

CHAPTER 203

STATE PUBLIC DEFENDER

SENATE BILL 96-205

BY SENATORS Wells, Feeley, Hernandez, Matsunaka, Mutzebaugh, Norton, Pascoe, Perlmutter, Tebedo, Wattenberg, and Wham;
also REPRESENTATIVE Adkins.

AN ACT

**CONCERNING APPOINTMENT OF COUNSEL IN CRIMINAL CASES, AND, IN CONNECTION THEREWITH,
CREATING THE OFFICE OF ALTERNATE DEFENSE COUNSEL IN THE JUDICIAL DEPARTMENT AND
MAKING AN APPROPRIATION.**

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

SECTION 1. Title 21, Colorado Revised Statutes, 1986 Repl. Vol., as amended,
is amended BY THE ADDITION OF A NEW ARTICLE to read:

ARTICLE 2
Alternate Defense Counsel

21-2-101. Alternate defense counsel - policy - commission. (1) THE OFFICE OF ALTERNATE DEFENSE COUNSEL IS HEREBY CREATED AND ESTABLISHED AS AN AGENCY OF THE JUDICIAL DEPARTMENT OF STATE GOVERNMENT. THE GENERAL ASSEMBLY HEREBY DECLARES THAT THE ALTERNATE DEFENSE COUNSEL SHALL PROVIDE LEGAL REPRESENTATION IN CIRCUMSTANCES IN WHICH THE STATE PUBLIC DEFENDER HAS A CONFLICT OF INTEREST IN PROVIDING LEGAL REPRESENTATION AND IN CASES WHERE THE COURT DETERMINES THE DEFENDANT IS PARTIALLY INDIGENT. THE GENERAL ASSEMBLY HEREBY DECLARES THAT THE ALTERNATE DEFENSE COUNSEL AT ALL TIMES SHALL SERVE HIS OR HER CLIENTS INDEPENDENTLY OF ANY POLITICAL CONSIDERATIONS OR PRIVATE INTERESTS, PROVIDE TO INDIGENT AND PARTIALLY INDIGENT PERSONS ACCUSED OF CRIMES LEGAL SERVICES THAT ARE COMMENSURATE WITH THOSE AVAILABLE TO NONINDIGENTS, AND CONDUCT THE OFFICE IN ACCORDANCE WITH THE COLORADO RULES OF PROFESSIONAL CONDUCT AND WITH THE AMERICAN BAR ASSOCIATION STANDARDS RELATING TO THE ADMINISTRATION OF CRIMINAL JUSTICE, THE DEFENSE FUNCTION.

Capital letters indicate new material added to existing statutes; dashes through words indicate deletions from existing statutes and such material not part of act.

(2) THE COLORADO SUPREME COURT SHALL APPOINT A NINE-MEMBER ALTERNATE DEFENSE COUNSEL COMMISSION, REFERRED TO IN THIS ARTICLE AS THE "COMMISSION". NO MORE THAN FIVE MEMBERS OF THE COMMISSION SHALL BE FROM THE SAME POLITICAL PARTY. SIX MEMBERS OF THE COMMISSION REPRESENTING EACH OF THE SIX CONGRESSIONAL DISTRICTS SHALL BE ATTORNEYS ADMITTED TO PRACTICE LAW IN THIS STATE WHO ARE ENGAGED IN THE PRACTICE OF CRIMINAL DEFENSE. THREE MEMBERS OF THE COMMISSION SHALL BE CITIZENS OF COLORADO NOT ADMITTED TO PRACTICE LAW IN THIS STATE. MEMBERS OF THE COMMISSION SHALL SERVE FOR TERMS OF FOUR YEARS; EXCEPT THAT, OF THE MEMBERS FIRST APPOINTED, FIVE SHALL SERVE FOR TERMS OF TWO YEARS. VACANCIES ON THE COMMISSION SHALL BE FILLED BY THE SUPREME COURT FOR THE REMAINDER OF ANY UNEXPIRED TERM. IN MAKING APPOINTMENTS TO THE COMMISSION, THE SUPREME COURT SHALL CONSIDER PLACE OF RESIDENCE, SEX, RACE, AND ETHNIC BACKGROUND. NO MEMBER OF THE COMMISSION SHALL BE AT ANY TIME A JUDGE, PROSECUTOR, PUBLIC DEFENDER, OR EMPLOYEE OF A LAW ENFORCEMENT AGENCY. THE SUPREME COURT SHALL ESTABLISH PROCEDURES FOR THE OPERATION OF THE COMMISSION.

