

# Colorado Revised Statutes 2017

## TITLE 21

### STATE PUBLIC DEFENDER

#### ARTICLE 1

##### State Public Defender

**Editor's note:** This article was numbered as article 21 of chapter 39, C.R.S. 1963. The provisions of this article were repealed and reenacted in 1969, resulting in the addition, relocation, and elimination of sections as well as subject matter. For amendments to this article prior to 1969, consult the Colorado statutory research explanatory note beginning on page vii in the front of this volume.

**21-1-101. Public defender - policy - commission.** (1) The office of state public defender is hereby created and established as an agency of the judicial department of state government. The general assembly hereby declares that the state public defender at all times shall serve his clients independently of any political considerations or private interests, provide legal services to indigent persons accused of crime 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.

(2) The Colorado supreme court shall provide for the appointment, terms, and procedure for a five-member public defender commission, no more than three of whom shall be from the same political party. Three of the members of the commission shall be attorneys admitted to practice law in this state, and two shall be citizens of Colorado not admitted to practice law in this state. 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.

(3) The public defender commission shall appoint and discharge, for cause, the state public defender, who shall be appointed to serve a term of five years and shall serve until his successor is appointed and qualified. He may be reappointed for one or more subsequent five-year terms. Vacancies in the office shall be filled by the public defender commission for the remainder of the unexpired term. The state public defender serving as such on July 1, 1979, shall continue to serve his current term.

(4) Members of the public defender commission shall serve without compensation but shall be reimbursed for actual and reasonable expenses incurred in the performance of their duties.

(5) Any expenses incurred for the commission shall be paid from the general operating budget of the office of the state public defender.

**Source:** L. 69: R&RE, p. 255, § 30. C.R.S. 1963: § 39-21-1. L. 79: Entire section R&RE, p. 770, § 1, effective July 1. L. 99: (1) amended, p. 632, § 52, effective August 4.

**21-1-102. State public defender - deputies and employees - regional offices.** (1) The state public defender shall have been licensed to practice law in this state for at least five years prior to his appointment, and he shall devote full time to the performance of his duties and shall not engage in the private practice of law.

(2) The compensation of the state public defender shall be fixed by the general assembly and may not be reduced during the term of his appointment.

(3) The state public defender shall employ and fix the compensation of a chief deputy public defender, deputy state public defenders, investigators, and any other employees necessary to discharge the functions of the office. All salaries shall be reviewed and approved by the Colorado supreme court. The chief deputy public defender and deputy public defenders shall serve, on a full-time basis, at the pleasure of the state public defender and shall not otherwise engage in the practice of law.

(4) The state public defender shall establish such regional offices as he deems necessary to carry out his duties under this article.

**Source:** L. 69: R&RE, p. 255, § 30. C.R.S. 1963: § 39-21-2. L. 79: Entire section R&RE, p. 771, § 2, effective July 1.

**21-1-103. Representation of indigent persons.** (1) The state public defender shall represent as counsel, without charge except as provided in subsection (3) of this section, each indigent person who is under arrest for or charged with committing a felony if:

(a) The defendant requests it and he complies with subsection (3) of this section; or

(b) The court, on its own motion or otherwise, so orders and the defendant does not affirmatively reject, of record, the opportunity to be represented by legal counsel in the proceeding. When appointed by the court, the office of the state public defender shall be limited to defending the indigent person and shall not be appointed to act as advisory counsel. The court shall not appoint a public defender to represent a defendant if such defendant does not fall within the fiscal standards or guidelines established by the supreme court for appointment of public defenders.

(2) The state public defender shall represent indigent persons charged in any court with crimes which constitute misdemeanors and in which the charged offense includes a possible sentence of incarceration; juveniles upon whom a delinquency petition is filed or who are in any way restrained by court order, process, or otherwise; persons held in any institution against their will by process or otherwise for the treatment of any disease or disorder or confined for the protection of the public; and such persons charged with municipal code violations as the state public defender in his or her discretion may determine, subject to review by the court if:

(a) The indigent person or his parent or legal guardian in delinquency or other actions under article 2 of title 19, C.R.S., requests it and complies with subsection (3) of this section; or

(b) The court, on its own motion or otherwise, so orders or requests and the defendant or his or her parent or legal guardian in delinquency or other actions under article 2 of title 19, C.R.S., does not affirmatively reject, of record, the opportunity to be represented by legal counsel in the proceeding. The court shall not appoint a public defender to represent the

defendant, or his or her parent or legal guardian, if such person does not fall within the fiscal standards or guidelines established by the supreme court.

