

Second Regular Session
Seventy-first General Assembly
STATE OF COLORADO

REREVISED

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

LLS NO. 18-0997.01 Richard Sweetman x4333

SENATE BILL 18-203

SENATE SPONSORSHIP

Marble,

HOUSE SPONSORSHIP

Lontine,

Senate Committees

Judiciary
Appropriations

House Committees

Judiciary
Appropriations

A BILL FOR AN ACT

101 **CONCERNING THE PROVISION OF INDEPENDENT COUNSEL TO INDIGENT**
102 **DEFENDANTS IN MUNICIPAL COURTS, AND, IN CONNECTION**
103 **THEREWITH, MAKING AN APPROPRIATION.**

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>.)

The bill requires each municipality, on and after January 1, 2020, to provide independent indigent defense for each indigent defendant facing a possible jail sentence for a violation of a municipal ordinance. Independent indigent defense requires, at minimum, that a nonpartisan entity independent of the municipal court and municipal officials oversee

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

HOUSE
3rd Reading Unamended
May 3, 2018

HOUSE
Amended 2nd Reading
May 2, 2018

SENATE
3rd Reading Unamended
April 17, 2018

SENATE
Amended 2nd Reading
April 16, 2018

the provision of indigent defense counsel. To satisfy this requirement, a municipality may:

- ! Contract directly with defense attorneys to provide independent indigent defense; or
- ! Establish a local or regional independent indigent defense commission to appoint and supervise defense counsel.

A municipality that contracts directly with defense attorneys to provide independent indigent defense shall ensure that oversight of such attorneys is provided by the office of alternate defense counsel, by a legal aid clinic at an accredited Colorado law school, or by a local or regional independent indigent defense commission.

The bill requires the state public defender to appoint the members of any local or regional independent indigent defense commission.

The bill sets forth an annual timeline by which a municipality may request and potentially receive the services of the office of alternate defense counsel to:

- ! Evaluate the provision of defense counsel to indigent defendants; or
- ! Provide defense counsel to indigent defendants at the expense of the municipality.

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

2 **SECTION 1.** In Colorado Revised Statutes, 13-10-114.5, **add as**
3 **it will become effective July 1, 2018,** (3) as follows:

4 **13-10-114.5. Representation by counsel - independent _____**
5 **indigent defense - definition.** (3) (a) ON AND AFTER JANUARY 1, 2020,
6 EACH MUNICIPALITY SHALL PROVIDE INDEPENDENT ___ INDIGENT DEFENSE
7 FOR EACH INDIGENT DEFENDANT CHARGED WITH A MUNICIPAL CODE
8 VIOLATION FOR WHICH THERE IS A POSSIBLE SENTENCE OF
9 INCARCERATION. INDEPENDENT INDIGENT DEFENSE REQUIRES, AT
10 MINIMUM, THAT A NONPARTISAN ENTITY INDEPENDENT OF THE MUNICIPAL
11 COURT AND MUNICIPAL OFFICIALS OVERSEE OR EVALUATE INDIGENT
12 DEFENSE COUNSEL.

13 (b) (I) BECAUSE THE OFFICE OF ALTERNATE DEFENSE COUNSEL
14 CREATED IN SECTION 21-2-101 IS AN INDEPENDENT SYSTEM OF INDIGENT

1 DEFENSE OVERSEEN BY AN INDEPENDENT COMMISSION, PROVISION OF
2 INDIGENT DEFENSE BY LAWYERS EVALUATED OR OVERSEEN BY THE OFFICE
3 OF ALTERNATE DEFENSE COUNSEL SATISFIES THE REQUIREMENT
4 DESCRIBED IN SUBSECTION (3)(a) OF THIS SECTION.

5 (II) BECAUSE A LEGAL AID CLINIC AT ANY COLORADO LAW SCHOOL
6 ACCREDITED BY THE AMERICAN BAR ASSOCIATION IS AN INDEPENDENT
7 SYSTEM OF INDIGENT DEFENSE OVERSEEN BY THE DEAN OF THE LAW
8 SCHOOL WITH WHICH IT IS AFFILIATED, ANY PROVISION OR OVERSIGHT OF
9 INDIGENT DEFENSE THROUGH A LEGAL AID CLINIC ASSOCIATED WITH ANY
10 COLORADO LAW SCHOOL ACCREDITED BY THE AMERICAN BAR
11 ASSOCIATION SATISFIES THE REQUIREMENT DESCRIBED IN SUBSECTION
12 (3)(a) OF THIS SECTION.

