

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**

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**SENATE SPONSORSHIP**

**Marble,**

**HOUSE SPONSORSHIP**

**Lontine,**

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**Senate Committees**

Judiciary  
Appropriations

**House Committees**

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**A BILL FOR AN ACT**

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

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**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.

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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

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

4                   **21-2-108. Conflict-free defense for indigent persons in**  
5                   **municipal courts - fund created.** (1) A MUNICIPALITY THAT WANTS TO  
6                   **UTILIZE THE OFFICE OF** ALTERNATE DEFENSE COUNSEL TO PROVIDE  
7                   DEFENSE COUNSEL TO **INDIGENT DEFENDANTS** DURING THE NEXT  
8                   CALENDAR YEAR SHALL REQUEST SUCH SERVICES ON OR BEFORE  
9                   SEPTEMBER 1, 2020, OR ON OR BEFORE SEPTEMBER 1 EACH YEAR  
10                  THEREAFTER.

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

18                  (3) ON OR BEFORE JANUARY 1, 2022, AND ON OR BEFORE JANUARY  
19                  1 EACH YEAR THEREAFTER, THE OFFICE OF ALTERNATE DEFENSE COUNSEL  
20                  SHALL BEGIN PROVIDING DEFENSE COUNSEL TO INDIGENT DEFENDANTS IN  
21                  EACH MUNICIPALITY TO WHICH THE OFFICE COMMITTED SUCH SERVICES  
22                  PURSUANT TO SUBSECTION (2) OF THIS SECTION.

23                  (4) THERE IS CREATED IN THE STATE TREASURY THE  
24                  CONFLICT-FREE MUNICIPAL DEFENSE FUND, REFERRED TO IN THIS  
25                  SUBSECTION (4) AS THE "FUND", WHICH CONSISTS OF MONEY COLLECTED  
26                  AS FEES FROM MUNICIPALITIES AND CREDITED TO THE FUND AND ANY  
27                  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.