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Nonpartisan Services for Colorado's Legislature

REVISED FISCAL NOTE

(replaces fiscal note dated March 20, 2018)

Drafting Number: LLS 18-0997 Date: April 30, 2018
Prime Sponsors: Sen. Marble Bill Status: House Appropriations
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Bill Topic: CONFLICT-FREE REPRESENTATION IN MUNICIPAL COURTS

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

This bill requires municipalities to provide independent defense and to have such defense evaluated by an independent entity. This bill potentially increases state revenue and increases state and local government expenditures and workload on an ongoing basis.

Appropriation Summary: For FY 2018-19, this bill requires an appropriation of \$124,263 to the Office of the Alternate Defense Counsel.

Fiscal Note Status: This fiscal note reflects the reengrossed bill, as amended by the House Judiciary Committee.

Table 1
State Fiscal Impacts Under SB 18-203

Table with 5 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 independent indigent defense (independent defense) for each indigent defendant charged with a crime that has a possible sentence of incarceration. Independent defense is to be overseen by the municipality, but must be provided by a nonpartisan entity that is independent of the municipal court by January 1, 2020. The Office of the Alternate Defense Counsel (OADC) or any Colorado law school legal aid clinic that is accredited by the American Bar Association (ABA) is authorized to provide or evaluate independent defense.

Indigent defense contract requirements. Municipalities contracting for the provision of independent indigent defense must ensure that:

- the independent defense selection process is transparent and merit based;
- each contracted indigent defense attorney is evaluated by an independent entity no later than one year after being hired and at least every three years thereafter; and
- evaluation results must be provided in writing to the municipality along with any corrective action recommendations.

Local or regional independent defense commission. Municipalities may establish a local independent defense commission or coordinate with one or more other municipalities to create a regional independent defense commission. Any such commission must include at least three commissioners. Any commission created:

- has the responsibility and exclusive authority to appoint independent defense counsel for a term of at least one year;
- has the sole authority to supervise appointed independent 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 ABA standards; and
- must make recommendations on adequate legal resources needed to provide independent defense.

Office of the Alternate Defense Counsel. A contract in which the municipality is financially responsible for all services rendered and expenses incurred is required in order for the OADC to provide defense to indigent offenders in municipal court. Subject to available appropriations, the OADC may also provide municipal independent defense evaluation services. The municipality is not required to pay for OADC evaluation services. The bill creates the Conflict-Free Municipal Defense Fund for the receipt of any such funds and any money appropriated by the General Assembly.

Municipalities that wish to use the OADC for independent defense or evaluation services, must request such services on or before the timeline specified in the bill. The OADC is required to notify municipalities requesting independent defense or evaluation services of its ability to provide such services by the dates specified in the bill.

Background and Assumptions

There are over 200 municipal courts in Colorado. Most municipalities contract with local attorneys for the provision of indigent legal defense, 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 independent defense. However, municipalities will need to implement an independent defense evaluation program either through a contract or a local or regional independent defense commission in order to fully comply with this bill. It is assumed between 30 and 50 municipalities will request OADC provide independent defense evaluation. Additional or fewer appropriations, if required, will be requested through the annual budget process.

The OADC provides representation for 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 2019-20 and continuing thereafter, to the extent that the OADC contracts with a municipality for the provision of independent defense, 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 independent defense and have not been estimated. This revenue is exempt from TABOR

State Expenditures

This bill increases state expenditures by \$147,846 and 0.9 FTE in FY 2018-19 and by \$245,635 and 1.9 FTE in FY 2019-20. Full-year costs of \$246,554 and 2.0 FTE begin in FY 2020-21 and continue each year thereafter. 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 Alternate Defense Counsel			
Personal Services	\$118,800	\$190,076	\$194,397
Operating Expenses and Capital Outlay Costs	\$5,463	\$6,508	\$1,900
Travel Expenses	-	\$6,009	\$6,009
Centrally Appropriated Costs*	\$23,583	\$43,042	\$44,248
FTE – Personal Services	0.9 FTE	1.9 FTE	2.0 FTE
Total Cost	\$147,846	\$245,635	\$246,554
Total FTE	0.8 FTE	1.9 FTE	2.0 FTE

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

OADC — municipal courts coordinator/evaluator. Beginning in FY 2018-19, the OADC requires 1.0 FTE for a municipal courts coordinator/evaluator. 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.

This position will set up the municipal independent defense program within the OADC and provide guidance to municipalities requesting indigent evaluation or contractual defense services. By September 1, 2018, this position will review requests for OADC evaluation services, which must be approved by May 1, 2019. Evaluation will begin on January 1, 2020 for an assumed 30 to 50 municipalities. Standard operating and capital outlay costs are included, as well as travel costs for evaluations taking place outside of the Denver metro area. FY 2018-19 costs are prorated for the General Fund paydate shift and the bill's effective date. The exact number of municipalities requesting evaluation services is unknown, should additional or fewer appropriations be needed, they will be requested through the annual budget process.

OADC — administrative specialist. Beginning in FY 2019-20, the OADC requires 1.0 FTE for an administrative specialist to provide support to the coordinator/evaluator, assist with the compilation of municipal evaluation contract materials, compile an evaluation schedule, and make travel arrangements for between 30 and 50 municipal independent defense evaluations. Standard operating and capital outlay costs are included and FY 2019-20 costs are prorated for the General Fund paydate shift.

OADC — contract costs. Costs may increase to contract with additional attorneys to provide independent representation for municipalities that have requested such representation. These costs have not been estimated, but are assumed to be offset by revenue received from the municipality utilizing these services.

Higher Education/law school clinic. To the extent that municipalities contract with a law school legal aid clinic for independent evaluation services, costs and workload will increase. These costs have not been estimated, but are assumed to be offset by revenue received from the municipality utilizing these services.

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 \$23,583 in FY 2018-19, \$43,042 in FY 2019-20, and \$44,248 in FY 2020-21.

Local Government

Beginning in FY 2019-20, this bill increases municipal government costs and workload as described below.

Indigent defense. Municipal costs are increased to implement independent defense programs. To the extent that municipalities choose to contract with the OADC 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 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, the net impact is expected to be minimal.

Indigent evaluation. To the extent a municipality contracts with a law clinic for independent indigent defense evaluation, costs may increase. Should a municipality choose to create a local or regional commission, member expense reimbursement and workload will increase. These impacts will vary by municipality and have not been estimated.

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 Appropriations

For FY 2018-19, this bill requires an appropriation of \$124,263 and an allocation of 0.9 FTE from the General Fund to the Office of Alternate Defense Counsel.

State and Local Government Contacts

Alternate Defense Counsel
Judicial
Public Defender

District Attorneys
Local Affairs

Information Technology
Municipalities