

HOUSE COMMITTEE OF REFERENCE REPORT

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Chairman of Committee

April 27, 2018  
Date

Committee on Judiciary.

After consideration on the merits, the Committee recommends the following:

SB18-203 be amended as follows, and as so amended, be referred to the Committee on Appropriations with favorable recommendation:

1 Amend reengrossed bill, page 2, line 4, after "**counsel** -" insert  
2 "**independent**".

3 Page 2, line 6, after "PROVIDE" insert "INDEPENDENT".

4 Page 2, line 8, after "INCARCERATION." add "INDEPENDENT INDIGENT  
5 DEFENSE REQUIRES, AT MINIMUM, THAT A NONPARTISAN ENTITY  
6 INDEPENDENT OF THE MUNICIPAL COURT AND MUNICIPAL OFFICIALS  
7 OVERSEE OR EVALUATE INDIGENT DEFENSE COUNSEL.

8 (b) (I) BECAUSE THE OFFICE OF ALTERNATE DEFENSE COUNSEL  
9 CREATED IN SECTION 21-2-101 IS AN INDEPENDENT SYSTEM OF INDIGENT  
10 DEFENSE OVERSEEN BY AN INDEPENDENT COMMISSION, PROVISION OF  
11 INDIGENT DEFENSE BY LAWYERS EVALUATED OR OVERSEEN BY THE OFFICE  
12 OF ALTERNATE DEFENSE COUNSEL SATISFIES THE REQUIREMENT  
13 DESCRIBED IN SUBSECTION (3)(a) OF THIS SECTION.

14 (II) BECAUSE A LEGAL AID CLINIC AT ANY COLORADO LAW SCHOOL  
15 ACCREDITED BY THE AMERICAN BAR ASSOCIATION IS AN INDEPENDENT  
16 SYSTEM OF INDIGENT DEFENSE OVERSEEN BY THE DEAN OF THE LAW  
17 SCHOOL WITH WHICH IT IS AFFILIATED, ANY PROVISION OR OVERSIGHT OF  
18 INDIGENT DEFENSE THROUGH A LEGAL AID CLINIC ASSOCIATED WITH ANY  
19 COLORADO LAW SCHOOL ACCREDITED BY THE AMERICAN BAR  
20 ASSOCIATION SATISFIES THE REQUIREMENT DESCRIBED IN SUBSECTION  
21 (3)(a) OF THIS SECTION.

22 (c) TO SATISFY THE REQUIREMENT DESCRIBED IN SUBSECTION

1 (3)(a) OF THIS SECTION, A MUNICIPALITY THAT CONTRACTS DIRECTLY WITH  
2 ONE OR MORE DEFENSE ATTORNEYS TO PROVIDE COUNSEL TO INDIGENT  
3 DEFENDANTS SHALL ENSURE THAT:

4 (I) THE PROCESS TO SELECT INDIGENT DEFENSE ATTORNEYS IS  
5 TRANSPARENT AND BASED ON MERIT; AND

6 (II) EACH CONTRACTED INDIGENT DEFENSE ATTORNEY IS  
7 PERIODICALLY EVALUATED BY AN INDEPENDENT ENTITY FOR COMPETENCY  
8 AND INDEPENDENCE. THE MUNICIPALITY SHALL EVALUATE EACH NEWLY  
9 HIRED DEFENSE ATTORNEY AS SOON AS PRACTICABLE BUT NO LATER THAN  
10 ONE YEAR AFTER HE OR SHE IS HIRED. OTHERWISE, THE MUNICIPALITY  
11 SHALL EVALUATE EACH DEFENSE ATTORNEY AT LEAST EVERY THREE  
12 YEARS. AN INDEPENDENT ENTITY THAT EVALUATES DEFENSE ATTORNEYS  
13 PURSUANT TO THIS SUBSECTION (3)(c)(II) SHALL PROVIDE EVALUATION  
14 RESULTS AND ANY RECOMMENDATIONS FOR CORRECTIVE ACTION IN  
15 WRITING TO THE MUNICIPALITY. FOR THE PURPOSE OF THIS SUBSECTION  
16 (3), "INDEPENDENT ENTITY" MEANS:

17 (A) THE OFFICE OF ALTERNATE DEFENSE COUNSEL;

