed others by implication. *Int’l Business Machines Corp v Dep’t of Treasury*, 496 Mich 642, 651; 852 NW2d 865 (2014) (cleaned up). Although repeals by implication are disfavored, they will be found when the two statutes are so incompatible that they cannot be read harmoniously. *Id.* at 651–52. This Court has explained that such “repeal by implication may be accomplished by the enactment of a subsequent act inconsistent with a former act or by the occupancy of the entire field by a subsequent enactment.” *Id.* at 651.

B. MIDCA’s text, structure, and purpose demonstrate that it abrogated Section 769.1k(1)(b)(iv) with respect to fully indigent defendants.

MIDCA and its 2018 amendments—which were the product of years of legislative work to comprehensively reform indigent defense in this state—implicitly abrogated another statute.

They extinguished any prior authority, under Section 769.1k(1)(b)(iv), to issue a repayment order to a defendant who, at the time of the order, is fully indigent.

1. Text

First there is MIDCA's text. MIDCA's sole provision authorizing an award of attorney fees requires an affirmative determination that the defendant is only partially indigent, as opposed to fully indigent. See MCL 780.993(17) ("The court shall collect . . . reimbursement from individuals determined to be partially indigent under applicable court rules and statutes."). A determination of partial indigency, in turn, can occur only under limited and highly regulated circumstances.

Under MCL 780.991(3)(a), an indigent defense system or court "must" determine whether the defendant is fully indigent or partially indigent.²⁶ As a threshold matter, a defendant can only be found partially indigent if the system determines that he or she is "not fully indigent." MCL 780.991(3)(d). And the indigency/partial indigency determination depends on a myriad of factors. See MCL 780.991(3)(a); MIDC Standards, *supra* note 17, at 14. If and when a defendant is determined to be partially indigent, the system or court must precisely "determine the amount of money the defendant must contribute to his or her defense," MCL 780.991(3)(a), subject to the MIDC's specific standards and guidelines. MCL 780.991(3)(f); MIDC Standards, *supra* note 17, at 16–17. Indigency determinations and determinations regarding the amount of money a partially indigent defendant must pay are both subject to judicial review. MCL 780.991(3)(a) and (e). Thus, MIDCA strictly controls who can be found partially indigent, and then protects partially indigent defendants against having to pay even slightly more than they can afford.

²⁶ MIDCA provides that "[a] trial court may play a role in this [indigency] determination." MCL 780.991(3)(a).

Construing MCL 769.1k(1)(b)(iv) to continue to permit trial courts to order reimbursement from *fully* indigent defendants, notwithstanding MIDCA’s commands, would thus provide fully indigent defendants with less statutory protection against fee awards than partially indigent defendants. Unlike partially indigent defendants, fully indigent defendants would not benefit from any determination of how much they can actually afford to pay.²⁷ And unlike partially indigent defendants, fully indigent defendants could be statutorily ordered to pay the *full* amount of their defense costs under MCL 769.1k(1)(b)(iv).

Consider the case of two otherwise identical defendants whose defenses each required an indigent defense system to spend \$3,000 in attorney fees: Defendant Smith, who is determined to be partially indigent and able to pay \$1,000, and Defendant Jones, who is fully indigent without a penny to his name. It seems beyond dispute that MIDCA abrogated, at a minimum, any prior authority under MCL 769.1k(1)(b)(iv) to impose attorney fees on partially indigent defendants beyond what the court or system has determined that they can actually afford. Thus, a trial court could order Smith to pay at most \$1,000. Yet, if this Court were to hold that MIDCA failed to abrogate MCL 769.1k(1)(b)(iv) for fully indigent defendants, then that same trial court could order Jones—who has no money at all—to pay the full \$3,000. That can’t be right.

2. *Structure*

Next is MIDCA’s structure. MIDCA’s highly reticulated funding system, as amended in 2018, ensures that each trial court across the state has sufficient funding to meet the MIDC’s standards for indigent defense. MIDCA controls every dollar that goes into or out of indigent

²⁷ See *Jackson*, 483 Mich at 271 (holding that trial courts do not have to conduct any ability to pay analysis before the assessment of attorney fees); *People v McKewen*, 516 Mich 23, 38; 33 NW3d 307 (2024) (citation omitted) (explaining that “the Legislature is presumed to be aware of judicial interpretations of existing law when passing legislation”).

defense systems. As shown above, its complex mechanisms seek to ensure that the state supplies funding that local systems lack, and that state funding is downwardly adjusted as appropriate. See MCL 780.983(i) and 780.993(6) and (14) through (16).

