

**Second Regular Session
Seventy-first General Assembly
STATE OF COLORADO**

PREAMENDED

*This Unofficial Version Includes Committee
Amendments Not Yet Adopted on Second Reading*

LLS NO. 18-0997.01 Richard Sweetman x4333

SENATE BILL 18-203

SENATE SPONSORSHIP

Marble,

HOUSE SPONSORSHIP

Lontine,

Senate Committees

Judiciary
Appropriations

House Committees

A BILL FOR AN ACT

101 **CONCERNING THE PROVISION OF INDEPENDENT COUNSEL TO INDIGENT**
102 **DEFENDANTS IN MUNICIPAL COURTS.**

Bill Summary

(Note: This summary applies to this bill as introduced and does not reflect any amendments that may be subsequently adopted. If this bill passes third reading in the house of introduction, a bill summary that applies to the reengrossed version of this bill will be available at <http://leg.colorado.gov>.)

The bill requires each municipality, on and after January 1, 2020, to provide independent indigent defense for each indigent defendant facing a possible jail sentence for a violation of a municipal ordinance. Independent indigent defense requires, at minimum, that a nonpartisan entity independent of the municipal court and municipal officials oversee the provision of indigent defense counsel. To satisfy this requirement, a

Shading denotes HOUSE amendment. Double underlining denotes SENATE amendment.
Capital letters or bold & italic numbers indicate new material to be added to existing statute.
Dashes through the words indicate deletions from existing statute.

municipality may:

- ! Contract directly with defense attorneys to provide independent indigent defense; or
- ! Establish a local or regional independent indigent defense commission to appoint and supervise defense counsel.

A municipality that contracts directly with defense attorneys to provide independent indigent defense shall ensure that oversight of such attorneys is provided by the office of alternate defense counsel, by a legal aid clinic at an accredited Colorado law school, or by a local or regional independent indigent defense commission.

The bill requires the state public defender to appoint the members of any local or regional independent indigent defense commission.

The bill sets forth an annual timeline by which a municipality may request and potentially receive the services of the office of alternate defense counsel to:

- ! Evaluate the provision of defense counsel to indigent defendants; or
- ! Provide defense counsel to indigent defendants at the expense of the municipality.

1 *Be it enacted by the General Assembly of the State of Colorado:*

2 **SECTION 1.** In Colorado Revised Statutes, 13-10-114.5, **add as**
3 **it will become effective July 1, 2018,** (3) as follows:

4 **13-10-114.5. Representation by counsel - indigent defense**
5 **- definition.** (3) (a) ON AND AFTER JANUARY 1, 2020, EACH
6 MUNICIPALITY SHALL PROVIDE INDIGENT DEFENSE FOR EACH INDIGENT
7 DEFENDANT CHARGED WITH A MUNICIPAL CODE VIOLATION FOR WHICH
8 THERE IS A POSSIBLE SENTENCE OF INCARCERATION.

9 (b) IN SATISFYING THE REQUIREMENT DESCRIBED IN SUBSECTION
10 (3)(a) OF THIS SECTION, A MUNICIPALITY THAT CONTRACTS DIRECTLY WITH
11 ONE OR MORE DEFENSE ATTORNEYS TO PROVIDE COUNSEL TO INDIGENT
12 DEFENDANTS SHALL:

13 (I) ENSURE THAT THE PROCESS TO SELECT INDIGENT DEFENSE
14 ATTORNEYS IS TRANSPARENT AND BASED ON MERIT; AND

1 (II) EVALUATE EACH NEWLY HIRED DEFENSE ATTORNEY AS SOON
2 AS PRACTICABLE BUT NO LATER THAN ONE YEAR AFTER HE OR SHE IS
3 HIRED. OTHERWISE, THE MUNICIPALITY SHALL EVALUATE EACH DEFENSE
4 ATTORNEY AT LEAST EVERY THREE YEARS. TO SATISFY THE REQUIREMENT
5 DESCRIBED IN THIS SUBSECTION (3)(b)(II), A MUNICIPALITY MAY
6 ESTABLISH A LOCAL INDIGENT DEFENSE COMMISSION OR COORDINATE
7 WITH OTHER MUNICIPALITIES TO ESTABLISH A REGIONAL INDIGENT
8 DEFENSE COMMISSION, AS DESCRIBED IN SUBSECTION (3)(c) OF THIS
9 SECTION.

10 (c) (I) TO ENSURE THE QUALITY OF INDIGENT DEFENSE COUNSEL,
11 A MUNICIPALITY MAY ESTABLISH A LOCAL INDIGENT DEFENSE COMMISSION
12 OR COORDINATE WITH ONE OR MORE OTHER MUNICIPALITIES TO ESTABLISH
13 A REGIONAL ___ INDIGENT DEFENSE COMMISSION. ANY LOCAL OR REGIONAL
14 ___ INDIGENT DEFENSE COMMISSION IN EXISTENCE AS OF JANUARY 1, 2018,
15 IS DEEMED TO BE IN COMPLIANCE WITH THIS SUBSECTION (3)(c) AND MAY
16 CONTINUE AS ESTABLISHED.