13 (c) TO SATISFY THE REQUIREMENT DESCRIBED IN SUBSECTION
14 (3)(a) OF THIS SECTION, A MUNICIPALITY THAT CONTRACTS DIRECTLY WITH
15 ONE OR MORE DEFENSE ATTORNEYS TO PROVIDE COUNSEL TO INDIGENT
16 DEFENDANTS SHALL ENSURE THAT:

17 (I) THE PROCESS TO SELECT INDIGENT DEFENSE ATTORNEYS IS
18 TRANSPARENT AND BASED ON MERIT; AND

19 (II) EACH CONTRACTED INDIGENT DEFENSE ATTORNEY IS
20 PERIODICALLY EVALUATED BY AN INDEPENDENT ENTITY FOR COMPETENCY
21 AND INDEPENDENCE. THE MUNICIPALITY SHALL EVALUATE EACH NEWLY
22 HIRED DEFENSE ATTORNEY AS SOON AS PRACTICABLE BUT NO LATER THAN
23 ONE YEAR AFTER HE OR SHE IS HIRED. OTHERWISE, THE MUNICIPALITY
24 SHALL EVALUATE EACH DEFENSE ATTORNEY AT LEAST EVERY THREE
25 YEARS. AN INDEPENDENT ENTITY THAT EVALUATES DEFENSE ATTORNEYS
26 PURSUANT TO THIS SUBSECTION (3)(c)(II) SHALL PROVIDE EVALUATION
27 RESULTS AND ANY RECOMMENDATIONS FOR CORRECTIVE ACTION IN

1 WRITING TO THE MUNICIPALITY. FOR THE PURPOSE OF THIS SUBSECTION

2 (3), "INDEPENDENT ENTITY" MEANS:

3 (A) THE OFFICE OF ALTERNATE DEFENSE COUNSEL;

4 (B) AN ATTORNEY OR A GROUP OF ATTORNEYS, EACH OF WHOM
5 HAS SUBSTANTIAL EXPERIENCE PRACTICING CRIMINAL DEFENSE IN
6 COLORADO WITHIN THE PRECEDING FIVE YEARS, SO LONG AS THE
7 ATTORNEY OR GROUP OF ATTORNEYS IS NOT AFFILIATED WITH THE
8 MUNICIPALITY RECEIVING THE SERVICES, INCLUDING ANY MUNICIPAL
9 JUDGE, PROSECUTOR, OR INDIGENT DEFENSE ATTORNEY; OR

10 (C) A LOCAL OR REGIONAL INDEPENDENT INDIGENT DEFENSE
11 COMMISSION, AS DESCRIBED IN SUBSECTION (3)(d) OF THIS SECTION.

12 (d) (I) TO SATISFY THE REQUIREMENT DESCRIBED IN SUBSECTION
13 (3)(a) OF THIS SECTION, A MUNICIPALITY MAY ESTABLISH A LOCAL
14 INDEPENDENT INDIGENT DEFENSE COMMISSION OR COORDINATE WITH ONE
15 OR MORE OTHER MUNICIPALITIES TO ESTABLISH A REGIONAL INDEPENDENT
16 INDIGENT DEFENSE COMMISSION. ANY LOCAL OR REGIONAL INDEPENDENT
17 INDIGENT DEFENSE COMMISSION IN EXISTENCE AS OF JANUARY 1, 2018, IS
18 DEEMED TO BE IN COMPLIANCE WITH THIS SUBSECTION (3)(d) AND MAY
19 CONTINUE AS ESTABLISHED.

20 (II) EACH LOCAL OR REGIONAL INDEPENDENT INDIGENT DEFENSE
21 COMMISSION MUST INCLUDE AT LEAST THREE MEMBERS, EACH OF WHOM
22 IS SELECTED BY THE CHIEF MUNICIPAL JUDGE IN CONSULTATION WITH THE
23 COLORADO CRIMINAL DEFENSE BAR, THE OFFICE OF ALTERNATE DEFENSE
24 COUNSEL, OR THE OFFICE OF THE STATE PUBLIC DEFENDER. PRIOR TO
25 SERVING ON A COMMISSION, ANY COMMISSION MEMBER WHO IS SELECTED
26 BY A CHIEF MUNICIPAL JUDGE MUST BE APPROVED BY THE OFFICE OF
27 ALTERNATE DEFENSE COUNSEL. THE OFFICE OF ALTERNATE DEFENSE

1 COUNSEL SHALL APPROVE SUCH APPOINTED COMMISSION MEMBERS WHOM
2 THE OFFICE, IN ITS DISCRETION, DEEMS LIKELY TO PROMOTE THE
3 PROVISION OF COMPETENT AND INDEPENDENT INDIGENT DEFENSE.