(3) THE COMMISSION SHALL APPOINT, AND MAY DISCHARGE FOR CAUSE, A PERSON TO SERVE AS ALTERNATE DEFENSE COUNSEL WHO SHALL SERVE A TERM OF FIVE YEARS AND UNTIL A SUCCESSOR IS APPOINTED AND QUALIFIED. SUCH PERSON MAY BE REAPPOINTED FOR ONE OR MORE SUBSEQUENT FIVE-YEAR TERMS. A VACANCY IN THE OFFICE SHALL BE FILLED BY THE COMMISSION FOR THE REMAINDER OF THE UNEXPIRED TERM.

(4) THE COMMISSION SHALL SERVE AS AN ADVISORY BOARD TO THE ALTERNATE DEFENSE COUNSEL AND SHALL MEET AT LEAST ANNUALLY. THE COMMISSION SHALL ADVISE THE ALTERNATE DEFENSE COUNSEL CONCERNING THE DEVELOPMENT AND MAINTENANCE OF COMPETENT AND COST-EFFECTIVE REPRESENTATION.

(5) MEMBERS OF THE COMMISSION SHALL SERVE WITHOUT COMPENSATION BUT SHALL BE REIMBURSED FOR ACTUAL AND REASONABLE EXPENSES INCURRED IN THE PERFORMANCE OF THEIR DUTIES.

(6) ANY EXPENSES INCURRED FOR THE COMMISSION SHALL BE PAID FROM THE GENERAL OPERATING BUDGET OF THE OFFICE OF THE ALTERNATE DEFENSE COUNSEL.

21-2-102. Alternate defense counsel - qualifications - employees. (1) THE ALTERNATE DEFENSE COUNSEL SHALL HAVE BEEN LICENSED TO PRACTICE LAW IN THIS STATE FOR AT LEAST FIVE YEARS PRIOR TO APPOINTMENT, AND HE OR SHE SHALL DEVOTE FULL TIME TO THE PERFORMANCE OF HIS OR HER DUTIES AND SHALL NOT ENGAGE IN THE PRIVATE PRACTICE OF LAW.

(2) THE COMPENSATION OF THE ALTERNATE DEFENSE COUNSEL SHALL BE FIXED BY THE GENERAL ASSEMBLY AND MAY NOT BE REDUCED DURING THE TERM OF HIS OR HER APPOINTMENT.

(3) THE ALTERNATE DEFENSE COUNSEL SHALL EMPLOY AND FIX THE COMPENSATION OF ANY OTHER EMPLOYEES NECESSARY TO DISCHARGE THE FUNCTIONS OF THE OFFICE OF ALTERNATE DEFENSE COUNSEL.

21-2-103. Representation of indigent and partially indigent persons. (1) ON

AND AFTER JANUARY 1, 1997, THE OFFICE OF ALTERNATE DEFENSE COUNSEL SHALL PROVIDE LEGAL REPRESENTATION IN THE FOLLOWING CIRCUMSTANCES:

(a) CASES INVOLVING CONFLICTS OF INTEREST FOR THE STATE PUBLIC DEFENDER AS DETERMINED BY THE COURT HAVING JURISDICTION OVER THE CASE;

(b) CASES IN WHICH THE COURT DETERMINES THE DEFENDANT IS PARTIALLY INDIGENT AND LACKS THE FUNDS, ON A PRACTICAL BASIS, TO RETAIN COMPETENT COUNSEL AND IN WHICH THE STATE IS REQUIRED TO PROVIDE AN ATTORNEY AT STATE EXPENSE.