17 (II) EACH LOCAL OR REGIONAL ___ INDIGENT DEFENSE COMMISSION
18 MUST INCLUDE AT LEAST THREE MEMBERS.

19 (III) THE TERMS AND PROCEDURES FOR THE MEMBERS OF A LOCAL
20 OR REGIONAL ___ INDIGENT DEFENSE COMMISSION MUST BE DETERMINED
21 BY THE MUNICIPALITY OR MUNICIPALITIES THAT ESTABLISH THE _____
22 INDIGENT DEFENSE COMMISSION.

23 (IV) A LOCAL OR REGIONAL ___ INDIGENT DEFENSE COMMISSION
24 ESTABLISHED PURSUANT TO THIS SUBSECTION (3)(c) HAS THE
25 RESPONSIBILITY AND EXCLUSIVE AUTHORITY TO APPOINT INDIGENT
26 DEFENSE COUNSEL FOR A TERM OF AT LEAST ONE YEAR OR MORE TO BE
27 SERVED UNTIL A SUCCESSOR IS APPOINTED. THE ___ INDIGENT DEFENSE

1 COMMISSION RETAINS SOLE AUTHORITY TO SUPERVISE THE INDIGENT
2 DEFENSE COUNSEL AND DISCHARGE HIM OR HER FOR CAUSE.

3 (V) A LOCAL OR REGIONAL INDIGENT DEFENSE COMMISSION,
4 THROUGH ITS ABILITY TO SUPERVISE, APPOINT, AND DISCHARGE THE
5 INDIGENT DEFENSE COUNSEL, SHALL ENSURE THAT INDIGENT DEFENDANTS
6 ACCUSED OF VIOLATIONS OF MUNICIPAL ORDINANCES FOR WHICH THERE
7 IS A POSSIBLE SENTENCE OF INCARCERATION ARE REPRESENTED
8 INDEPENDENTLY OF ANY POLITICAL CONSIDERATIONS OR PRIVATE
9 INTERESTS, THAT SUCH INDIGENT DEFENDANTS RECEIVE LEGAL SERVICES
10 THAT ARE COMMENSURATE WITH THOSE AVAILABLE TO NONINDIGENT
11 DEFENDANTS, AND THAT MUNICIPAL INDIGENT DEFENSE ATTORNEYS
12 PROVIDE REPRESENTATION IN ACCORDANCE WITH THE COLORADO RULES
13 OF PROFESSIONAL CONDUCT AND THE AMERICAN BAR ASSOCIATION
14 STANDARDS RELATING TO THE ADMINISTRATION OF CRIMINAL JUSTICE.

15 (VI) A LOCAL OR REGIONAL INDIGENT DEFENSE COMMISSION
16 SHALL NOT INTERFERE WITH THE DISCRETION, JUDGMENT, AND ZEALOUS
17 ADVOCACY OF INDIGENT DEFENSE ATTORNEYS IN SPECIFIC CASES.

18 (VII) A LOCAL OR REGIONAL INDIGENT DEFENSE COMMISSION
19 SHALL MAKE RECOMMENDATIONS TO ITS MUNICIPALITY OR
20 MUNICIPALITIES REGARDING THE PROVISION OF ADEQUATE MONETARY
21 RESOURCES TO PROVIDE LEGAL SERVICES TO INDIGENT DEFENDANTS
22 ACCUSED OF VIOLATIONS OF SUCH MUNICIPAL ORDINANCES.

23 (VIII) THE MEMBERS OF AN INDIGENT DEFENSE COMMISSION
24 SHALL SERVE WITHOUT COMPENSATION; EXCEPT THAT A MUNICIPALITY
25 THAT ESTABLISHES A LOCAL INDIGENT DEFENSE COMMISSION OR THAT
26 COORDINATES WITH ONE OR MORE OTHER MUNICIPALITIES TO ESTABLISH
27 A REGIONAL INDIGENT DEFENSE COMMISSION SHALL REIMBURSE THE

1 MEMBERS OF THE COMMISSION FOR ACTUAL AND REASONABLE EXPENSES
2 INCURRED IN THE PERFORMANCE OF THEIR DUTIES.

3 **SECTION 2.** In Colorado Revised Statutes, 21-2-103, **amend (1)**
4 as follows:

5 **21-2-103. Representation of indigent persons.** (1) ~~On and after~~
6 ~~January 1, 1997,~~ The office of alternate defense counsel shall provide
7 legal representation in the following circumstances:

8 (a) IN cases involving conflicts of interest for the state public
9 defender as determined pursuant to subsection (1.5) of this section; AND

10 (b) (Deleted by amendment, L. 2000, p. 1479, § 2, effective
11 August 2, 2000.)