18 (B) AN ATTORNEY OR A GROUP OF ATTORNEYS, EACH OF WHOM  
19 HAS SUBSTANTIAL EXPERIENCE PRACTICING CRIMINAL DEFENSE IN  
20 COLORADO WITHIN THE PRECEDING FIVE YEARS, SO LONG AS THE  
21 ATTORNEY OR GROUP OF ATTORNEYS IS NOT AFFILIATED WITH THE  
22 MUNICIPALITY RECEIVING THE SERVICES, INCLUDING ANY MUNICIPAL  
23 JUDGE, PROSECUTOR, OR INDIGENT DEFENSE ATTORNEY; OR

24 (C) A LOCAL OR REGIONAL INDEPENDENT INDIGENT DEFENSE  
25 COMMISSION, AS DESCRIBED IN SUBSECTION (3)(d) OF THIS SECTION.

26 (d) (I) TO SATISFY THE REQUIREMENT DESCRIBED IN SUBSECTION  
27 (3)(a) OF THIS SECTION, A MUNICIPALITY MAY ESTABLISH A LOCAL  
28 INDEPENDENT INDIGENT DEFENSE COMMISSION OR COORDINATE WITH ONE  
29 OR MORE OTHER MUNICIPALITIES TO ESTABLISH A REGIONAL INDEPENDENT  
30 INDIGENT DEFENSE COMMISSION. ANY LOCAL OR REGIONAL INDEPENDENT  
31 INDIGENT DEFENSE COMMISSION IN EXISTENCE AS OF JANUARY 1, 2018, IS  
32 DEEMED TO BE IN COMPLIANCE WITH THIS SUBSECTION (3)(d) AND MAY  
33 CONTINUE AS ESTABLISHED.

34 (II) EACH LOCAL OR REGIONAL INDEPENDENT INDIGENT DEFENSE  
35 COMMISSION MUST INCLUDE AT LEAST THREE MEMBERS, EACH OF WHOM  
36 IS SELECTED BY THE CHIEF MUNICIPAL JUDGE IN CONSULTATION WITH THE  
37 COLORADO CRIMINAL DEFENSE BAR, THE OFFICE OF ALTERNATE DEFENSE  
38 COUNSEL, OR THE OFFICE OF THE STATE PUBLIC DEFENDER. PRIOR TO  
39 SERVING ON A COMMISSION, ANY COMMISSION MEMBER WHO IS SELECTED  
40 BY A CHIEF MUNICIPAL JUDGE MUST BE APPROVED BY THE OFFICE OF  
41 ALTERNATE DEFENSE COUNSEL. THE OFFICE OF ALTERNATE DEFENSE

- 1 COUNSEL SHALL APPROVE SUCH APPOINTED COMMISSION MEMBERS WHOM  
2 THE OFFICE, IN ITS DISCRETION, DEEMS LIKELY TO PROMOTE THE  
3 PROVISION OF COMPETENT AND INDEPENDENT INDIGENT DEFENSE."
- 4 Page 2, strike lines 9 through 14.
- 5 Page 3, strike lines 1 through 18.
- 6 Page 3, line 20, after "REGIONAL" insert "INDEPENDENT".
- 7 Page 3, line 21, after "ESTABLISH THE" insert "INDEPENDENT".
- 8 Page 3, line 23, after "REGIONAL" insert "INDEPENDENT".
- 9 Page 3, line 24, strike "(3)(c)" and substitute "(3)(d)".
- 10 Page 3, line 27, after "THE" insert "INDEPENDENT".
- 11 Page 4, line 3, after "REGIONAL" insert "INDEPENDENT".
- 12 Page 4, line 15, after "REGIONAL" insert "INDEPENDENT".
- 13 Page 4, line 18, after "REGIONAL" insert "INDEPENDENT".
- 14 Page 4, line 23, after "AN" insert "INDEPENDENT".
- 15 Page 4, line 25, after "LOCAL" insert "INDEPENDENT".
- 16 Page 4, line 27, after "REGIONAL" insert "INDEPENDENT".
- 17 Page 5, line 3, strike "(1)" and substitute "(1); and **add (5)**".
- 18 Page 6, strike line 1 and substitute:  
19 "(5) THE OFFICE OF ALTERNATE DEFENSE COUNSEL MAY, BUT IS  
20 NOT REQUIRED TO, EVALUATE THE PERFORMANCE OF ATTORNEYS  
21 PROVIDING INDIGENT DEFENSE IN MUNICIPAL COURTS AT THE REQUEST OF  
22 ANY MUNICIPALITY, AS DESCRIBED IN SECTION 13-10-114.5 (3)(c)(II). THE  
23 OFFICE OF ALTERNATE DEFENSE COUNSEL SHALL NOT PERFORM ANY SUCH  
24 EVALUATIONS WITHOUT SUFFICIENT FUNDING FOR PERSONNEL TO PERFORM  
25 SUCH EVALUATIONS."