As part of this comprehensive system, MIDCA specifies that courts must send all monies collected “from individuals determined to be partially indigent” back to the local indigent defense system. MCL 780.993(17). Those dollars are then carefully disbursed. Twenty percent goes to the Department of Licensing and Regulatory Affairs (which houses MIDC) and “must be expended by the MIDC in support of indigent criminal defense systems.” *Id.* The remaining 80% “may be retained by the indigent criminal defense system for purposes of reimbursing the costs of collecting the funds under this subsection and funding indigent defense in the subsequent fiscal year.” *Id.*

But these commands apply only to payments “from individuals determined to be partially indigent.” *Id.* Accordingly, if this Court were to hold that trial courts may still order reimbursement from fully indigent defendants under MCL 769.1k(1)(b)(iv), then their fee orders would fully escape MIDCA’s command that attorney fee payments must be sent to the relevant indigent defense system. Instead, money collected from fully indigent defendants under MCL 769.1k(1)(b)(iv), unlike money collected from partially indigent defendants under MIDCA, could conceivably be used for any purpose.

Consider the same two defendants discussed above, Smith (partially indigent and ordered to pay \$1,000) and Jones (fully indigent but ordered to pay \$3,000). Under the prosecution’s view, Smith’s \$1,000 payment would be subject to MIDCA’s strict requirements: the local system must send \$200 (20%) of it back to the MIDC, which is required to put the funds towards funding indigent criminal defense, and the remaining \$800 (80%) could be retained by the system only for purposes of funding indigent criminal defense in the future. MCL 780.993(17). On the other hand,

any payment made by Jones would be sent back to the local system with no requirement to report or send any of it to the MIDC or use it towards indigent criminal defense services.²⁸ Again, that cannot be right.

3. Purpose

Finally, there is MIDCA's purpose. As shown above, MIDCA was designed to both strengthen representation for indigent criminal defendants and create a robust system to fund that representation. But when MIDCA was enacted in 2013, it was not clear how much the new defense system would cost.²⁹ At first, MIDC's operating budget was \$1.5 million in fiscal year 2016 and \$2.4 million in fiscal year 2017.³⁰ But in 2017, after adoption of its first standards, MIDC began to approve compliance plans and requests for grant funding from local systems, which exponentially increased costs.³¹ In 2018, the final budget gave the MIDC a total of \$86.8 million to distribute to local systems to ensure compliance with MIDC standards.

²⁸ See MCL 769.1j(5) (if a defendant is subject to fines or costs arising out of the criminal prosecution, "money collected from that person for the payment" of those fines or costs "shall be allocated as provided in" MCL 775.22); MCL 775.22 (providing that payments collected from a criminal defendant "shall be applied to payment of fines, costs, supervision fees, and other assessments or payments").

²⁹ The House Fiscal Agency's Legislative Analysis of the Act said that MIDCA "would have an indeterminate fiscal impact on state government" and that "[b]ecause it is not known what the standards would be, what the local systems would need to do in order to meet the standards," among other things, "it is not possible to estimate the fiscal impact at this time." House Legislative Analysis, *supra* note 14, p 9.

³⁰ Michigan Indigent Defense Commission, *Impact Report: 2016 Year in Review* (2017), p 27, available at <<https://michiganidc.gov/wp-content/uploads/2017/02/MIDC-2016-Annual-Impact-Report.pdf>> (accessed October 2, 2026); Michigan Indigent Defense Commission, *Planning for Change: 2017 Annual Impact Report* (2018), p 10–11, available at <<https://michiganidc.gov/wp-content/uploads/2018/04/MIDC-2017-Annual-Report-FINAL.pdf>> (accessed October 2, 2026).

³¹ See Michigan Indigent Defense Commission, *2018 Impact Report: Correcting the Crisis* (2019), p 12–15, available at <<https://michiganidc.gov/wp-content/uploads/2019/05/2018-Impact-Report.pdf>> (accessed October 2, 2026).

