

## CHAPTER 354

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**COURTS**


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## SENATE BILL 18-203

BY SENATOR(S) Marble, Aguilar, Court, Fields, Garcia, Guzman, Kagan, Kefalas, Kerr, Merrifield, Moreno, Neville T., Tate, Todd, Williams A.;

also REPRESENTATIVE(S) Lontine, Arndt, Bridges, Buckner, Coleman, Exum, Hansen, Hooton, Jackson, Kennedy, Lee, Melton, Michaelson Jenet, Pettersen, Rosenthal, Salazar, Singer, Weissman, Young, Duran.

## AN ACT

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

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

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

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

(b) (I) BECAUSE THE OFFICE OF ALTERNATE DEFENSE COUNSEL CREATED IN SECTION 21-2-101 IS AN INDEPENDENT SYSTEM OF INDIGENT DEFENSE OVERSEEN BY AN INDEPENDENT COMMISSION, PROVISION OF INDIGENT DEFENSE BY LAWYERS EVALUATED OR OVERSEEN BY THE OFFICE OF ALTERNATE DEFENSE COUNSEL SATISFIES THE REQUIREMENT DESCRIBED IN SUBSECTION (3)(a) OF THIS SECTION.

(II) BECAUSE A LEGAL AID CLINIC AT ANY COLORADO LAW SCHOOL ACCREDITED BY THE AMERICAN BAR ASSOCIATION IS AN INDEPENDENT SYSTEM OF INDIGENT DEFENSE OVERSEEN BY THE DEAN OF THE LAW SCHOOL WITH WHICH IT IS AFFILIATED, ANY PROVISION OR OVERSIGHT OF INDIGENT DEFENSE THROUGH A LEGAL AID CLINIC ASSOCIATED WITH ANY COLORADO LAW SCHOOL ACCREDITED BY THE AMERICAN

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*Capital letters or bold & italic numbers indicate new material added to existing statutes; dashes through words indicate deletions from existing statutes and such material not part of act.*

BAR ASSOCIATION SATISFIES THE REQUIREMENT DESCRIBED IN SUBSECTION (3)(a) OF THIS SECTION.

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

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

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

(A) THE OFFICE OF ALTERNATE DEFENSE COUNSEL;

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

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

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

(II) EACH LOCAL OR REGIONAL INDEPENDENT INDIGENT DEFENSE COMMISSION MUST INCLUDE AT LEAST THREE MEMBERS, EACH OF WHOM IS SELECTED BY THE CHIEF MUNICIPAL JUDGE IN CONSULTATION WITH THE COLORADO CRIMINAL DEFENSE BAR, THE OFFICE OF ALTERNATE DEFENSE COUNSEL, OR THE OFFICE OF THE STATE PUBLIC DEFENDER. PRIOR TO SERVING ON A COMMISSION, ANY COMMISSION MEMBER WHO IS SELECTED BY A CHIEF MUNICIPAL JUDGE MUST BE APPROVED BY THE OFFICE OF ALTERNATE DEFENSE COUNSEL. THE OFFICE OF ALTERNATE DEFENSE COUNSEL SHALL APPROVE SUCH APPOINTED COMMISSION MEMBERS WHOM THE OFFICE, IN ITS DISCRETION, DEEMS LIKELY TO PROMOTE THE PROVISION OF COMPETENT AND INDEPENDENT INDIGENT DEFENSE.

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

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

(V) A LOCAL OR REGIONAL INDEPENDENT INDIGENT DEFENSE COMMISSION, THROUGH ITS ABILITY TO SUPERVISE, APPOINT, AND DISCHARGE THE INDIGENT DEFENSE COUNSEL, SHALL ENSURE THAT INDIGENT DEFENDANTS ACCUSED OF VIOLATIONS OF MUNICIPAL ORDINANCES FOR WHICH THERE IS A POSSIBLE SENTENCE OF INCARCERATION ARE REPRESENTED INDEPENDENTLY OF ANY POLITICAL CONSIDERATIONS OR PRIVATE INTERESTS, THAT SUCH INDIGENT DEFENDANTS RECEIVE LEGAL SERVICES THAT ARE COMMENSURATE WITH THOSE AVAILABLE TO NONINDIGENT DEFENDANTS, AND THAT MUNICIPAL INDIGENT DEFENSE ATTORNEYS PROVIDE REPRESENTATION IN ACCORDANCE WITH THE COLORADO RULES OF PROFESSIONAL CONDUCT AND THE AMERICAN BAR ASSOCIATION STANDARDS RELATING TO THE ADMINISTRATION OF CRIMINAL JUSTICE.

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

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

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

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

**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) IN cases involving conflicts of interest for the state public defender as

determined pursuant to subsection (1.5) of this section; AND

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

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

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

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

**21-2-108. Conflict-free defense for indigent persons in municipal courts - fund created.** (1) FOR THE PURPOSES OF SECTION 21-2-103 (1)(c) AND (5), ANY MUNICIPALITY THAT WANTS TO UTILIZE THE SERVICES OF THE OFFICE OF ALTERNATE DEFENSE COUNSEL MAY REQUEST SUCH SERVICES AS PROVIDED IN THIS SECTION.

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

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

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

(5) A MUNICIPALITY THAT WANTS TO UTILIZE THE OFFICE OF ALTERNATE DEFENSE COUNSEL TO PROVIDE A LIST OF APPROVED ATTORNEYS TO BE USED FOR INDIGENT DEFENSE DURING THE NEXT CALENDAR YEAR SHALL REQUEST SUCH SERVICES ON OR BEFORE SEPTEMBER 1, 2020, OR ON OR BEFORE SEPTEMBER 1 EACH YEAR THEREAFTER.

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

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

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

**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.

Approved: June 1, 2018