(2) IN CASES INVOLVING CONFLICTS OF INTEREST FOR THE STATE PUBLIC DEFENDER, THE DETERMINATION OF INDIGENCY SHALL BE MADE BY THE STATE PUBLIC DEFENDER IN ACCORDANCE WITH SECTION 21-1-103. UPON NOTIFICATION TO THE COURT BY THE STATE PUBLIC DEFENDER OF THE CONFLICT OF INTEREST, THE COURT SHALL APPOINT THE OFFICE OF ALTERNATE DEFENSE COUNSEL WHICH SHALL PROVIDE REPRESENTATION FOR THE INDIGENT PERSON.

(3) IN CASES IN WHICH THE COURT DETERMINES THE DEFENDANT IS PARTIALLY INDIGENT, THE COURT, ON ITS OWN MOTION OR UPON THE APPLICATION OF THE PARTIALLY INDIGENT PERSON, MAY APPOINT THE OFFICE OF ALTERNATE DEFENSE COUNSEL TO PROVIDE REPRESENTATION FOR THE PARTIALLY INDIGENT PERSON. IN EACH SUCH CASE, THE COURT SHALL ENTER A WRITTEN ORDER SPECIFYING THE FACTS SUPPORTING THE DETERMINATION OF PARTIAL INDIGENCY AND SHALL ORDER REIMBURSEMENT BY THE DEFENDANT FOR THE COSTS OF REPRESENTATION.

(4) THE OFFICE OF ALTERNATE DEFENSE COUNSEL SHALL PROVIDE LEGAL REPRESENTATION FOR INDIGENT PERSONS AND PARTIALLY INDIGENT PERSONS BY CONTRACTING WITH LICENSED ATTORNEYS AND INVESTIGATORS PURSUANT TO SECTION 21-2-105.

21-2-104. Duties of alternate defense counsel and contract attorneys.

(1) WHEN REPRESENTING AN INDIGENT PERSON OR PARTIALLY INDIGENT PERSON, THE ATTORNEY UNDER CONTRACT WITH THE OFFICE OF ALTERNATE DEFENSE COUNSEL SHALL:

(a) COUNSEL AND DEFEND SUCH PERSON, WHETHER HE OR SHE IS HELD IN CUSTODY, FILED ON AS A DELINQUENT, OR CHARGED WITH A FELONY OFFENSE, AT EVERY STAGE OF THE PROCEEDINGS FOLLOWING ARREST, DETENTION, OR SERVICE OF PROCESS; AND

(b) PROSECUTE ANY APPEALS OR OTHER REMEDIES BEFORE OR AFTER CONVICTION THAT THE ALTERNATE DEFENSE COUNSEL OR THE CONTRACT ATTORNEY CONSIDERS TO BE IN THE INTEREST OF JUSTICE.

(2) IN NO CASE SHALL THE ALTERNATE DEFENSE COUNSEL OR A CONTRACT ATTORNEY BE REQUIRED TO PROSECUTE ANY APPEAL OR OTHER REMEDY UNLESS THE ALTERNATE DEFENSE COUNSEL OR CONTRACT ATTORNEY IS SATISFIED THAT THERE IS ARGUABLE MERIT TO THE PROCEEDING.