After those costs came into focus, the Legislature amended MIDCA and changed its financial structures. See 2018 PA 214.³² As explained by the House Fiscal Agency’s legislative analysis, the 2018 amendments were expected to “increase State revenues” by “allow[ing] the State to receive 20% of reimbursements collected from partially indigent criminal defendants,” while providing that local systems would keep the other 80%.³³

Construing MCL 769.1k(1)(b)(iv) to allow imposition of fees on fully indigent defendants after MIDCA’s 2018 amendments would undermine both of MIDCA’s purposes. First, by authorizing trial courts to order indigent defendants to repay their entire attorney fees despite having no ability to pay them, this construction would nonsensically allow trial courts to treat fully indigent defendants more harshly than partially indigent defendants. Second, because fee awards under MCL 769.1k(1)(b)(iv) are not subject to the channeling mechanisms in MIDCA’s 2018 amendments, this construction would allow trial courts to divert payments for attorney fees away from the indigent defense systems that MIDCA sought to fund.

* * *

For the reasons explained above, MCL 769.1k(1)(b)(iv) must be read as partially abrogated by MIDCA. Reading MCL 769.1k(1)(b)(iv) to allow attorney fees to be assessed against fully indigent defendants would seriously undermine MIDCA, whose text, structure, and purposes reflect a legislative intention to create a comprehensive scheme for indigent defense in Michigan. As this Court explained in *Milne*, when two statutes seemingly conflict but neither “expressly references the other, one statute must be construed as a de facto amendment of, or limitation upon,

³² See also House Legislative Analysis, *Michigan Indigent Defense Revisions: House Bill 5985 as Reported* (May 16, 2018), p 5, available at < <https://www.legislature.mi.gov/documents/2017-2018/billanalysis/House/pdf/2017-HLA-5985-98D07654.pdf>> (accessed October 2, 2026).

³³ *Id.*

the other.” *Milne*, 513 Mich at 11. In this case, the timing of MIDCA—a sweeping reform effort to improve and fund indigent defense services across the state—years after MCL 769.1k was initially adopted in 2005, “supports the conclusion that the Legislature intended” MIDCA to limit attorney fees under MCL 769.1k. See *Milne*, 513 Mich at 17–18. This is especially true considering that reading MIDCA in this way “would not *entirely eliminate*” Section 769.1k, which covers far more than just attorney fees. *Id.* at 19. Instead, construing MIDCA to have abrogated only MCL 769.1k(1)(b)(iv) as to fully indigent defendants would “give[] the maximum possible effect to both statutes,” by ensuring that MCL 769.1k still allows courts to order other fines and costs without fundamentally undermining the text, structure, and purpose of MIDCA. *Milne*, 513 Mich at 19.

II. MIDCA should also be construed to have abrogated MCL 769.1k(1)(b)(iv) to avoid serious doubts about whether MCL 769.1k(1)(b)(iv) violates the Michigan Constitution.

Beyond the tools of statutory construction described above, there is an additional tool that compels the conclusion that MIDCA abrogated MCL 769.1k(1)(b)(iv): the canon of constitutional doubt. “[I]f a serious doubt of constitutionality is raised, it is a cardinal principle that this Court will first ascertain whether a construction of the statute is fairly possible by which the question may be avoided.” *Sole*, 509 Mich at 419–420 (citation omitted). The constitutional-doubt canon does not require a court to find that a certain interpretation would violate constitutional provisions. Instead, if one interpretation of a statute would even “arguably” or “potentially” offend the constitution, this Court will then “adopt any other construction of the statute that is fairly possible.” *Id.* at 420–21 (citation omitted); see also *People v McKinley*, 496 Mich 410, 415–417; 852 NW2d 770 (2014) (applying “the widely accepted and venerable rule of constitutional avoidance” where the constitutional challenge was “a novel one that other courts have not addressed”). Here, as explained below, construing MCL 769.1k(1)(b)(iv) to permit courts to order attorney fees against

fully indigent criminal defendants would raise significant constitutional doubts under the Michigan Constitution's provisions governing the right to counsel, unlawful taxes, and unlawful and excessive fines. Accordingly, because it is at least fairly possible to construe MIDCA to have abrogated MCL 769.1k(1)(b)(iv), this Court should adopt that construction.

A. Allowing the assessment of attorney fees against indigent criminal defendants would raise significant doubts under Article 1, § 20 of the 1963 Michigan Constitution.