12 (c) TO INDIGENT PERSONS WHO ARE CHARGED WITH MUNICIPAL
13 CODE VIOLATIONS FOR WHICH THERE IS A POSSIBLE SENTENCE OF
14 INCARCERATION, AS THE ALTERNATE DEFENSE COUNSEL IN HIS OR HER
15 DISCRETION MAY DETERMINE, AND AS AVAILABLE RESOURCES ALLOW. THE
16 OFFICE OF ALTERNATE DEFENSE COUNSEL SHALL PROVIDE SUCH
17 REPRESENTATION ONLY PURSUANT TO A CONTRACT BETWEEN A
18 REQUESTING MUNICIPALITY AND THE OFFICE OF ALTERNATE DEFENSE
19 COUNSEL. ANY SUCH CONTRACT MUST REQUIRE THE MUNICIPALITY TO BE
20 FINANCIALLY RESPONSIBLE FOR ALL SERVICES RENDERED AND EXPENSES
21 INCURRED BY CONTRACTORS TO DEFEND PERSONS CHARGED WITH SUCH
22 MUNICIPAL CODE VIOLATIONS IN THE CONTRACTING MUNICIPALITY. THE
23 OFFICE OF ALTERNATE DEFENSE COUNSEL IS NOT REQUIRED TO CONTRACT
24 WITH ANY MUNICIPALITY UNLESS THE OFFICE OF ALTERNATE DEFENSE
25 COUNSEL DETERMINES THAT THE MUNICIPALITY HAS SUFFICIENT FUNDING
26 AND PERSONNEL TO ADMINISTER AND OVERSEE THE CONTRACTS FOR THE
27 PROVISION OF INDIGENT DEFENSE SERVICES IN THAT MUNICIPALITY.

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SECTION 3. In Colorado Revised Statutes, **add** 21-2-108 as follows:

21-2-108. Conflict-free defense for indigent persons in municipal courts - fund created. (1) A MUNICIPALITY THAT WANTS TO UTILIZE THE OFFICE OF ALTERNATE DEFENSE COUNSEL TO PROVIDE DEFENSE COUNSEL TO INDIGENT DEFENDANTS DURING THE NEXT CALENDAR YEAR SHALL REQUEST SUCH SERVICES ON OR BEFORE SEPTEMBER 1, 2020, OR ON OR BEFORE SEPTEMBER 1 EACH YEAR THEREAFTER.

(2) ON OR BEFORE MAY 1, 2021, AND ON OR BEFORE MAY 1 EACH YEAR THEREAFTER, THE OFFICE OF ALTERNATE DEFENSE COUNSEL SHALL INFORM EACH MUNICIPALITY THAT REQUESTED THE LEGAL DEFENSE SERVICES OF THE OFFICE PURSUANT TO SUBSECTION (1) OF THIS SECTION WHETHER THE OFFICE HAS SUFFICIENT FUNDING TO PROVIDE THE SERVICES AND WHETHER THE OFFICE CAN COMMIT TO PROVIDING SUCH SERVICES DURING THE NEXT CALENDAR YEAR.

(3) ON OR BEFORE JANUARY 1, 2022, AND ON OR BEFORE JANUARY 1 EACH YEAR THEREAFTER, THE OFFICE OF ALTERNATE DEFENSE COUNSEL SHALL BEGIN PROVIDING DEFENSE COUNSEL TO INDIGENT DEFENDANTS IN EACH MUNICIPALITY TO WHICH THE OFFICE COMMITTED SUCH SERVICES PURSUANT TO SUBSECTION (2) OF THIS SECTION.

(4) THERE IS CREATED IN THE STATE TREASURY THE CONFLICT-FREE MUNICIPAL DEFENSE FUND, REFERRED TO IN THIS SUBSECTION (4) AS THE "FUND", WHICH CONSISTS OF MONEY COLLECTED AS FEES FROM MUNICIPALITIES AND CREDITED TO THE FUND AND ANY OTHER MONEY THAT THE GENERAL ASSEMBLY MAY APPROPRIATE OR

1 TRANSFER TO THE FUND. MONEY IN THE FUND IS CONTINUOUSLY
2 APPROPRIATED TO THE JUDICIAL DEPARTMENT FOR DISTRIBUTION TO THE
3 OFFICE OF ALTERNATIVE DEFENSE COUNSEL FOR THE PURPOSES DESCRIBED
4 IN THIS SECTION. THE STATE TREASURER SHALL CREDIT ALL INTEREST
5 DERIVED FROM THE DEPOSIT AND INVESTMENT OF MONEY IN THE FUND TO
6 THE FUND. ANY MONEY NOT APPROPRIATED BY THE GENERAL ASSEMBLY
7 MUST REMAIN IN THE FUND AND SHALL NOT BE TRANSFERRED OR REVERT
8 TO THE GENERAL FUND AT THE END OF ANY FISCAL YEAR.

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10 **SECTION 4. Act subject to petition - effective date.** This act
11 takes effect at 12:01 a.m. on the day following the expiration of the
12 ninety-day period after final adjournment of the general assembly (August
13 8, 2018, if adjournment sine die is on May 9, 2018); except that, if a
14 referendum petition is filed pursuant to section 1 (3) of article V of the
15 state constitution against this act or an item, section, or part of this act
16 within such period, then the act, item, section, or part will not take effect
17 unless approved by the people at the general election to be held in
18 November 2018 and, in such case, will take effect on the date of the
19 official declaration of the vote thereon by the governor.