21-2-105. Contracts with attorneys and investigators. (1) ON AND AFTER

JANUARY 1, 1997, THE ALTERNATE DEFENSE COUNSEL SHALL CONTRACT, WHERE FEASIBLE, WITHOUT PRIOR APPROVAL OF THE COURT, FOR THE PROVISION OF ATTORNEY SERVICES FOR CASES DESCRIBED IN SECTION 21-2-103 (1). TO PROVIDE FOR ADEQUATE LEGAL REPRESENTATION OF INDIGENT AND PARTIALLY INDIGENT PERSONS, THE OFFICE OF ALTERNATE DEFENSE COUNSEL MAY CONTRACT, WHERE FEASIBLE, WITHOUT PRIOR APPROVAL OF THE COURT, FOR THE PROVISION OF INVESTIGATIVE SERVICES FOR CASES DESCRIBED IN SECTION 21-1-103 (1). THE OFFICE OF ALTERNATE DEFENSE COUNSEL SHALL ESTABLISH, WHERE FEASIBLE, A LIST OF APPROVED CONTRACT ATTORNEYS TO SERVE AS COUNSEL AND A LIST OF APPROVED INVESTIGATORS TO PROVIDE INVESTIGATIVE SERVICES IN SUCH CASES. AS A CONDITION OF PLACEMENT ON THE APPROVED LIST, THE CONTRACTING ATTORNEY OR INVESTIGATOR SHALL AGREE TO PROVIDE SERVICES BASED ON THE TERMS TO BE ESTABLISHED IN A CONTRACT, AT EITHER A FIXED FEE OR THE HOURLY RATE FOR REIMBURSEMENT SET BY THE SUPREME COURT. TERMS OF THE CONTRACT SHALL BE NEGOTIATED BETWEEN THE ALTERNATE DEFENSE COUNSEL AND THE CONTRACT ATTORNEY OR INVESTIGATOR. CONTRACTS MADE WITH AN ATTORNEY SHALL SPECIFY THAT THE SERVICES SHALL BE PROVIDED SUBJECT TO THE COLORADO RULES OF PROFESSIONAL CONDUCT.

(2) CONTRACTS MADE PURSUANT TO THIS SECTION SHALL PROVIDE FOR REASONABLE COMPENSATION AND REIMBURSEMENT FOR EXPENSES NECESSARILY INCURRED, TO BE FIXED AND PAID FROM STATE FUNDS APPROPRIATED THEREFOR. THE OFFICE OF ALTERNATE DEFENSE COUNSEL SHALL REVIEW THE BILLS SUBMITTED FOR REIMBURSEMENT BY ANY CONTRACT ATTORNEY OR INVESTIGATOR AND MAY APPROVE OR DENY THE PAYMENT OF SUCH BILLS IN WHOLE OR IN PART BASED ON THE TERMS SET FORTH IN THE CONTRACT NEGOTIATED BETWEEN THE ALTERNATE DEFENSE COUNSEL AND THE CONTRACT ATTORNEY OR INVESTIGATOR.

21-2-106. Recoupment of fees and costs. IN ANY CASE WHEN A COURT DETERMINES THAT A DEFENDANT IS ABLE TO REPAY ALL OR PART OF THE EXPENSE OF STATE-SUPPLIED OR COURT-APPOINTED COUNSEL OR ANY ANCILLARY EXPENSES INCURRED IN REPRESENTING SUCH DEFENDANT, THE COURT SHALL ASSESS SUCH FEES OR COSTS AGAINST SUCH DEFENDANT AND SHALL NOTIFY THE JUDICIAL DISTRICT'S COLLECTION INVESTIGATOR OR THE CONTROLLER, WHO SHALL INSTITUTE PROCEEDINGS PURSUANT TO SECTION 24-30-202.4, C.R.S., AS NECESSARY TO RECOVER SUCH FEES OR COSTS.

SECTION 2. 21-1-105, Colorado Revised Statutes, 1986 Repl. Vol., as amended, is repealed as follows:

21-1-105. Appointment of other attorney or investigator in place of public defender - contracts for services. ~~(1) For cause, the court may, on its own motion or upon the application of the state public defender or the indigent person, appoint an attorney other than the state public defender to represent the indigent person at any stage of the proceedings or on appeal. The attorney shall be awarded reasonable compensation and reimbursement for expenses necessarily incurred, to be fixed and paid from state funds appropriated therefor.~~

~~(2) No later than July 1, 1996, the state public defender shall contract, where feasible, without prior approval of the court, for the provision of attorney services and investigative services in situations where there is a conflict of interest in representing~~