In *People v Jackson*, a decision that predates MIDCA, this Court held that the Sixth Amendment to the U.S. Constitution did not require courts to conduct an ability-to-pay analysis before imposing attorney fees under MCL 769.1k(1)(b)(iv). *Jackson*, 483 Mich at 289–290. The Court reasoned that the Sixth Amendment required an ability-to-pay analysis only when the fee was “actually enforced.” *Id.* at 292–294. Amici respectfully submit that *Jackson*'s holding warrants reconsideration.³⁴ But even assuming it remains correct as a matter of Sixth Amendment law, it is an open question whether imposing attorney fees upon indigent defendants violates the Michigan Constitution. For the reasons explained below, that question is a serious one, and therefore supplies a basis to construe MIDCA to have abrogated MCL 769.1k(1)(b)(iv).

³⁴ *Jackson* relied on the U.S. Supreme Court's decision in *Fuller v Oregon*, which involved a statute giving trial courts discretion to impose fees for appointed attorneys only when the court determined that the defendant had a *foreseeable* ability to pay the fee. 417 US 40, 53; 94 S Ct 2116; 40 L Ed 2d 642 (1974). The Supreme Court upheld the statute, noting that it was “carefully designed to insure that only those who actually become capable of repaying the State will ever be obliged to do so.” *Id.*

Interpreting *Fuller*, several state and federal courts have held that the Sixth Amendment requires trial courts to assess a defendant's ability to pay before imposing attorney fees. See, e.g., *State v Morgan*, 173 Vt 533, 535; 789 A2d 928 (2001) (“[U]nder the Sixth Amendment to the United States Constitution, before imposing an obligation to reimburse the state, the court must make a finding that the defendant is or will be able to pay the reimbursement amount ordered.”); *Olson v James*, 603 F2d 150, 155 (CA 10, 1979); *Fitch v Belshaw*, 581 F Supp 273, 277 (D Or, 1984); *State v Dudley*, 766 NW2d 606, 613 (Iowa, 2009) (coming to the same conclusion under the state and federal constitutions); *People v Cook*, 81 Ill 2d 176, 186; 407 NE2d 56 (1980) (same).

Section 20 of Article 1 of Michigan’s 1963 Constitution guarantees that “[i]n every criminal prosecution, the accused shall have the right . . . to have the assistance of counsel for his or her defense.” Indigent criminal defendants are constitutionally entitled to the appointment of counsel, paid for by the government. See *Jackson*, 483 Mich at 278 (citing *Gideon v Wainwright*, 372 US 335; 83 S Ct 792; 9 L Ed 2d 799 (1963)); *People v Portillo*, 241 Mich App 540, 543; 616 NW2d 707 (2000).

When interpreting the Michigan Constitution, this Court is not bound by federal law interpreting the U.S. Constitution, “even where the language is identical.” *People v Jennings*, __ Mich __; __ NW3d __ (2026) (Docket No. 165764); slip op at 28 (quoting *People v Goldston*, 470 Mich 523, 534; 682 NW2d 479 (2004)). “This Court must instead, from the outset, ‘independently analyze [the] state Constitution to ensure that our citizens are receiving the measure of the protections that *they* created, which protections may or may not extend beyond those set forth by the federal Constitution.’” *Jennings*, __ Mich at __; slip op at 31 (quoting *People v Tanner*, 496 Mich 199, 222 n 15; 853 NW2d 653 (2014)).

Here, even assuming the Sixth Amendment permits attorney fees to be ordered without an assessment of ability to pay, there are strong reasons to conclude that the Michigan Constitution provides no such permission. This Court has long acknowledged that the right to counsel is “of particular importance,” because “without this right the practical enjoyment of other rights is often not realized.” *People v Leonard*, 421 Mich 207, 217; 364 NW2d 625 (1984). In fact, this Court required, by rule, trial courts to appoint counsel for indigent defendants sixteen years before the U.S. Supreme Court’s decision in *Gideon v Wainwright* required the same. *Parshay*, 379 Mich at 11–12.