1 Page 6, strike lines 5 through 7 and substitute:  
2 **"municipal courts - fund created.** (1) FOR THE PURPOSES OF SECTION  
3 21-2-103 (1)(c) AND (5), ANY MUNICIPALITY THAT WANTS TO UTILIZE THE  
4 SERVICES OF THE OFFICE OF ALTERNATE DEFENSE COUNSEL MAY REQUEST  
5 SUCH SERVICES AS PROVIDED IN THIS SECTION.

6 (2) A MUNICIPALITY THAT WANTS TO UTILIZE THE SERVICES OF THE  
7 OFFICE OF ALTERNATE DEFENSE COUNSEL TO EVALUATE THE PROVISION OF  
8 DEFENSE COUNSEL TO INDIGENT DEFENDANTS AS DESCRIBED IN SECTION  
9 13-10-114.5 (3)(c)(II)(A) DURING THE NEXT CALENDAR YEAR SHALL  
10 REQUEST SUCH SERVICES ON OR BEFORE SEPTEMBER 1, 2018, AND ON OR  
11 BEFORE SEPTEMBER 1 EACH YEAR THEREAFTER.

12 (3) ON OR BEFORE MAY 1, 2019, AND ON OR BEFORE MAY 1 EACH  
13 YEAR THEREAFTER, THE OFFICE OF ALTERNATE DEFENSE COUNSEL SHALL  
14 INFORM EACH MUNICIPALITY THAT REQUESTED THE EVALUATION SERVICES  
15 OF THE OFFICE PURSUANT TO SUBSECTION (2) OF THIS SECTION WHETHER  
16 THE OFFICE HAS SUFFICIENT FUNDING TO PROVIDE THE SERVICES AND  
17 WHETHER THE OFFICE CAN COMMIT TO PROVIDING SUCH SERVICES DURING  
18 THE NEXT CALENDAR YEAR.

19 (4) ON OR BEFORE JANUARY 1, 2020, AND ON OR BEFORE JANUARY  
20 1 EACH YEAR THEREAFTER, THE OFFICE OF ALTERNATE DEFENSE COUNSEL  
21 SHALL BEGIN EVALUATING THE PROVISION OF DEFENSE COUNSEL TO  
22 INDIGENT DEFENDANTS IN EACH MUNICIPALITY TO WHICH THE OFFICE  
23 COMMITTED SUCH SERVICES PURSUANT TO SUBSECTION (3) OF THIS  
24 SECTION.

25 (5) A MUNICIPALITY THAT WANTS TO UTILIZE THE OFFICE OF  
26 ALTERNATE DEFENSE COUNSEL TO PROVIDE A LIST OF APPROVED  
27 ATTORNEYS TO BE USED FOR INDIGENT DEFENSE DURING THE NEXT".

28 Renumber succeeding subsections accordingly.

29 Page 6, line 14, strike "(1)" and substitute "(5)".

30 Page 6, strike line 20 and substitute "SHALL PROVIDE A LIST OF APPROVED  
31 INDIGENT DEFENSE COUNSEL TO".

32 Page 6, line 22, strike "(2)" and substitute "(6)".

33 Page 6, line 25, strike "(4)" and substitute "(8)", and insert "ANY" after  
34 "OF".

35 Page 6, line 26, strike "AS FEES".

- 1 Page 7, line 2, strike "JUDICIAL DEPARTMENT FOR DISTRIBUTION TO THE".
- 2 Page 7, line 3, strike "ALTERNATIVE" and substitute "ALTERNATE".

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