

Second Regular Session
Seventy-first General Assembly
STATE OF COLORADO

INTRODUCED

LLS NO. 18-0997.01 Richard Sweetman x4333

SENATE BILL 18-203

SENATE SPONSORSHIP

Marble,

HOUSE SPONSORSHIP

Lontine,

Senate Committees

Judiciary

House Committees

A BILL FOR AN ACT

101 CONCERNING THE PROVISION OF INDEPENDENT COUNSEL TO INDIGENT
102 DEFENDANTS IN 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://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 the provision of indigent defense counsel. To satisfy this requirement, a

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.

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

12 (b) (I) BECAUSE THE OFFICE OF ALTERNATE DEFENSE COUNSEL
13 CREATED IN SECTION 21-2-101 IS AN INDEPENDENT SYSTEM OF INDIGENT
14 DEFENSE OVERSEEN BY AN INDEPENDENT COMMISSION, ANY PROVISION OR

1 OVERSIGHT OF INDIGENT DEFENSE BY THE OFFICE OF ALTERNATE DEFENSE
2 COUNSEL SATISFIES THE REQUIREMENT DESCRIBED IN SUBSECTION (3)(a)
3 OF THIS SECTION.

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

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

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

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

1 RECOMMENDATIONS FOR CORRECTIVE ACTION IN WRITING TO THE
2 MUNICIPALITY. FOR THE PURPOSE OF THIS SUBSECTION (3), "INDEPENDENT
3 ENTITY" MEANS:

4 (A) THE OFFICE OF ALTERNATE DEFENSE COUNSEL;

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

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

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

21 (II) EACH LOCAL OR REGIONAL INDEPENDENT INDIGENT DEFENSE
22 COMMISSION MUST INCLUDE AT LEAST THREE MEMBERS, EACH OF WHOM
23 IS APPOINTED BY THE STATE PUBLIC DEFENDER PURSUANT TO SECTION
24 21-1-104 (6).

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

1 THE INDEPENDENT INDIGENT DEFENSE COMMISSION.

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

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

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

26 (VII) A LOCAL OR REGIONAL INDEPENDENT INDIGENT DEFENSE
27 COMMISSION SHALL MAKE RECOMMENDATIONS TO ITS MUNICIPALITY OR

1 MUNICIPALITIES REGARDING THE PROVISION OF ADEQUATE MONETARY
2 RESOURCES TO PROVIDE LEGAL SERVICES TO INDIGENT DEFENDANTS
3 ACCUSED OF VIOLATIONS OF SUCH MUNICIPAL ORDINANCES.

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

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

14 **21-2-103. Representation of indigent persons.** (1) ~~On and after~~
15 ~~January 1, 1997,~~ The office of alternate defense counsel shall provide
16 legal representation in the following circumstances:

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

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

21 (c) TO INDIGENT PERSONS WHO ARE CHARGED WITH MUNICIPAL
22 CODE VIOLATIONS FOR WHICH THERE IS A POSSIBLE SENTENCE OF
23 INCARCERATION, AS THE ALTERNATE DEFENSE COUNSEL IN HIS OR HER
24 DISCRETION MAY DETERMINE, AND AS AVAILABLE RESOURCES ALLOW. THE
25 OFFICE OF ALTERNATE DEFENSE COUNSEL SHALL PROVIDE SUCH
26 REPRESENTATION ONLY PURSUANT TO A CONTRACT BETWEEN A
27 REQUESTING MUNICIPALITY AND THE OFFICE OF ALTERNATE DEFENSE

1 COUNSEL. ANY SUCH CONTRACT MUST REQUIRE THE MUNICIPALITY TO BE
2 FINANCIALLY RESPONSIBLE FOR ALL SERVICES RENDERED AND EXPENSES
3 INCURRED BY CONTRACTORS TO DEFEND PERSONS CHARGED WITH SUCH
4 MUNICIPAL CODE VIOLATIONS IN THE CONTRACTING MUNICIPALITY. THE
5 OFFICE OF ALTERNATE DEFENSE COUNSEL IS NOT REQUIRED TO CONTRACT
6 WITH ANY MUNICIPALITY UNLESS THE OFFICE OF ALTERNATE DEFENSE
7 COUNSEL DETERMINES THAT THE MUNICIPALITY HAS SUFFICIENT FUNDING
8 AND PERSONNEL TO ADMINISTER AND OVERSEE THE CONTRACTS FOR THE
9 PROVISION OF INDIGENT DEFENSE SERVICES IN THAT MUNICIPALITY.