Imposing attorney fees against fully indigent defendants risks chilling defendants' exercise of their state constitutional right to counsel. This Court has made clear that actions which unduly "chill the exercise of a defendant's constitutional right[s]" under the Michigan Constitution "will not be tolerated." *People v Harrison*, 386 Mich 269, 275; 191 NW2d 371 (1971). If an indigent defendant is told that they might have to repay the cost of their court-appointed attorney down the road, they might respond by declining the assistance of counsel in the first place.³⁵

This is true in part because the imposition of unpayable attorney fees against indigent criminal defendants has real and often devastating consequences. Unpayable fees can undermine their ability to access stable housing and employment, ruin their credit scores, and force them to pick and choose among their other financial obligations and essential needs while an additional debt hangs over them.³⁶ These fees also risk prolonging a defendant's involvement with the

³⁵ See Tallon et al, *Paying for the Right to Counsel: National Survey Findings on the Practice of Charging Public Defense Fees to Clients* (January 2025), p 13, available at <https://www.innovatingjustice.org/wp-content/uploads/2025/04/Defender-Fees-Report_Template_01212025.pdf> (accessed October 2, 2026) (reporting on interviews with defense attorneys who had witnessed clients waive the right to counsel because they could not pay attorney fees); *Dudley*, 766 NW2d at 613 ("[A] defendant faced with the prospect of having to repay the State for the costs of court-appointed counsel may choose to decline the services of an attorney."); *Cook*, 81 Ill 2d at 186 (imposing fees on defendants "may serve to restrain such a defendant from exercising his right to the effective assistance of counsel. This is because if he knows that the money or other property posted for his bail will be subject to seizure to pay for legal services, regardless of his inability to pay[,] he may choose not to exercise this constitutionally assured right."); *Pennsylvania v Opara*, 240 Pa Super 511, 525–527; 362 A2d 305 (1976) ("Where neither the order nor the proceeding out of which it arose contains assurance that only those able to repay will ever be required to there is a real danger that some may choose to forgo their right to appointed counsel. This being so, such an order is invalid in that it unnecessarily infringes on the right to counsel.").

³⁶ See Beeman et al, *At What Cost? Findings from an Examination into the Imposition of Public Defense System Fees* (July 2022), p 41, available at <https://www.nlada.org/sites/default/files/NLADA_At_What_Cost.pdf> (accessed October 2, 2026); *People v Dueñas*, 30 Cal App 5th 1157, 1168; 242 Cal Rptr 3d 268 (2019) (explaining that the liens "can disrupt employment, make it difficult to meet other obligations such as child support, and lead to financial insecurity").

criminal legal system.³⁷ As reported by the National Legal Aid and Defenders Association, “individuals assessed [attorney] fees who cannot pay them down are essentially sentenced to years of court entanglement and consequences that can sharply limit efforts to move forward in life.”³⁸

Assessing ability to pay only when a fee order is “actually enforced,” a point on which this Court relied in *Jackson*, does not negate this burden on the right to counsel. 483 Mich at 292–294. An indigent defendant who owes attorney fees does not know if or when the state will try to collect. Every decision they make—whether or not to pay bills, to buy groceries, to move to safer housing, to have a child—can be influenced by the knowledge that the state may seek enforcement of their debt at any time, and failure to pay could lead to housing instability, loss of employment, arrest, or even incarceration. Moreover, unlike when *Jackson* was decided, MIDCA has now created a system under which local indigent defense systems and courts routinely can, and do, assess ability to pay before ordering attorney fees against partially indigent defendants. It is unclear how, consistent with the Michigan Constitution, fully indigent defendants can be deprived of that system’s protections. See Const 1963, art 1, § 2 (“No person shall be denied the equal protection of the laws . . .”).

Acknowledging the negative effects of unpayable attorney fees and the risk that the possibility of these fees might chill the right to counsel, several of Michigan’s sister states protect their state constitutional right to counsel by requiring courts to assess a defendant’s ability to pay before imposing attorney fees. For example, the Iowa Supreme Court has held that the Iowa constitution requires an ability-to-pay determination before a court orders a defendant to pay attorney fees, recognizing that “a defendant faced with the prospect of having to repay the State

³⁷ Tallon et al, *supra* note 35, p 10; Beeman et al., *supra* note 36, p 7.