(3) The determination of indigency shall be made by the state public defender, subject to review by the court. When a defendant or, if applicable, the defendant's parent or legal guardian requests representation by a public defender, such person shall submit an appropriate application, the form of which shall state that such application is signed under oath and under the penalty of perjury and that a false statement may be prosecuted as such. A nonrefundable processing fee of twenty-five dollars shall be paid by the applicant if the court-appointed counsel enters an appearance based upon the application. The fee shall be assessed at the time of sentencing or adjudication, if sentencing or adjudication occurs, or upon other final disposition of the case; except that the court may, at sentencing, adjudication, or other final disposition, waive the fee if the court determines, based upon the financial information submitted by the party being represented by the court-appointed counsel, that the person does not have the financial resources to pay the fee. Before the court appoints a public defender based on said application, the court shall advise the defendant or, if applicable, the defendant's parent or legal guardian that the application is signed under oath and under the penalty of perjury. A copy of the application shall be sent to the prosecuting attorney for review, and, upon request, the court shall hold a hearing on the issue of the eligibility for appointment of the public defender's office. Processing fees collected pursuant to this subsection (3) shall be transmitted to the state treasurer, who shall credit the same to the general fund.

(4) Nothing in this section shall be construed to authorize the public defender to represent or advise any person who is physically outside the state of Colorado and who has not made a court appearance in the pending matter in the state of Colorado.

(5) Nothing in this section may be construed to prevent the public defender, before determining indigency, from providing representation to juveniles in detention hearings.

**Source:** L. 69: R&RE, p. 255, § 30. C.R.S. 1963: § 39-21-3. L. 81: (2) amended, p. 929, § 3, effective September 1. L. 81: (4) added, p. 924, § 2, effective May 26. L. 88: (1)(a), (1)(b), (2)(a), (2)(b), and (3) amended, p. 665, § 6, effective July 1. L. 90: IP(1) and (3) amended, p. 1038, § 1, effective July 1. L. 92: (2)(a) and (2)(b) amended, p. 2176, § 31, effective June 2; (3) amended, p. 466, § 3, effective July 1. L. 2000: (1)(b), IP(2), and (2)(b) amended, p. 1480, § 5, effective August 2. L. 2004: (3) amended, p. 725, § 1, effective August 4. L. 2013: IP(2) amended, (HB 13-1210), ch. 306, p. 1624, § 4, effective January 1, 2014. L. 2014: (5) added, (HB 14-1032), ch. 247, p. 954, § 6, effective November 1.

**Cross references:** For appointment of counsel for indigent persons in insanity or incompetency proceedings, see § 16-8-119.

**21-1-104. Duties of public defender.** (1) When representing an indigent person, the state public defender, only after the conditions of section 21-1-103 have been met, shall:

(a) Counsel and defend him, whether he is held in custody, filed on as a delinquent, or charged with a criminal offense or municipal code violation 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 state public defender considers to be in the interest of justice, except as limited in subsection (3) of this section.

(2) In no case, however, shall the state public defender be required to prosecute any appeal or other remedy unless the state public defender is satisfied first that there is arguable merit to the proceeding.

(3) In order to expedite death penalty appeals, state moneys shall not be used to prosecute any appeal on behalf of the defendant in any class 1 felony case where the death penalty has been imposed that is not an appeal as of right in state court. In addition, in any class 1 felony case where the death penalty has been imposed, state moneys shall not be used to prosecute any federal habeas corpus proceeding on behalf of the petitioner, unless the petitioner is seeking to prevent extradition. For purposes of this subsection (3), "appeal as of right" means a direct appeal on behalf of the defendant of the validity of the underlying conviction and the propriety of the sentence and a motion for postconviction relief properly brought by the defendant in accordance with rule 35 of the Colorado rules of criminal procedure and any appeal on behalf of the defendant of the denial of such motion.