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6 (III) THE TERMS AND PROCEDURES FOR THE MEMBERS OF A LOCAL
7 OR REGIONAL INDEPENDENT INDIGENT DEFENSE COMMISSION MUST BE
8 DETERMINED BY THE MUNICIPALITY OR MUNICIPALITIES THAT ESTABLISH
9 THE INDEPENDENT INDIGENT DEFENSE COMMISSION.

10 (IV) A LOCAL OR REGIONAL INDEPENDENT INDIGENT DEFENSE
11 COMMISSION ESTABLISHED PURSUANT TO THIS SUBSECTION (3)(d) HAS THE
12 RESPONSIBILITY AND EXCLUSIVE AUTHORITY TO APPOINT INDIGENT
13 DEFENSE COUNSEL FOR A TERM OF AT LEAST ONE YEAR OR MORE TO BE
14 SERVED UNTIL A SUCCESSOR IS APPOINTED. THE INDEPENDENT
15 INDIGENT DEFENSE COMMISSION RETAINS SOLE AUTHORITY TO SUPERVISE
16 THE INDIGENT DEFENSE COUNSEL AND DISCHARGE HIM OR HER FOR CAUSE.

17 (V) A LOCAL OR REGIONAL INDEPENDENT INDIGENT DEFENSE
18 COMMISSION, THROUGH ITS ABILITY TO SUPERVISE, APPOINT, AND
19 DISCHARGE THE INDIGENT DEFENSE COUNSEL, SHALL ENSURE THAT
20 INDIGENT DEFENDANTS ACCUSED OF VIOLATIONS OF MUNICIPAL
21 ORDINANCES FOR WHICH THERE IS A POSSIBLE SENTENCE OF
22 INCARCERATION ARE REPRESENTED INDEPENDENTLY OF ANY POLITICAL
23 CONSIDERATIONS OR PRIVATE INTERESTS, THAT SUCH INDIGENT
24 DEFENDANTS RECEIVE LEGAL SERVICES THAT ARE COMMENSURATE WITH
25 THOSE AVAILABLE TO NONINDIGENT DEFENDANTS, AND THAT MUNICIPAL
26 INDIGENT DEFENSE ATTORNEYS PROVIDE REPRESENTATION IN
27 ACCORDANCE WITH THE COLORADO RULES OF PROFESSIONAL CONDUCT

1 AND THE AMERICAN BAR ASSOCIATION STANDARDS RELATING TO THE
2 ADMINISTRATION OF CRIMINAL JUSTICE.

3 (VI) A LOCAL OR REGIONAL INDEPENDENT == INDIGENT DEFENSE
4 COMMISSION SHALL NOT INTERFERE WITH THE DISCRETION, JUDGMENT,
5 AND ZEALOUS ADVOCACY OF INDIGENT DEFENSE ATTORNEYS IN SPECIFIC
6 CASES.

7 (VII) A LOCAL OR REGIONAL INDEPENDENT == INDIGENT DEFENSE
8 COMMISSION SHALL MAKE RECOMMENDATIONS TO ITS MUNICIPALITY OR
9 MUNICIPALITIES REGARDING THE PROVISION OF ADEQUATE MONETARY
10 RESOURCES TO PROVIDE LEGAL SERVICES TO INDIGENT DEFENDANTS
11 ACCUSED OF VIOLATIONS OF SUCH MUNICIPAL ORDINANCES.

12 (VIII) THE MEMBERS OF AN INDEPENDENT == INDIGENT DEFENSE
13 COMMISSION SHALL SERVE WITHOUT COMPENSATION; EXCEPT THAT A
14 MUNICIPALITY THAT ESTABLISHES A LOCAL INDEPENDENT == INDIGENT
15 DEFENSE COMMISSION OR THAT COORDINATES WITH ONE OR MORE OTHER
16 MUNICIPALITIES TO ESTABLISH A REGIONAL INDEPENDENT == INDIGENT
17 DEFENSE COMMISSION SHALL REIMBURSE THE MEMBERS OF THE
18 COMMISSION FOR ACTUAL AND REASONABLE EXPENSES INCURRED IN THE
19 PERFORMANCE OF THEIR DUTIES.