³⁸ Beeman et al, *supra* note 36, p 1.

for the costs of court-appointed counsel may choose to decline the services of an attorney.” *State v Dudley*, 766 NW2d 606, 613 (Iowa 2009).³⁹ Similarly, the Illinois Supreme Court found that a statute requiring a defendant’s bail to be used to pay attorney fees without any ability to pay analysis violated the due process clause of the Illinois constitution after finding that the statute “may serve to restrain such a defendant from exercising his right to the effective assistance of counsel. This is because if he knows that the money or other property posted for his bail will be subject to seizure to pay for legal services, regardless of his inability to pay[,] he may choose not to exercise this constitutionally assured right.” *People v Cook*, 81 Ill 2d 176, 186; 407 NE2d 56 (1980).⁴⁰

There is therefore at least “a serious doubt” about whether MCL 769.1k(1)(b)(iv) would comply with the Michigan Constitution if, notwithstanding MIDCA, it were construed to permit attorney fees to be ordered against fully indigent defendants. See *Sole*, 509 Mich at 420–421. It is precisely to avoid having to decide such a serious constitutional question that other states have interpreted their attorney fee recoupment statutes as requiring an ability-to-pay determination. See, e.g., *King v State*, 780 P2d 943, 957 (Wy, 1989) (avoiding a constitutional question by construing the relevant statute so that “the district court could not order reimbursement without first determining the defendant’s ability to pay”); *State v Haines*, 360 NW2d 791, 797 (Iowa 1985) (upholding a statute as applied to convicted defendants because its “‘reasonably able to pay’

³⁹ *Dudley* struck down Iowa’s recoupment statutes as applied to acquitted defendants but noted that the statutes were lawful as applied to convicted defendants precisely because they required an ability to pay assessment for the latter group. *Dudley*, 766 NW2d at 614; see also *State v Haines*, 360 NW2d 791, 797 (Iowa 1985) (citation omitted) (“It is this ‘reasonably able to pay’ standard which allows section 910.2 to withstand constitutional attack.”).

⁴⁰ See also *Morgan*, 173 Vt at 535 (finding that the federal right to counsel required courts to conduct an ability to pay analysis “before imposing an obligation to reimburse the state” for counsel).

standard . . . allows [it] to withstand constitutional attack”) (citation omitted); cf. *State v Robinson*, 281 Kan 538, 546; 132 P3d 934 (2006) (noting, with reference to federal due process guarantees, that “the sentencing court, at the time of initial assessment, must consider the financial resources of the defendant and the nature of the burden that payment will impose. . . .”). This Court should do the same.

B. Given MIDCA’s funding system, the imposition of attorney fees against indigent defendants raises several other constitutional issues.

Given the funding structure MIDCA created, construing MCL 769.1k(1)(b)(iv) to allow the imposition of attorney fees against fully indigent defendants could also raise other constitutional concerns. These concerns will arise especially if courts order fully indigent defendants to make payments, under MCL 769.1k(1)(b)(iv), that local defense systems do not actually need to fund indigent defense because of the state funding those systems now receive under MIDCA.

Under MIDCA, local systems receive the bulk of their indigent defense budget from the state. When fees are collected from partially indigent defendants, in accordance with MIDCA’s mandates, then 20% must be sent back to the state and reported to the MIDC. The other 80% must be used for funding indigent criminal defense in the following year. The MIDC is aware of this money and can ensure that it is used appropriately. Thus, if a local system is receiving so much in attorney fees that it does not need its full grant amount from the state, the system’s MIDC grant can be decreased in future years. MCL 780.993(15).

But if a local system instead receives attorney fees under MCL 769.1k(1)(b)(iv), that accounting distribution could break down in ways that might allow the local system to profit from indigent defendants. For starters, unlike fees governed by MIDCA, the local system would seemingly recover 100% of funds paid under MCL 769.1k(1)(b)(iv) orders. On top of that, there

are no requirements that such funds be reported to the MIDC or used for funding indigent criminal defense. In fact, amici are not certain where the money goes. Under this system, it's unclear why a local system would even bother making determinations of partial indigency; after all, by not making these determinations, the system could keep all funds paid by defendants under MCL 769.1k(1)(b)(iv), instead of sharing them with the state pursuant to MIDCA.⁴¹

Local systems might even end up recovering more money from indigent defendants, under MCL 769.1k(1)(b)(iv) orders, than they are required to spend on indigent defense under MIDCA. That is particularly true for systems with very low local shares, i.e. those where almost the entire system is funded by the state.⁴² Imagine a local system that spends \$3,000 from its own coffers per year on indigent criminal defense, with the rest of its budget covered by the state. If that system receives \$4,000 in attorney fees due to orders under MCL 769.1k(1)(b)(iv), it will turn a profit. And depending on how those fees were collected, that profit could become a constitutional problem.

