



Legislative Council Staff

Nonpartisan Services for Colorado's Legislature

REVISED FISCAL NOTE

(replaces fiscal note dated March 20, 2018)

Drafting Number: LLS 18-0997 Date: April 9, 2018
Prime Sponsors: Sen. Marble Bill Status: Senate Appropriations
Rep. Lontine Fiscal Analyst: Chris Creighton | 303-866-5834
Chris.Creighton@state.co.us

Bill Topic: CONFLICT-FREE REPRESENTATION IN MUNICIPAL COURTS

- Summary of Fiscal Impact:
- State Revenue (potential)
- State Expenditure
- State Transfer
- TABOR Refund
- Local Government
- Statutory Public Entity

This bill requires municipalities to provide indigent defense services beginning in FY 2020-21. This bill potentially increases state revenue and increases state and local government expenditures and workload on an ongoing basis.

Appropriation Summary: No appropriation is required.

Fiscal Note Status: This revised fiscal note reflects the introduced bill, as amended by the Senate Judiciary Committee.

Table 1
State Fiscal Impacts Under SB 18-203

Table with 4 columns: Category, Sub-category, FY 2018-19, FY 2019-20, FY 2020-21. Rows include Revenue (Cash Funds), Expenditures (General Fund, Centrally Appropriated), Total, Total FTE, and Transfers.

Summary of Legislation

This bill requires municipalities to provide "indigent defense" for each indigent defendant charged with a crime that has a possible sentence of incarceration by January 1, 2020.

Indigent defense contract requirements. Municipalities contracting with one or more defense attorneys for the provision of indigent defense services must ensure that:

- the indigent defense service selection process is transparent and merit based; and
- each contracted indigent defense attorney is evaluated as soon as possible, but no later than one year after being hired and at least every three years thereafter;

Local or regional indigent defense commission. Municipalities may establish a local indigent defense commission or coordinate with one or more other municipalities to create a regional indigent defense commission. Any such commission must include at least three commissioners who serve without compensation, but may be reimbursed for expenses incurred. Any commission created:

- has the responsibility and exclusive authority to appoint indigent defense counsel for a term of at least one year;
- has the sole authority to supervise appointed indigent defense counsel and may discharge him or her for cause;
- must ensure that indigent defendants receive legal services equal to those available for non-indigent defendants and in accordance with Colorado rules of professional conduct and American Bar Association standards; and
- must make recommendations on adequate legal resources needed to provide indigent defense services.

Office of the Alternate Defense Counsel. This bill allows municipalities to contract with the Office of the Alternate Defense Counsel (OADC) to provide defense to indigent offenders in municipal court. The municipality is financially responsible for all services rendered and expenses incurred in any such contracts. Municipalities that wish to use the OADC for indigent defense services must request such services on or before September 1, 2020. The OADC is required to notify municipalities requesting indigent defense services of its ability to provide such services by May 1, 2021, and the provision of such services is to begin on or before January 1, 2022. The Conflict-Free Municipal Defense Fund is created to receive funds from municipal indigent defense contracts.

Background and Assumptions

There are over 200 municipal courts in Colorado. Most municipalities contract with local attorneys for the provision of indigent legal defense services, except for the City and County of Denver and the City of Aurora which hire in-house public defenders that are overseen by a commission. It is assumed that contracting with attorneys for indigent legal defense will satisfy this bill's requirement for municipalities to provide indigent defense services; however, most municipalities will need to create or coordinate with other municipalities to create a indigent defense commission.

The OADC provides representation in district and county court cases where a defendant has been charged with a crime that has a possible sentence of incarceration when there is a conflict of interest and the Office of the State Public Defender cannot provide representation. This is done using contract attorneys. The OADC does not currently provide representation of indigent offenders in municipal court cases.

State Revenue

Beginning in FY 2021-22 and continuing thereafter, to the extent that the OADC contracts with a municipality for the provision of indigent defense services, state cash fund revenue will increase. Revenue collections will depend on the number of municipalities that contract with the OADC and the number of cases that require indigent defense services and have not been estimated. This revenue is exempt from TABOR revenue limits.

State Expenditures

This bill increases state expenditures by \$162,321 and 0.9 FTE in FY 2019-20 and \$178,168 and 1.0 FTE in FY 2020-21. These costs are shown in Table 2 and discussed below.

**Table 2
 Expenditures Under SB 18-203**

	FY 2018-19	FY 2019-20	FY 2020-21
Office of Alternative Defense Counsel			
Personal Services	-	\$130,679	142,559
Operating Expenses and Capital Outlay Costs	-	\$5,558	\$6,959
Centrally Appropriated Costs*	-	\$26,084	\$28,650
FTE – Personal Services	-	0.9 FTE	1.0 FTE
Total Cost	-	\$162,321	\$178,168
Total FTE	-	0.9 FTE	1.0 FTE

* Centrally appropriated costs are not included in the bill's appropriation.

Office of the Alternate Defense Counsel. Beginning in FY 2019-20, the OADC requires 1.0 FTE for a municipal courts coordinator. It is assumed that this position will need to be filled by an attorney with criminal defense experience and be paid a salary similar to other OADC division coordinator positions. FY 2019-20, costs are prorated for the General Fund paydate shift. Ongoing costs are estimated at \$178,168 and 1.0 FTE beginning in FY 2020-21.

This position will set up the municipal indigent defense program within the OADC and provide guidance to municipalities requesting contract defense services. Beginning on or before September 1, 2020, this position will review and approve requests for OADC contract defense services beginning January 1, 2022.

The number of municipalities that will request OADC contract defense services is unknown. Should additional or fewer appropriations for contract attorney costs, staff, or other municipal indigent defense program costs be needed, they will be requested in future years through the annual budget process.

Centrally appropriated costs. Pursuant to a Joint Budget Committee policy, certain costs associated with this bill are addressed through the annual budget process and centrally appropriated in the Long Bill or supplemental appropriations bills, rather than in this bill. These costs, which include employee insurance and supplemental employee retirement payments, are estimated to be \$26,084 in FY 2019-20 with \$28,650 in FY 2020-21 and future years.

Local Government

Beginning in FY 2019-20, municipal governments will have additional workload and costs to create local or regional indigent defense commissions and to pay for commission member expense reimbursement. These impacts will vary by municipality and have not been estimated.

Future municipal costs may be impacted beginning in FY 2021-22. To the extent that municipalities choose to contract with the OADC for indigent defense services costs may increase or decrease by an unknown amount depending on OADC attorney contract rates compared to existing contract attorney rates. Because most municipalities already contract with attorneys for the provision of indigent defense services and only use such services to the extent that an offender is tried for a crime that has a possible sentence of incarceration and qualifies for indigent defense services, the net impact is expected to be minimal.

Effective Date

The bill takes effect August 8, 2018, if the General Assembly adjourns on May 9, 2018, as scheduled, and no referendum petition is filed.

State and Local Government Contacts

Alternate Defense Counsel
Judicial
Public Defender

District Attorneys
Local Affairs

Information Technology
Municipalities