20 **SECTION 2.** In Colorado Revised Statutes, 21-2-103, **amend (1);**
21 **and add (5)** as follows:

22 **21-2-103. Representation of indigent persons.** (1) ~~On and after~~
23 ~~January 1, 1997,~~ The office of alternate defense counsel shall provide
24 legal representation in the following circumstances:

25 (a) IN cases involving conflicts of interest for the state public
26 defender as determined pursuant to subsection (1.5) of this section; AND

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

1 August 2, 2000.)

2 (c) TO INDIGENT PERSONS WHO ARE CHARGED WITH MUNICIPAL
3 CODE VIOLATIONS FOR WHICH THERE IS A POSSIBLE SENTENCE OF
4 INCARCERATION, AS THE ALTERNATE DEFENSE COUNSEL IN HIS OR HER
5 DISCRETION MAY DETERMINE, AND AS AVAILABLE RESOURCES ALLOW. THE
6 OFFICE OF ALTERNATE DEFENSE COUNSEL SHALL PROVIDE SUCH
7 REPRESENTATION ONLY PURSUANT TO A CONTRACT BETWEEN A
8 REQUESTING MUNICIPALITY AND THE OFFICE OF ALTERNATE DEFENSE
9 COUNSEL. ANY SUCH CONTRACT MUST REQUIRE THE MUNICIPALITY TO BE
10 FINANCIALLY RESPONSIBLE FOR ALL SERVICES RENDERED AND EXPENSES
11 INCURRED BY CONTRACTORS TO DEFEND PERSONS CHARGED WITH SUCH
12 MUNICIPAL CODE VIOLATIONS IN THE CONTRACTING MUNICIPALITY. THE
13 OFFICE OF ALTERNATE DEFENSE COUNSEL IS NOT REQUIRED TO CONTRACT
14 WITH ANY MUNICIPALITY UNLESS THE OFFICE OF ALTERNATE DEFENSE
15 COUNSEL DETERMINES THAT THE MUNICIPALITY HAS SUFFICIENT FUNDING
16 AND PERSONNEL TO ADMINISTER AND OVERSEE THE CONTRACTS FOR THE
17 PROVISION OF INDIGENT DEFENSE SERVICES IN THAT MUNICIPALITY.

18 (5) THE OFFICE OF ALTERNATE DEFENSE COUNSEL MAY, BUT IS NOT
19 REQUIRED TO, EVALUATE THE PERFORMANCE OF ATTORNEYS PROVIDING
20 INDIGENT DEFENSE IN MUNICIPAL COURTS AT THE REQUEST OF ANY
21 MUNICIPALITY, AS DESCRIBED IN SECTION 13-10-114.5 (3)(c)(II). THE
22 OFFICE OF ALTERNATE DEFENSE COUNSEL SHALL NOT PERFORM ANY SUCH
23 EVALUATIONS WITHOUT SUFFICIENT FUNDING FOR PERSONNEL TO PERFORM
24 SUCH EVALUATIONS.

25 **SECTION 3.** In Colorado Revised Statutes, **add** 21-2-108 as
26 follows:

27 **21-2-108. Conflict-free defense for indigent persons in**

1 **municipal courts - fund created.** (1) FOR THE PURPOSES OF SECTION
2 21-2-103 (1)(c) AND (5), ANY MUNICIPALITY THAT WANTS TO UTILIZE THE
3 SERVICES OF THE OFFICE OF ALTERNATE DEFENSE COUNSEL MAY REQUEST
4 SUCH SERVICES AS PROVIDED IN THIS SECTION.

5 (2) A MUNICIPALITY THAT WANTS TO UTILIZE THE SERVICES OF THE
6 OFFICE OF ALTERNATE DEFENSE COUNSEL TO EVALUATE THE PROVISION OF
7 DEFENSE COUNSEL TO INDIGENT DEFENDANTS AS DESCRIBED IN SECTION
8 13-10-114.5 (3)(c)(II)(A) DURING THE NEXT CALENDAR YEAR SHALL
9 REQUEST SUCH SERVICES ON OR BEFORE SEPTEMBER 1, 2018, AND ON OR
10 BEFORE SEPTEMBER 1 EACH YEAR THEREAFTER.

11 (3) ON OR BEFORE MAY 1, 2019, AND ON OR BEFORE MAY 1 EACH
12 YEAR THEREAFTER, THE OFFICE OF ALTERNATE DEFENSE COUNSEL SHALL
13 INFORM EACH MUNICIPALITY THAT REQUESTED THE EVALUATION SERVICES
14 OF THE OFFICE PURSUANT TO SUBSECTION (2) OF THIS SECTION WHETHER
15 THE OFFICE HAS SUFFICIENT FUNDING TO PROVIDE THE SERVICES AND
16 WHETHER THE OFFICE CAN COMMIT TO PROVIDING SUCH SERVICES DURING
17 THE NEXT CALENDAR YEAR.

