

Second Regular Session
Seventieth General Assembly
STATE OF COLORADO

PREAMENDED

*This Unofficial Version Includes Committee
Amendments Not Yet Adopted on Second Reading*

LLS NO. 16-0971.01 Richard Sweetman x4333

HOUSE BILL 16-1309

HOUSE SPONSORSHIP

Lontine,

SENATE SPONSORSHIP

Marble,

House Committees

Judiciary

Senate Committees

State, Veterans, & Military Affairs

Finance

A BILL FOR AN ACT

101 **CONCERNING A DEFENDANT'S RIGHT TO COUNSEL IN CERTAIN CASES**

102 **CONSIDERED BY MUNICIPAL COURTS.**

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://www.leg.state.co.us/billsummaries>.)

At the time of first appearance on a municipal charge, if the defendant is in custody and the charged offense includes a possible sentence of incarceration, the court shall appoint counsel to represent the defendant for purposes of the initial appearance unless, after a full advisement, the defendant makes a knowing, intelligent, and voluntary waiver of his or her right to counsel.

Shading denotes HOUSE amendment. Double underlining denotes SENATE amendment.

Capital letters indicate new material to be added to existing statute.

Dashes through the words indicate deletions from existing statute.

HOUSE
3rd Reading Unamended
April 1, 2016

HOUSE
2nd Reading Unamended
March 31, 2016

If the defendant remains in custody, the appointment of counsel continues until the defendant is released from custody. If the defendant is released from custody, he or she may apply for court-appointed counsel, and the court shall appoint counsel if the court determines that the defendant is indigent and the charged offense includes a possible sentence of incarceration.

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

2 **SECTION 1. Legislative declaration.** The general assembly
3 hereby finds and declares that the both the United States and Colorado
4 constitutions provide that an accused person has the right to be
5 represented by counsel in criminal prosecutions. This constitutional right
6 has been interpreted to mean that counsel will be provided at government
7 expense for indigent persons in all cases in which incarceration is a
8 possible penalty, unless there is a knowing, intelligent, and voluntary
9 waiver of the right to counsel.

10 **SECTION 2.** In Colorado Revised Statutes, **add** 13-10-114.5 as
11 follows:

12 **13-10-114.5. Representation by counsel.** (1) AT THE TIME OF
13 FIRST APPEARANCE ON A MUNICIPAL CHARGE, IF THE DEFENDANT IS IN
14 CUSTODY AND THE CHARGED OFFENSE INCLUDES A POSSIBLE SENTENCE OF
15 INCARCERATION, THE COURT SHALL APPOINT COUNSEL FROM THE STATE
16 PUBLIC DEFENDER'S OFFICE TO REPRESENT THE DEFENDANT FOR PURPOSES
17 OF THE INITIAL APPEARANCE UNLESS, AFTER A FULL ADVISEMENT
18 PURSUANT TO C.M.C.R. 210 AND SECTION 16-7-207, C.R.S., THE
19 DEFENDANT MAKES A KNOWING, INTELLIGENT, AND VOLUNTARY WAIVER
20 OF HIS OR HER RIGHT TO COUNSEL.

21 (2) IF THE DEFENDANT REMAINS IN CUSTODY, THE APPOINTMENT
22 OF COUNSEL CONTINUES UNTIL THE DEFENDANT IS RELEASED FROM

1 CUSTODY. IF THE DEFENDANT IS RELEASED FROM CUSTODY, HE OR SHE
2 MAY APPLY FOR COURT-APPOINTED COUNSEL, AND THE COURT SHALL
3 APPOINT COUNSEL FROM THE STATE PUBLIC DEFENDER'S OFFICE IF THE
4 COURT DETERMINES THAT THE DEFENDANT IS INDIGENT AND THE CHARGED
5 OFFENSE INCLUDES A POSSIBLE SENTENCE OF INCARCERATION.

6 **SECTION 3.** In Colorado Revised Statutes, 16-7-207, **add** (3) as
7 follows:

8 **16-7-207. Court's duty to inform on first appearance in court**
9 **and on pleas of guilty.** (3) THIS SECTION APPLIES TO PROSECUTIONS FOR
10 VIOLATIONS OF MUNICIPAL CHARTERS AND PROSECUTIONS FOR
11 VIOLATIONS OF MUNICIPAL ORDINANCES.

12 **SECTION 4.** In Colorado Revised Statutes, 21-1-104, **add** (6) as
13 follows:

14 **21-1-104. Duties of public defender.** (6) THE STATE PUBLIC
15 DEFENDER SHALL PROVIDE COUNSEL TO DEFENDANTS IN MUNICIPAL
16 COURTS WHEN SUCH COUNSEL IS APPOINTED BY A MUNICIPAL COURT
17 PURSUANT TO SECTION 13-10-114.5, C.R.S.

18 **SECTION 5. Act subject to petition - effective date.** This act
19 takes effect at 12:01 a.m. on the day following the expiration of the
20 ninety-day period after final adjournment of the general assembly (August
21 10, 2016, if adjournment sine die is on May 11, 2016); except that, if a
22 referendum petition is filed pursuant to section 1 (3) of article V of the
23 state constitution against this act or an item, section, or part of this act
24 within such period, then the act, item, section, or part will not take effect
25 unless approved by the people at the general election to be held in
26 November 2016 and, in such case, will take effect on the date of the
27 official declaration of the vote thereon by the governor.