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

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

19 **21-2-108. Conflict-free defense for indigent persons in**
20 **municipal courts - fund created.** (1) FOR THE PURPOSES OF SECTION
21 21-2-103 (1)(c) AND (5), ANY MUNICIPALITY THAT WANTS TO UTILIZE THE
22 SERVICES OF THE OFFICE OF ALTERNATE DEFENSE COUNSEL MAY REQUEST
23 SUCH SERVICES AS PROVIDED IN THIS SECTION.

24 (2) A MUNICIPALITY THAT WANTS TO UTILIZE THE SERVICES OF THE
25 OFFICE OF ALTERNATE DEFENSE COUNSEL TO EVALUATE THE PROVISION OF
26 DEFENSE COUNSEL TO INDIGENT DEFENDANTS AS DESCRIBED IN SECTION
27 13-10-114.5 (3)(c)(II)(A) DURING THE NEXT CALENDAR YEAR SHALL

1 REQUEST SUCH SERVICES ON OR BEFORE SEPTEMBER 1, 2018, AND ON OR
2 BEFORE SEPTEMBER 1 EACH YEAR THEREAFTER.

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

10 (4) ON OR BEFORE JANUARY 1, 2020, AND ON OR BEFORE JANUARY
11 1 EACH YEAR THEREAFTER, THE OFFICE OF ALTERNATE DEFENSE COUNSEL
12 SHALL BEGIN EVALUATING THE PROVISION OF DEFENSE COUNSEL TO
13 INDIGENT DEFENDANTS IN EACH MUNICIPALITY TO WHICH THE OFFICE
14 COMMITTED SUCH SERVICES PURSUANT TO SUBSECTION (3) OF THIS
15 SECTION.

16 (5) A MUNICIPALITY THAT WANTS TO UTILIZE THE OFFICE OF
17 ALTERNATE DEFENSE COUNSEL TO PROVIDE DEFENSE COUNSEL TO
18 INDIGENT DEFENDANTS AS DESCRIBED IN SECTION 13-10-114.5 (3)(b)
19 DURING THE NEXT CALENDAR YEAR SHALL REQUEST SUCH SERVICES ON OR
20 BEFORE SEPTEMBER 1, 2020, OR ON OR BEFORE SEPTEMBER 1 EACH YEAR
21 THEREAFTER.

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

1 DURING THE NEXT CALENDAR YEAR.

2 (7) ON OR BEFORE JANUARY 1, 2022, AND ON OR BEFORE JANUARY
3 1 EACH YEAR THEREAFTER, THE OFFICE OF ALTERNATE DEFENSE COUNSEL
4 SHALL BEGIN PROVIDING DEFENSE COUNSEL TO INDIGENT DEFENDANTS IN
5 EACH MUNICIPALITY TO WHICH THE OFFICE COMMITTED SUCH SERVICES
6 PURSUANT TO SUBSECTION (6) OF THIS SECTION.

7 (8) THERE IS CREATED IN THE STATE TREASURY THE
8 CONFLICT-FREE MUNICIPAL DEFENSE FUND, REFERRED TO IN THIS
9 SUBSECTION (8) AS THE "FUND", WHICH CONSISTS OF MONEY COLLECTED
10 AS FEES FROM MUNICIPALITIES AND CREDITED TO THE FUND AND ANY
11 OTHER MONEY THAT THE GENERAL ASSEMBLY MAY APPROPRIATE OR
12 TRANSFER TO THE FUND. MONEY IN THE FUND IS CONTINUOUSLY
13 APPROPRIATED TO THE JUDICIAL DEPARTMENT FOR DISTRIBUTION TO THE
14 OFFICE OF ALTERNATIVE DEFENSE COUNSEL FOR THE PURPOSES DESCRIBED
15 IN THIS SECTION. THE STATE TREASURER SHALL CREDIT ALL INTEREST
16 DERIVED FROM THE DEPOSIT AND INVESTMENT OF MONEY IN THE FUND TO
17 THE FUND. ANY MONEY NOT APPROPRIATED BY THE GENERAL ASSEMBLY
18 MUST REMAIN IN THE FUND AND SHALL NOT BE TRANSFERRED OR REVERT
19 TO THE GENERAL FUND AT THE END OF ANY FISCAL YEAR.

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

22 **21-1-104. Duties of public defender.** (6) THE STATE PUBLIC
23 DEFENDER SHALL APPOINT COMMISSION MEMBERS FOR ANY MUNICIPALITY
24 OR MUNICIPALITIES THAT WANT TO ESTABLISH A LOCAL OR REGIONAL
25 INDEPENDENT INDIGENT DEFENSE COMMISSION PURSUANT TO SECTION
26 13-10-114.5 (3)(d).

27 **SECTION 5. Act subject to petition - effective date.** This act

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