

**First Regular Session
Sixty-ninth General Assembly
STATE OF COLORADO**

REVISED

*This Version Includes All Amendments Adopted
on Second Reading in the Second House*

LLS NO. 13-0462.01 Debbie Haskins x2045

HOUSE BILL 13-1210

HOUSE SPONSORSHIP

Kagan,

SENATE SPONSORSHIP

Steadman,

House Committees

Judiciary
Appropriations

Senate Committees

Judiciary
Appropriations

A BILL FOR AN ACT

101 **CONCERNING APPOINTMENT OF LEGAL COUNSEL DURING PLEA**
102 **NEGOTIATIONS FOR INDIGENT ADULT DEFENDANTS, AND, IN**
103 **CONNECTION THEREWITH, MAKING AN APPROPRIATION.**

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>.)

To make Colorado law consistent with recent U.S. supreme court decisions regarding the right to legal counsel during critical stages, including plea negotiations, this bill repeals a statute that requires an indigent person charged with a misdemeanor, petty offense, or motor

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.*

SENATE
2nd Reading Unamended
May 3, 2013

HOUSE
3rd Reading Unamended
April 16, 2013

HOUSE
Amended 2nd Reading
April 15, 2013

vehicle or traffic offense to meet with the prosecuting attorney before legal counsel is appointed.

The bill makes conforming amendments.

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

2 **SECTION 1.** In Colorado Revised Statutes, 16-7-301, **amend** (1);
3 and **repeal** (4) as follows:

4 **16-7-301. Propriety of plea discussions and plea agreements.**

5 (1) Where it appears that the effective administration of criminal justice
6 will thereby be served, the district attorney may engage in plea
7 discussions for the purpose of reaching a plea agreement. ~~He~~ THE
8 DISTRICT ATTORNEY should engage in plea discussions or reach plea
9 agreements with the defendant only through or in the presence of defense
10 counsel except where the defendant is not eligible for appointment of
11 ~~counsel~~ BECAUSE THE DEFENDANT IS NOT INDIGENT or THE CHARGED
12 ~~OFFENSE DOES NOT INCLUDE A POSSIBLE SENTENCE OF INCARCERATION OR~~
13 ~~BECAUSE THE DEFENDANT~~ refuses appointment of counsel and has not
14 ~~retained counsel.~~ or except as provided in subsection (4) of this section.

15 (4) (a) ~~In misdemeanors, petty offenses, or offenses under title 42;~~
16 ~~C.R.S., the prosecuting attorney is obligated to tell the defendant any~~
17 ~~offer that can be made based on the facts as known by the prosecuting~~
18 ~~attorney at that time. The defendant and the prosecuting attorney may~~
19 ~~engage in further plea discussions about the case, but the defendant is~~
20 ~~under no obligation to talk to the prosecuting attorney. The prosecuting~~
21 ~~attorney shall advise the defendant that the defendant has the right to~~
22 ~~retain counsel or seek appointment of counsel. The application for~~
23 ~~appointment of counsel and the payment of the application fee shall be~~
24 ~~deferred until after the prosecuting attorney has spoken with the~~

1 ~~defendant as provided in this subsection (4). Upon completion of the~~
2 ~~discussions, the prosecutor shall inform the court of whether a plea~~
3 ~~agreement has been reached, and:~~

4 ~~(I) If a plea agreement has been reached, the prosecutor shall~~
5 ~~inform the court of the terms of the proposed plea agreement and the~~
6 ~~recommended penalty. If the court determines that the proposed plea~~
7 ~~agreement is acceptable, the court shall, in addition to any other~~
8 ~~advisement required by law, advise the defendant of the right to a~~
9 ~~court-appointed attorney prior to acceptance of the defendant's plea. The~~
10 ~~court shall also advise the defendant prior to acceptance of the~~
11 ~~defendant's plea that the court exercises independent judgment in~~
12 ~~deciding whether to grant charge and sentence concessions made in the~~
13 ~~plea agreement and that the court may therefore sentence the defendant~~
14 ~~in a manner that is different than that discussed during the plea~~
15 ~~discussions.~~

16 ~~(H) If a plea agreement has not been reached and the defendant~~
17 ~~chooses to retain an attorney, or the defendant meets the requirements of~~
18 ~~section 21-1-103, C.R.S., the court shall appoint counsel and all~~
19 ~~discussions with the defendant outside of the presence of counsel shall~~
20 ~~cease.~~

21 ~~(b) After completion of discussions as described in paragraph (a)~~
22 ~~of this subsection (4), if counsel is retained by the defendant, or if counsel~~
23 ~~is appointed for the defendant, when it appears that the effective~~
24 ~~administration of justice will thereby be served, the prosecutor may~~
25 ~~engage in additional plea discussions with the counsel for the defense for~~
26 ~~the purpose of reaching a plea agreement.~~

27 **SECTION 2.** In Colorado Revised Statutes, 16-7-207, **amend** (1)

1 as follows:

2 **16-7-207. Court's duty to inform on first appearance in court**

3 **and on pleas of guilty.** (1) At the first appearance of the defendant in
4 court or upon arraignment, whichever is first in time, it is the duty of the
5 judge to inform the defendant and make certain that ~~he~~ THE DEFENDANT
6 understands the following:

7 (a) ~~He~~ THE DEFENDANT need make no statement, and any
8 statement made can and may be used against him OR HER.

9 (b) ~~He~~ THE DEFENDANT has a right to counsel.