~~an indigent person. The state public defender shall establish, where feasible, a list of approved contract attorneys to serve as conflicts counsel and a list of approved investigators to provide investigative services in conflict of interest situations. As a condition of placement on the approved list, the contracting attorney or investigator shall agree to provide services based on the terms established in any contract, subject to the rules on reimbursement negotiated between the state public defender and the contract attorney or investigator and, in the case of a contract attorney, subject also to the Colorado rules of professional conduct. When making appointments for conflicts counsel, judges shall appoint attorneys from such approved contract attorney list. However, if in a particular judicial district the court and the office of the state public defender agree that the approved contract attorney list does not include any suitable attorneys, the judge has the authority to appoint attorneys who are not on the approved contract list to serve as conflicts counsel, subject to the same rules on reimbursement negotiated with contract attorneys and subject to the Colorado rules of professional conduct. The court and the office of the state public defender shall cooperate in developing a procedure to ensure that the office of the state public defender is timely notified of each conflicts appointment that is made and that the judicial branch is timely notified of the public defender's position in regard to whether there is a conflict of interest in any particular case.~~

~~(3) The state public defender shall review the bills submitted for reimbursement by any contract attorney or investigator and may approve or deny the payment of such bills in whole or in part based upon the terms set forth in the contract rules negotiated between the state public defender and the contract attorney or investigator.~~

SECTION 3. 21-1-106, Colorado Revised Statutes, 1986 Repl. Vol., is amended to read:

21-1-106. Recoupment of fees and costs. In any case when a court determines that a defendant is able to repay all or part of the expense of state-supplied or court-appointed counsel or any ancillary expenses incurred in representing such defendant, the court shall assess such fees or costs against such defendant and shall notify the JUDICIAL DISTRICT'S COLLECTION INVESTIGATOR OR THE controller, who shall institute proceedings pursuant to section 24-30-202.4, C.R.S., AS necessary to recover such fees or costs.

SECTION 4. 18-1-403, Colorado Revised Statutes, 1986 Repl. Vol., is amended to read:

18-1-403. Legal assistance and supporting services. Except as provided in section 16-5-501, C.R.S., all indigent persons who are charged with or held for the commission of a crime are entitled to legal representation and supporting services at state expense, to the extent and in the manner provided for in ~~sections 21-1-103 to 21-1-105;~~ ARTICLES 1 AND 2 OF TITLE 21, C.R.S.

SECTION 5. Transfer of appropriation. For the purpose of implementing this act, any appropriation made to the judicial department, office of the public defender, for the fiscal year beginning July 1, 1996, that remains on January 1, 1997, for conflict of interest cases and any unreserved and unrestricted rollforward balance maintained as of January 1, 1997, for the purpose of making payments for conflict of interest cases shall be transferred to and may be expended by the judicial department,

office of alternate defense counsel, on or after January 1, 1997.

SECTION 6. Appropriation - adjustment in 1996 long bill. (1) In addition to any other appropriation, there is hereby appropriated, out of any moneys in the general fund not otherwise appropriated, to the judicial department, office of alternate defense counsel, for the fiscal year beginning July 1, 1996, the sum of one hundred one thousand nine hundred ninety-six dollars (\$101,996) and 1.3 FTE, or so much thereof as may be necessary, for the implementation of this act.

(2) For the implementation of this act, appropriations made in the annual general appropriation act for the fiscal year beginning July 1, 1996, shall be adjusted as follows:

(a) The general fund appropriation to the capital construction fund outlined in section 3 (1)(c) and (1)(e) is reduced by one hundred one thousand nine hundred ninety-six dollars (\$101,996).

(b) The capital construction fund exempt appropriation to the department of transportation, construction projects, is reduced by one hundred one thousand nine hundred ninety-six dollars (\$101,996).

SECTION 7. Future appropriation. It appears that this act will require an appropriation from the general fund to the judicial department, office of alternate defense counsel, for the fiscal year beginning July 1, 1997, and subsequent fiscal years, and the amount of the appropriation for the fiscal year beginning July 1, 1997, is estimated to be one hundred eight thousand five hundred sixty-eight dollars (\$108,568) and 1.0 FTE.

SECTION 8. Safety clause. The general assembly hereby finds, determines, and declares that this act is necessary for the immediate preservation of the public peace, health, and safety.

Approved: May 23, 1996