If local systems profit from attorney fees paid by indigent defendants, such fees are arguably unconstitutional taxes because they raise revenue unconnected to the local system's actual costs. See *Bolt v City of Lansing*, 459 Mich 152, 161; 587 NW2d 264 (1998) (articulating a three-factor test to determine when a charge is a tax subject to constitutional limitations); Const

⁴¹ This problem would be especially acute if, as PAAM incorrectly argues, trial courts are wholly unconstrained by MIDCA and can impose attorney fees regardless of indigency. See PAAM Amicus Br. at 22.

⁴² For Fiscal Year 2027, two systems (Township of Shelby and City of Sterling Heights) have local shares of \$0.00. Additionally, the following systems will be spending \$5,000 or less: City of Madison Heights (\$1,779.62), City of Wyandotte (\$1,460.91), City of Gross Pointe Woods (\$3,147.74), City of Gross Pointe (\$3,229.42), and City of Southgate (\$4,682.31). Michigan Indigent Defense Commission, *MIDC Funding FY27* (2027), available at <<https://michiganidc.gov/wp-content/uploads/2026/09/MIDC-Funding-FY27-for-website.pdf>> (accessed October 2, 2026).

1963, art 4, § 32 (providing that “[e]very law which imposes, continues or revives a tax shall distinctly state the tax”); *id.* art 3, § 2 (separation of powers provision prohibiting the judiciary from levying a tax). This would also raise constitutional doubts under the due process clause of Article 1, § 17, because it gives judges—who are funded and paid by the same system that would profit from the fees—an institutional financial interest in ordering attorney fees. See *People v Cameron*, 504 Mich 927 (2019) (McCORMACK, C.J., concurring).

Such fees might also be considered “fines,” raising doubts under the Michigan Constitution’s excessive fines clause, Article 1, § 16, and its requirement that all fines assessed “for any breach of the penal laws shall be exclusively applied to” support public libraries. Const 1963, art 8, § 9. At least two panels of the Michigan Court of Appeals have found that attorney fees are fines subject to the excessive fines clause. See *People v Sherrill*, unpublished per curiam opinion of the Court of Appeals, issued June 15, 2023 (Docket No. 358371); *People v Leser*, unpublished per curiam opinion of the Court of Appeals, issued August 15, 2024 (Docket No. 365940), p 6 n 6. Here, such fines are arguably excessive because they do not serve the Legislature’s goals, see Argument Part I; bear no direct relation to the nature of the underlying crime or any preventative effects; and are imposed without any determination of a defendant’s ability to pay. See *People v Antolovich*, 207 Mich App 714, 717; 525 NW2d 513 (1994) (discussing factors to consider in determining when a fine is excessive under Article 1, § 16). Moreover, a fee paid by a criminal defendant must be used to support libraries unless it “bear[s] some direct relation to actual costs incurred in a given criminal prosecution,” *People v Barber*, 14 Mich App 395, 402; 165 NW2d 608 (1968), or is “compensatory” and “uniform,” *Saginaw Pub Libraries v Judges of 70th Dist Court*, 118 Mich App 379, 389; 325 NW2d 777 (1982). If MCL 769.1k(1)(b)(iv) allows systems to avoid MIDCA’s reporting and spending requirements by imposing fees on indigent

defendants, and to directly profit from the same, those fees are divorced from the “actual costs” to the state and are not directly “compensatory.”

In sum, construing MCL 769.1k(1)(b)(iv) to allow for imposition of attorney fees that escape MIDCA’s funding system could create a host of constitutional issues. Under the canon of constitutional doubt, the Court can avoid these issues by interpreting MIDCA to have abrogated MCL 769.1k(1)(b)(iv).

CONCLUSION

For the reasons set out above, the Court should hold that attorney fees cannot be assessed against a fully indigent criminal defendant.

Respectfully submitted,

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This amicus brief is submitted on behalf of the American Civil Liberties Union of Michigan, the American Civil Liberties Union, and the Michigan State Planning Body. The American Civil Liberties Union of Michigan and American Civil Liberties Union have filed an accompanying motion for leave to file this brief on their own behalf. Co-amicus Michigan State Planning Body is not required to seek leave to file pursuant to MCR 7.312(H)(2)(d).

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