(4) Notwithstanding section 24-1-136 (11)(a)(I), pursuant to section 2-7-203, the state public defender shall report annually to the judiciary committees of the house of representatives and senate, or to any successor committees, information concerning:

(a) The number of juvenile delinquency cases for which counsel from the office is appointed;

(b) The number of juvenile cases that involve a conflict of interest;

(c) The process of selecting, training, and supporting attorneys who represent children in juvenile delinquency court;

(d) The average length of time attorneys are assigned to juvenile court; and

(e) The outcome of efforts to reduce juvenile court rotations and increase opportunities for promotional advancement in salaries for attorneys in juvenile court.

(5) The state public defender shall hire social workers, as defined in section 12-43-401 (11), C.R.S., to assist in defending juvenile defendants.

**Source:** L. 69: R&RE, p. 256, § 30. C.R.S. 1963: § 39-21-4. L. 81: IP(1) amended, p. 924, § 3, effective May 26. L. 94: (1)(b) amended and (3) added, p. 1475, § 4, effective July 1. L. 2014: (5) added, (HB 14-1023), ch. 177, p. 649, § 1, effective May 14; (4) added, (HB 14-1032), ch. 247, p. 955, § 9, effective November 1. L. 2017: IP(4) amended, (SB 17-233), ch. 175, p. 637, § 1, effective August 9.

**21-1-105. Appointment of other attorney or investigator in place of public defender - contracts for services. (Repealed)**

**Source:** L. 69: R&RE, p. 256, § 30. C.R.S. 1963: § 39-21-5. L. 95: Entire section amended, p. 1407, § 1, effective July 1. L. 96: Entire section repealed, p. 1015, § 2, effective May 23.

**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.

**Source: L. 81:** Entire section added, p. 1051, § 1, effective September 1. **L. 96:** Entire section amended, p. 1016, § 3, effective May 23.

## 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. 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 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.

(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 shall be attorneys admitted to practice law in this state who have experience in the practice of criminal defense, and three members of the commission shall be citizens of Colorado not admitted to practice law in this state. There shall be one member from each of the congressional districts in the 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.

(3.5) No later than September 30, 2007, the commission shall adopt written procedures governing the office of the alternate defense counsel, including but not limited to the hiring, evaluation, and termination of the alternate defense counsel; the resolution of contractual disputes involving the office of the alternate defense counsel; and the processing and resolution of complaints involving the office of the alternate defense counsel.

(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.

**Source:** L. 96: Entire article added, p. 1012, § 1, effective May 23. L. 2000: (1) amended, p. 1479, § 1, effective August 2. L. 2002: (2) amended, p. 944, § 4, effective August 7. L. 2007: (2) amended and (3.5) added, p. 323, § 1, effective April 2.

**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.

**Source:** L. 96: Entire article added, p 1013, § 1, effective May 23.

**21-2-103. Representation of 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 pursuant to subsection (1.5) of this section.

(b) (Deleted by amendment, L. 2000, p. 1479, § 2, effective August 2, 2000.)

(1.5) (a) To request withdrawal from a case due to a conflict of interest, the state public defender shall submit to the court having jurisdiction over the case a motion specifically describing the nature of the conflict of interest. If the state public defender determines that ethical obligations prevent a specific description of the nature of the conflict of interest, the state public defender shall cite any applicable legal authority for the determination, and the portion of the motion that specifically describes the nature of the conflict shall be sealed. In the event an issue arises later concerning whether an actual conflict existed, the sealed portion of the motion may be opened and examined by the original judge or by another judge if necessary to prevent the violation of an ethical obligation.

(b) Upon review of the motion, the court shall determine whether a conflict of interest exists that would require withdrawal of the state public defender and appointment of the alternate defense counsel.

(c) For purposes of this article, a "conflict of interest" may include, but need not be limited to, circumstances in which the state public defender represents a codefendant or a person who is a witness in the case or other circumstances identified in the Colorado rules of professional conduct or other rules of civil procedure as creating a conflict of interest. Case

overload, lack of resources, and other similar circumstances shall not constitute a "conflict of interest".

(d) If the court allows withdrawal of the state public defender and appoints the alternate defense counsel and it is later determined that no genuine conflict of interest existed, the office of the state public defender shall reimburse the office of the alternate defense counsel for the cost of the representation.