10 (c) If ~~he~~ THE DEFENDANT is an indigent person, he OR SHE may
11 make application for a court-appointed attorney, and upon payment of the
12 application fee he OR SHE will be assigned counsel as provided by law or
13 applicable rule of criminal procedure. ~~except that, if the defendant is~~
14 ~~charged with an offense described in section 16-7-301 (4) (a), and, after~~
15 ~~conferring with the defendant pursuant to section 16-7-301 (4), the~~
16 ~~prosecutor files a written statement that incarceration is not being sought~~
17 ~~as provided in section 16-5-501, counsel will not be provided to the~~
18 ~~defendant.~~

19 (d) Any plea ~~he~~ THE DEFENDANT makes must be voluntary on his
20 OR HER part and not the result of undue influence or coercion on the part
21 of anyone.

22 (e) ~~He~~ THE DEFENDANT has a right to bail, if the offense is
23 bailable, and the amount of bail that has been set by the court.

24 (f) ~~He~~ THE DEFENDANT has a right to a jury trial.

25 (g) The nature of the charges against ~~him~~ THE DEFENDANT.

26 **SECTION 3.** In Colorado Revised Statutes, **repeal** 16-5-501 as
27 follows:

1 **16-5-501. Prosecuting attorney - incarceration - legal**
2 **representation and supporting services at state expense.** Except as
3 otherwise provided, in any criminal prosecution for class 2 and class 3
4 misdemeanors, petty offenses, class 1 and class 2 misdemeanor traffic
5 offenses, or municipal or county ordinance violations, the prosecuting
6 attorney may, at any time during the prosecution, state in writing whether
7 or not he or she will seek incarceration as part of the penalty upon
8 conviction of an offense for which the defendant has been charged. If the
9 prosecuting attorney does not seek incarceration as part of such penalty,
10 legal representation and supporting services need not thereafter be
11 provided for the defendant at state expense, and no such defendant shall
12 be incarcerated if found guilty of the charges against him or her, but the
13 defendant shall be subject to all alternatives available to the court under
14 section 18-1.3-702, C.R.S., and to alternatives available to each
15 municipality under its municipal ordinances for failure to pay fines and
16 costs.

17 **SECTION 4.** In Colorado Revised Statutes, 21-1-103, **amend** (2)
18 introductory portion as follows:

19 **21-1-103. Representation of indigent persons.** (2) Except as
20 provided in section 16-5-501, C.R.S., The state public defender shall
21 represent indigent persons charged in any court with crimes which
22 constitute misdemeanors AND IN WHICH THE CHARGED OFFENSE INCLUDES
23 A POSSIBLE SENTENCE OF INCARCERATION; juveniles upon whom a
24 delinquency petition is filed or who are in any way restrained by court
25 order, process, or otherwise; persons held in any institution against their
26 will by process or otherwise for the treatment of any disease or disorder
27 or confined for the protection of the public; and such persons charged

1 with municipal code violations as the state public defender in his or her
2 discretion may determine, subject to review by the court if:

3 **SECTION 5. Appropriation.** (1) In addition to any other
4 appropriation, there is hereby appropriated, out of any moneys in the
5 general fund not otherwise appropriated, to the judicial department, for
6 the fiscal year beginning July 1, 2013, the sum of \$54,366 and 0.8 FTE,
7 or so much thereof as may be necessary, to be allocated to the trial courts
8 for the implementation of this act as follows:

9 (a) \$52,228 and 0.8 FTE for trial court programs for personal
10 services; and

11 (b) \$2,138 for trial court programs for operating expenses.

12 (2) In addition to any other appropriation, there is hereby
13 appropriated, out of any moneys in the general fund not otherwise
14 appropriated, to the judicial department, for the fiscal year beginning July
15 1, 2013, the sum of \$30,125, or so much thereof as may be necessary, to
16 be allocated to the courts administration division for courthouse capital
17 expenses related to the implementation of this act.

18 (3) In addition to any other appropriation, there is hereby
19 appropriated, out of any moneys in the general fund not otherwise
20 appropriated, to the judicial department, for the fiscal year beginning July
21 1, 2013, the sum of \$3,710,909 and 37.1 FTE, or so much thereof as may
22 be necessary, to be allocated to the office of the state public defender for
23 the implementation of this act as follows:

24	Personal Services	\$2,359,574 and 37.1 FTE
25	Short-term Disability	4,017
26	Health, Life, and Dental	295,099

1	S.B. 04-257 Amortization Equalization Disbursement	80,344
2	S.B. 06-235 Supplemental Amortization Equalization	
3	Disbursement	74,001
4	Capital Outlay Expenses	419,037
5	Leased Space/Utilities	389,893
6	Operating and Travel Expenses	79,566
7	Attorney Registration	9,378

8 **SECTION 6. Act subject to petition - effective date -**

9 **applicability.** (1) Sections 1 through 4 of this act take effect January 1,
10 2014, and this section and section 5 of this act take effect September 1,
11 2013; except that, if a referendum petition is filed pursuant to section 1
12 (3) of article V of the state constitution against this act or an item, section,
13 or part of this act within the ninety-day period after final adjournment of
14 the general assembly, then the act, item, section, or part will not take
15 effect unless approved by the people at the general election to be held in
16 November 2014 and, in such case, will take effect on the date of the
17 official declaration of the vote thereon by the governor.

18 (2) This act applies to misdemeanors, petty offenses, class 2 and
19 class 3 misdemeanor traffic offenses, and municipal or county ordinance
20 violations committed on or after the applicable effective date of this act.