18 (4) ON OR BEFORE JANUARY 1, 2020, AND ON OR BEFORE JANUARY
19 1 EACH YEAR THEREAFTER, THE OFFICE OF ALTERNATE DEFENSE COUNSEL
20 SHALL BEGIN EVALUATING THE PROVISION OF DEFENSE COUNSEL TO
21 INDIGENT DEFENDANTS IN EACH MUNICIPALITY TO WHICH THE OFFICE
22 COMMITTED SUCH SERVICES PURSUANT TO SUBSECTION (3) OF THIS
23 SECTION.

24 (5) A MUNICIPALITY THAT WANTS TO UTILIZE THE OFFICE OF
25 ALTERNATE DEFENSE COUNSEL TO PROVIDE A LIST OF APPROVED
26 ATTORNEYS TO BE USED FOR INDIGENT DEFENSE DURING THE NEXT
27 CALENDAR YEAR SHALL REQUEST SUCH SERVICES ON OR BEFORE

1 SEPTEMBER 1, 2020, OR ON OR BEFORE SEPTEMBER 1 EACH YEAR
2 THEREAFTER.

3 (6) ON OR BEFORE MAY 1, 2021, AND ON OR BEFORE MAY 1 EACH
4 YEAR THEREAFTER, THE OFFICE OF ALTERNATE DEFENSE COUNSEL SHALL
5 INFORM EACH MUNICIPALITY THAT REQUESTED THE LEGAL DEFENSE
6 SERVICES OF THE OFFICE PURSUANT TO SUBSECTION (5) OF THIS SECTION
7 WHETHER THE OFFICE HAS SUFFICIENT FUNDING TO PROVIDE THE SERVICES
8 AND WHETHER THE OFFICE CAN COMMIT TO PROVIDING SUCH SERVICES
9 DURING THE NEXT CALENDAR YEAR.

10 (7) ON OR BEFORE JANUARY 1, 2022, AND ON OR BEFORE JANUARY
11 1 EACH YEAR THEREAFTER, THE OFFICE OF ALTERNATE DEFENSE COUNSEL
12 SHALL PROVIDE A LIST OF APPROVED INDIGENT DEFENSE COUNSEL TO
13 EACH MUNICIPALITY TO WHICH THE OFFICE COMMITTED SUCH SERVICES
14 PURSUANT TO SUBSECTION (6) OF THIS SECTION.

15 (8) THERE IS CREATED IN THE STATE TREASURY THE
16 CONFLICT-FREE MUNICIPAL DEFENSE FUND, REFERRED TO IN THIS
17 SUBSECTION (8) AS THE "FUND", WHICH CONSISTS OF ANY MONEY
18 COLLECTED FROM MUNICIPALITIES AND CREDITED TO THE FUND AND
19 ANY OTHER MONEY THAT THE GENERAL ASSEMBLY MAY APPROPRIATE OR
20 TRANSFER TO THE FUND. MONEY IN THE FUND IS CONTINUOUSLY
21 APPROPRIATED TO THE OFFICE OF ALTERNATE DEFENSE COUNSEL FOR
22 THE PURPOSES DESCRIBED IN THIS SECTION. THE STATE TREASURER SHALL
23 CREDIT ALL INTEREST DERIVED FROM THE DEPOSIT AND INVESTMENT OF
24 MONEY IN THE FUND TO THE FUND. ANY MONEY NOT APPROPRIATED BY
25 THE GENERAL ASSEMBLY MUST REMAIN IN THE FUND AND SHALL NOT BE
26 TRANSFERRED OR REVERT TO THE GENERAL FUND AT THE END OF ANY
27 FISCAL YEAR.

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SECTION 4. Appropriation. For the 2018-19 state fiscal year, \$124,263 is appropriated to the judicial department for use by the office of the alternate defense counsel. This appropriation is from the general fund and is based on an assumption that the office will require an additional 0.8 FTE. To implement this act, the office may use this appropriation for the municipal court program.

SECTION 5. Act subject to petition - effective date. This act takes effect at 12:01 a.m. on the day following the expiration of the ninety-day period after final adjournment of the general assembly (August 8, 2018, if adjournment sine die is on May 9, 2018); except that, if a referendum petition is filed pursuant to section 1 (3) of article V of the state constitution against this act or an item, section, or part of this act within such period, then the act, item, section, or part will not take effect unless approved by the people at the general election to be held in November 2018 and, in such case, will take effect on the date of the official declaration of the vote thereon by the governor.