

CHAPTER 465

COURTS

HOUSE BILL 24-1437

BY REPRESENTATIVE(S) Weissman and Duran, Epps, Jodeh, Lindsay, Amabile, Bacon, Boesenecker, Brown, Froelich, Hamrick, Hernandez, Herod, Mabrey, Ortiz, Parenti, Ricks, Rutinel, Sirota, Titone, Vigil, Woodrow;
also SENATOR(S) Fields and Michaelson Jenet, Buckner, Cutter, Exum, Gonzales, Hinrichsen, Marchman, Priola.

AN ACT**CONCERNING PROHIBITING A MUNICIPALITY FROM USING SPECIFIED PAYMENT STRUCTURES FOR INDIGENT DEFENSE SERVICES UNDER CERTAIN CIRCUMSTANCES.**

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

SECTION 1. Legislative declaration. (1) The general assembly finds and declares that:

(a) Flat-fee contracting for the provision of constitutionally required indigent defense undermines the integrity of the criminal justice system;

(b) The American bar association and several states reject flat-fee contracts for the provision of indigent defense because flat-fee contracts financially disincentivize defense counsel for the indigent from zealously advocating for their clients and these contracts constitute an inherent conflict of interest between the client and the attorney;

(c) The state of Colorado, through the office of the state public defender and the office of alternate defense counsel, ensures that all indigent individuals charged with a state criminal offense are afforded an attorney who is not paid through a flat-fee contract, and the Colorado supreme court, through chief justice directive 04-04, ensures that the state of Colorado pays reasonable hourly rates to contract defense attorneys; however, some Colorado municipal courts use or have considered using flat-fee contracts to provide indigent defense;

(d) Flat-fee contracts and low hourly rates for defense attorneys raise the greatest concern in prosecutions for a serious offense, particularly in cases involving an

Capital letters or bold & italic numbers indicate new material added to existing law; dashes through words or numbers indicate deletions from existing law and such material is not part of the act.

allegation of domestic violence, which is the most serious offense type handled in municipal court;

(e) Domestic violence cases are sensitive prosecutions for both victims and criminal defendants;

(f) Although few Colorado municipalities choose to prosecute domestic violence cases, municipalities that do should provide the same level of unconflicted and robust indigent defense that is available in state court;

(g) The state of Colorado has a strong interest in ensuring there is unconflicted and robust indigent defense for domestic violence cases prosecuted in any court in Colorado in order to protect the rights of both criminal defendants and victims;

(h) Competent criminal defense increases professionalism in all aspects of the case, minimizes delays in case resolution, and creates greater certainty for victims since cases involving competent criminal defense are less likely to be appealed; and

(i) Victims of domestic violence are, in too many cases, inadvertently arrested and prosecuted for domestic violence, and strong indigent defense is essential to quickly and effectively address these errors.

(2) Therefore, the general assembly determines that Colorado's interest and the interests of justice are best served by prohibiting municipalities that choose to prosecute domestic violence from using a flat-fee payment structure for indigent defense services and requiring municipalities to pay hourly rates that are equivalent to the rates paid in state court for indigent defense services.

SECTION 2. In Colorado Revised Statutes, 13-10-114.5, **amend** (3)(c)(I); and **add** (3)(c)(III) as follows:

13-10-114.5. Representation by counsel - independent indigent defense - definitions. (3) (c) To satisfy the requirement described in subsection (3)(a) of this section, a municipality that contracts directly with one or more defense attorneys to provide counsel to indigent defendants shall ensure that:

(I) The process to select indigent defense attorneys is transparent and based on merit; ~~and~~

(III) (A) THE CONTRACT DOES NOT USE A FIXED OR FLAT-FEE PAYMENT STRUCTURE FOR INDIGENT DEFENSE SERVICES BUT INSTEAD USES THE SAME PAYMENT STRUCTURE AND RATES THAT ARE PAID BY THE STATE OF COLORADO TO ATTORNEYS AND OTHER INTERDISCIPLINARY TEAM MEMBERS UNDER CONTRACT WITH THE OFFICE OF ALTERNATE DEFENSE COUNSEL CREATED IN SECTION 21-2-101 AND THAT ARE CONSISTENT WITH CHIEF JUSTICE DIRECTIVE 04-04, OR ANY SUCCESSOR CHIEF JUSTICE DIRECTIVE.

(B) THIS SUBSECTION (3)(c)(III) ONLY APPLIES TO A MUNICIPALITY THAT PROSECUTES AN ACT OF DOMESTIC VIOLENCE, AS DEFINED IN SECTION 18-6-800.3.

(C) FOR THE PURPOSES OF THIS SUBSECTION (3)(c), "FIXED OR FLAT-FEE PAYMENT

STRUCTURE" MEANS A FEE PAID AS A FIXED AMOUNT FOR SPECIFIED LEGAL SERVICES REGARDLESS OF THE TIME OR EFFORT INVOLVED, BUT DOES NOT INCLUDE AN AMOUNT PAID AS A SALARY OR ON A SALARY BASIS.

SECTION 3. Act subject to petition - effective date. This act takes effect July 1, 2025; except that, if a referendum petition is filed pursuant to section 1 (3) of article V of the state constitution against this act or an item, section, or part of this act within the ninety-day period after final adjournment of the general assembly, then the act, item, section, or part will not take effect unless approved by the people at the general election to be held in November 2024 and, in such case, will take effect July 1, 2025, or on the date of the official declaration of the vote thereon by the governor, whichever is later.

Approved: June 6, 2024