(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.

(3) (Deleted by amendment, L. 2000, p. 1479, § 2, effective August 2, 2000.)

(4) The office of alternate defense counsel shall provide legal representation for indigent persons by contracting with licensed attorneys and investigators pursuant to section 21-2-105.

**Source: L. 96:** Entire article added, p. 1014, § 1, effective May 23. **L. 99:** (1)(a) and (2) amended and (1.5) added, p. 874, § 1, effective August 4. **L. 2000:** (1)(b), (3), and (4) amended, p. 1479, § 2, effective August 2.

**21-2-104. Duties of alternate defense counsel and contract attorneys.** (1) When representing an 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.

(3) Pursuant to section 2-7-203, C.R.S., the office of alternate defense counsel shall report annually to the judiciary committees of the house of representatives and senate, or to any successor committees, information concerning:

(a) The number of juvenile delinquency cases for which counsel from the office is appointed;

(b) The number of juvenile cases that involve a conflict of interest;

(c) The process of selecting, training, and supporting attorneys who represent children in juvenile delinquency court;

(d) The average length of time attorneys are assigned to juvenile court; and

(e) The outcome of efforts to reduce juvenile court rotations and increase opportunities for promotional advancement in salaries for attorneys in juvenile court.

**Source: L. 96:** Entire article added, p. 1014, § 1, effective May 23. **L. 2000:** IP(1) amended, p. 1480, § 3, effective August 2. **L. 2014:** (3) added, (HB 14-1032), ch. 247, p. 955, § 10, effective November 1.

**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 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.

**Source: L. 96:** Entire article added, p. 1015, § 1, effective May 23. **L. 2000:** (1) amended, p. 1480, § 4, effective August 2.

**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.

**Source: L. 96:** Entire article added, p. 1015, § 1, effective May 23.

**21-2-107. Complaints against contracted attorneys - procedure.** (1) If a person files a claim for damages arising from professional negligence as a result of an act or omission committed by an attorney during the performance of the attorney's duties pursuant to a contract with the office of alternate defense counsel pursuant to section 21-2-105:

(a) The complainant shall file with the court a certificate of review in accordance with the provisions of part 6 of article 20 of title 13, C.R.S.;

(b) The attorney shall not be required to file an answer to the complaint until twenty days after the complainant files the accompanying certificate of review; and

(c) The office of the attorney general shall represent the attorney from the time of service of the complaint until the certificate of review is filed; except that, if the office of alternate defense counsel determines that the act or omission that is the basis of the claim did not occur during the performance of the attorney's duties pursuant to a contract with the office of alternate defense counsel pursuant to section 21-2-105:



(I) The office of alternate defense counsel shall notify the attorney and the office of the attorney general of said determination; and

(II) The office of the attorney general shall not represent the attorney.

(2) Upon the timely filing of a certificate of review as required in subsection (1) of this section, the court shall:

(a) Allow the office of the attorney general to withdraw from representation of the attorney; and

(b) If requested, allow the attorney to substitute new counsel to represent him or her.

(3) If the office of the attorney general represents an attorney pursuant to paragraph (c) of subsection (1) of this section and the court determines that the act or omission that is the basis of the claim did not occur during the performance of the attorney's duties pursuant to a contract with the office of alternate defense counsel pursuant to section 21-2-105, the office of the attorney general may request, and in response to such a request the court shall order, the attorney to reimburse the office of the attorney general for reasonable costs and reasonable attorney fees incurred by the office of the attorney general during the course of the representation.

(4) If a person files a claim for damages that arise from professional negligence as a result of an act or omission committed by an attorney during the performance of the attorney's duties pursuant to a contract with the office of alternate defense counsel pursuant to section 21-2-105 and the attorney's contract for insurance with his or her malpractice insurance carrier requires the attorney to notify the insurance carrier upon the filing of a claim against the attorney, the insurance carrier may not consider the claim in determining the amount of the attorney's future malpractice insurance premiums unless a certificate of review is timely filed pursuant to paragraph (a) of subsection (1) of this section.

**Source: L. 2010:** Entire section added, (SB 10-063), ch. 99, p. 339, § 1, effective August 11.