

**Second Regular Session
Seventy-fourth General Assembly
STATE OF COLORADO**

INTRODUCED

LLS NO. 24-1127.01 Shelby Ross x4510

HOUSE BILL 24-1437

HOUSE SPONSORSHIP

Weissman and Duran, Jodeh, Lindsay

SENATE SPONSORSHIP

Fields and Michaelson Jenet,

House Committees
Judiciary

Senate Committees

A BILL FOR AN ACT

101 **CONCERNING PROHIBITING A MUNICIPALITY FROM USING SPECIFIED**
102 **PAYMENT STRUCTURES FOR INDIGENT DEFENSE SERVICES UNDER**
103 **CERTAIN CIRCUMSTANCES.**

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>.)

Beginning January 1, 2025, the bill requires a municipality that prosecutes an act of domestic violence and that contracts directly with one or more defense attorneys to provide counsel to indigent defendants to ensure that the municipality's contract does not use a fixed or flat-fee payment structure for indigent defense services. The bill requires the

Shading denotes HOUSE amendment. Double underlining denotes SENATE amendment.
Capital letters or bold & italic numbers indicate new material to be added to existing law.
Dashes through the words or numbers indicate deletions from existing law.

municipal court to instead use the same payment structure and rates that are paid by the state of Colorado to attorneys or other interdisciplinary team members under contract with the office of alternate defense counsel and consistent with chief justice directive 04-04.

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

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

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

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

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

20 (d) Flat-fee contracts and low hourly rates for defense attorneys
21 raise the greatest concern in prosecutions for a serious offense,
22 particularly in cases involving an allegation of domestic violence, which
23 is the most serious offense type handled in municipal court;

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

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

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

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

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

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

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

27 **13-10-114.5. Representation by counsel - independent indigent**

1 **defense - definition.** (3) (c) To satisfy the requirement described in
2 subsection (3)(a) of this section, a municipality that contracts directly
3 with one or more defense attorneys to provide counsel to indigent
4 defendants shall ensure that:

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

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

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

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