

An Act

HOUSE BILL 00-1174

BY REPRESENTATIVES Tool, Kaufman, and Mace;
also SENATOR Lacy.

CONCERNING ELIMINATION OF ALTERNATE DEFENSE COUNSEL
REPRESENTATION OF THE PARTIALLY INDIGENT DEFENDANT, AND
MAKING AN APPROPRIATION IN CONNECTION THEREWITH.

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

SECTION 1. 21-2-101 (1), Colorado Revised Statutes, is amended to read:

21-2-101. Alternate defense counsel - policy - commission.

(1) The office of alternate defense counsel is hereby created and established as an agency of the judicial department of state government. The general assembly hereby declares that the alternate defense counsel shall provide legal representation in circumstances in which the state public defender has a conflict of interest in providing legal representation. ~~and in cases where the court determines the defendant is partially indigent.~~ The general assembly hereby declares that the alternate defense counsel at all times shall serve his or her clients independently of any political considerations or private interests, provide to indigent ~~and partially indigent~~ persons accused of crimes legal services that are commensurate with those available to nonindigents, and conduct the office in accordance with the

Colorado rules of professional conduct and with the American bar association standards relating to the administration of criminal justice, the defense function.

SECTION 2. 21-2-103 (1) (b), (3), and (4), Colorado Revised Statutes, are amended to read:

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:

~~(b) Cases in which the court determines the defendant is partially indigent and lacks the funds, on a practical basis, to retain competent counsel and in which the state is required to provide an attorney at state expense.~~

~~(3) In cases in which the court determines the defendant is partially indigent, the court, on its own motion or upon the application of the partially indigent person, may appoint the office of alternate defense counsel to provide representation for the partially indigent person. In each such case, the court shall enter a written order specifying the facts supporting the determination of partial indigency and shall order reimbursement by the defendant for the costs of representation.~~

(4) The office of alternate defense counsel shall provide legal representation for indigent persons ~~and partially indigent persons~~ by contracting with licensed attorneys and investigators pursuant to section 21-2-105.

SECTION 3. The introductory portion to 21-2-104 (1), Colorado Revised Statutes, is amended to read:

21-2-104. Duties of alternate defense counsel and contract attorneys. (1) When representing an indigent person, ~~or partially indigent person~~, the attorney under contract with the office of alternate defense counsel shall:

SECTION 4. 21-2-105 (1), Colorado Revised Statutes, is amended to read:

21-2-105. Contracts with attorneys and investigators. (1) On and after January 1, 1997, the alternate defense counsel shall contract, where feasible, without prior approval of the court, for the provision of attorney services for cases described in section 21-2-103 (1). To provide for adequate legal representation of indigent ~~and partially indigent~~ persons, the office of alternate defense counsel may contract, where feasible, without prior approval of the court, for the provision of investigative services for cases described in section 21-1-103 (1). The office of alternate defense counsel shall establish, where feasible, a list of approved contract attorneys to serve as counsel and a list of approved investigators to provide investigative services in such cases. As a condition of placement on the approved list, the contracting attorney or investigator shall agree to provide services based on the terms to be established in a contract, at either a fixed fee or the hourly rate for reimbursement set by the supreme court. Terms of the contract shall be negotiated between the alternate defense counsel and the contract attorney or investigator. Contracts made with an attorney shall specify that the services shall be provided subject to the Colorado rules of professional conduct.

SECTION 5. 21-1-103 (1) (b), the introductory portion to 21-1-103 (2), and 21-1-103 (2) (b), Colorado Revised Statutes, are amended to read:

21-1-103. Representation of indigent persons. (1) The state public defender shall represent as counsel, without charge except as provided in subsection (3) of this section, each indigent person who is under arrest for or charged with committing a felony if:

(b) The court, on its own motion or otherwise, so orders and the defendant does not affirmatively reject, of record, the opportunity to be represented by legal counsel in the proceeding. When appointed by the court, the office of the state public defender shall be limited to defending the indigent person and shall not be appointed to act as advisory counsel. The court shall not appoint a public defender to represent a defendant if such defendant does not fall within the fiscal standards OR GUIDELINES established by the supreme court for appointment of public defenders. ~~or if such person is determined to be partially indigent.~~

(2) Except as provided in section 16-5-501, C.R.S., the state public defender shall represent indigent persons charged in any court with crimes which constitute misdemeanors; juveniles upon whom a delinquency

petition is filed or who are in any way restrained by court order, process, or otherwise; persons held in any institution against their will by process or otherwise for the treatment of any disease or disorder or confined for the protection of the public; and such persons charged with municipal code violations as the state public defender in his OR HER discretion may determine, subject to review by the court if:

(b) The court, on its own motion or otherwise, so orders or requests and the defendant or his OR HER parent or legal guardian in delinquency or other actions under article 2 of title 19, C.R.S., does not affirmatively reject, of record, the opportunity to be represented by legal counsel in the proceeding. The court shall not appoint a public defender to represent the defendant, or his OR HER parent or legal guardian, if such person does not fall within the fiscal standards OR GUIDELINES established by the supreme court. ~~or if such person is determined to be partially indigent.~~

SECTION 6. Appropriations in long bill to be adjusted. (1) For the implementation of this act, appropriations made in the annual general appropriation act to the judicial department for the fiscal year beginning July 1, 2000, shall be adjusted as follows:

(a) The general fund appropriation to the judicial department, alternate defense counsel, conflict of interest contracts, is decreased by one hundred seventy-four thousand seven hundred ninety-four dollars (\$174,794).

(b) The general fund appropriation to the judicial department, public defender, personal services, is increased by one hundred seventy-one thousand nine hundred ninety-six dollars (\$171,996), and 3.7 FTE, or so much thereof as may be necessary, for the purpose of implementing this act.

SECTION 7. Effective date. This act shall take effect at 12:01 a.m. on the day following the expiration of the ninety-day period after final adjournment of the general assembly that is allowed for submitting a referendum petition pursuant to article V, section 1 (3) of the state

constitution; except that, if a referendum petition is filed against this act or an item, section, or part of this act within such period, then the act, item, section, or part, if approved by the people, shall take effect on the date of the official declaration of the vote thereon by proclamation of the governor.

Russell George
SPEAKER OF THE HOUSE
OF REPRESENTATIVES

Ray Powers
PRESIDENT OF
THE SENATE

Judith M. Rodrigue
CHIEF CLERK OF THE HOUSE
OF REPRESENTATIVES

Patricia K. Dicks
SECRETARY OF
THE SENATE

APPROVED _____

Bill Owens
GOVERNOR OF THE STATE OF COLORADO