

Second Regular Session
Seventieth General Assembly
STATE OF COLORADO

REREVISED

*This Version Includes All Amendments
Adopted in the Second House*

LLS NO. 16-0971.01 Richard Sweetman x4333

HOUSE BILL 16-1309

HOUSE SPONSORSHIP

Lontine,

SENATE SPONSORSHIP

Marble,

House Committees
Judiciary

Senate Committees
State, Veterans, & Military Affairs
Finance

A BILL FOR AN ACT

101 **CONCERNING A DEFENDANT'S RIGHT TO COUNSEL IN CERTAIN CASES**
102 **CONSIDERED BY 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://www.leg.state.co.us/billsummaries>.)

At the time of first appearance on a municipal charge, if the defendant is in custody and the charged offense includes a possible sentence of incarceration, the court shall appoint counsel to represent the defendant for purposes of the initial appearance unless, after a full advisement, the defendant makes a knowing, intelligent, and voluntary waiver of his or her right to counsel.

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

SENATE
3rd Reading Unamended
April 26, 2016

SENATE
Amended 2nd Reading
April 25, 2016

HOUSE
3rd Reading Unamended
April 1, 2016

HOUSE
2nd Reading Unamended
March 31, 2016

If the defendant remains in custody, the appointment of counsel continues until the defendant is released from custody. If the defendant is released from custody, he or she may apply for court-appointed counsel, and the court shall appoint counsel if the court determines that the defendant is indigent and the charged offense includes a possible sentence of incarceration.

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

2 **SECTION 1. Legislative declaration.** The general assembly
3 hereby finds and declares that the both the United States and Colorado
4 constitutions provide that an accused person has the right to be
5 represented by counsel in criminal prosecutions. This constitutional right
6 has been interpreted to mean that counsel will be provided at government
7 expense for indigent persons in all cases in which incarceration is a
8 possible penalty, unless there is a knowing, intelligent, and voluntary
9 waiver of the right to counsel.

10 **SECTION 2.** In Colorado Revised Statutes, **add** 13-10-114.5 as
11 follows:

12 **13-10-114.5. Representation by counsel.** (1) AT THE TIME OF
13 FIRST APPEARANCE ON A MUNICIPAL CHARGE, IF THE DEFENDANT IS IN
14 CUSTODY AND THE CHARGED OFFENSE INCLUDES A POSSIBLE SENTENCE OF
15 INCARCERATION, THE COURT SHALL APPOINT COUNSEL TO REPRESENT THE
16 DEFENDANT FOR PURPOSES OF THE INITIAL APPEARANCE UNLESS, AFTER A
17 FULL ADVISEMENT PURSUANT TO C.M.C.R. 210 AND SECTION 16-7-207,
18 C.R.S., THE DEFENDANT MAKES A KNOWING, INTELLIGENT, AND
19 VOLUNTARY WAIVER OF HIS OR HER RIGHT TO COUNSEL.

20 (2) IF THE DEFENDANT REMAINS IN CUSTODY, THE APPOINTMENT
21 OF COUNSEL CONTINUES UNTIL THE DEFENDANT IS RELEASED FROM
22 CUSTODY. IF THE DEFENDANT IS RELEASED FROM CUSTODY, HE OR SHE

1 MAY APPLY FOR COURT-APPOINTED COUNSEL, AND THE COURT SHALL
2 APPOINT COUNSEL IF THE COURT DETERMINES THAT THE DEFENDANT IS
3 INDIGENT AND THE CHARGED OFFENSE INCLUDES A POSSIBLE SENTENCE OF
4 INCARCERATION.

5 **SECTION 3.** In Colorado Revised Statutes, 16-7-207, **add** (3) as
6 follows:

7 **16-7-207. Court's duty to inform on first appearance in court**
8 **and on pleas of guilty.** (3) THIS SECTION APPLIES TO PROSECUTIONS FOR
9 VIOLATIONS OF MUNICIPAL CHARTERS AND PROSECUTIONS FOR
10 VIOLATIONS OF MUNICIPAL ORDINANCES.

11 **SECTION 4. Act subject to petition - effective date.** This act
12 takes effect May 1, 2017; except that, if a referendum petition is filed
13 pursuant to section 1 (3) of article V of the state constitution against this
14 act or an item, section, or part of this act within the ninety-day period
15 after final adjournment of the general assembly, then the act, item,
16 section, or part will not take effect unless approved by the people at the
17 general election to be held in November 2016 and, in such case, will take
18 effect on May 1, 2017, or on the date of the official declaration of the
19 vote thereon by the governor, whichever is later.