TITLE 21

STATE PUBLIC DEFENDER

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ARTICLE 1

State Public Defender

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21-1-101. Public defender - policy - commission.

(1) The office of state public defender is hereby created and established as an agency of the judicial department of state government. The general assembly hereby declares that the state public defender at all times shall serve his clients independently of any political considerations or private interests, provide legal services to indigent persons accused of crime 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.

(2) The Colorado supreme court shall provide for the appointment, terms, and procedure for a five-member public defender commission, no more than three of whom shall be from the same political party. Three of the members of the commission shall be attorneys admitted to practice law in this state, and two shall be citizens of Colorado not admitted to practice law in this state.

In making appointments to the commission, the supreme court shall consider place of residence, sex, race, and ethnic background. No member of the commission shall be at any time a judge, prosecutor, public defender, or employee of a law enforcement agency.

(3) The public defender commission shall appoint and discharge, for cause, the state public defender, who shall be appointed to serve a term of five years and shall serve until his successor is appointed and qualified. He may be reappointed for one or more subsequent five-year terms. Vacancies in the office shall be filled by the public defender commission for the remainder of the unexpired term. The state public defender serving as such on July 1, 1979, shall continue to serve his current term.

(4) Members of the public defender commission shall serve without compensation but shall be reimbursed for actual and reasonable expenses incurred in the performance of their duties.

(5) Any expenses incurred for the commission shall be paid from the general operating budget of the office of the state public defender.

Source: L. 69: R&RE, p. 255, § 30. **C.R.S. 1963:** § 39-21-1. **L. 79:** Entire section R&RE, p. 770, § 1, effective July 1. **L. 99:** (1) amended, p. 632, § 52, effective August 4.

ANNOTATION

Law reviews. For note, "Colorado's Defender Act — Has the Time Arrived to Implement its Provisions?", see 36 U. Colo. L. Rev. 235 (1964). For note, "Rural Poverty and the Law in Southern Colorado", see 47 Den. L. J. 82 (1970). For note, "The Right to Effective Counsel: A Case Study of the Denver Public Defender", see 50 Den. L. J. 45 (1973).

Appointment within ambit of constitutional provision. The Colorado constitution allows the supreme court to appoint "such . . . personnel as the court may deem necessary to aid in the administration of the courts". Certainly, the general assembly's determination that the state public defender be appointed by the Colorado supreme court is within the ambit of this constitutional provision. People v. Mullins, 188 Colo. 29, 532 P.2d 736 (1975).

And is not violative of due process or separation of powers. The office of the state public defender is not unconstitutional and does not violate the separation of powers doctrine or deny defendants a trial in accord with the due process clause of the state and federal constitutions. Although the state public defender is appointed and his compensation is fixed by the Colorado supreme court, this statutory scheme does not create such a nexus as would violate the due process provisions, the separation of powers doctrine, or the right a defendant has to a fair trial. People v. Mullins, 188 Colo. 29, 532 P.2d 736 (1975).

Nor do statutory protections violate separation of powers. The statutory system in Colorado, which protects the public defender's office with certain statutory safeguards, in no way violates the principles of separation of powers or the other guarantees of due process. People v. Mullins, 188 Colo. 29, 532 P.2d 736 (1975).

Office of state public defender is clearly necessary to advance sound administration of the courts in Colorado. People v. Mullins, 188 Colo. 29, 532 P.2d 736 (1975).

The public defender's duties and responsibilities toward his clients are identical to any other Colorado attorney in all respects whether privately retained or court appointed. Espinoza v. Rogers, 470 F.2d 1174 (10th Cir. 1972).

An attorney does not act under color of state law simply because he has accepted employment as a Colorado public defender. Espinoza v. Rogers, 470 F.2d 1174 (10th Cir. 1972).

21-1-102. State public defender - deputies and employees - regional offices.

(1) The state public defender shall have been licensed to practice law in this state for at least five years prior to his appointment, and he shall devote full time to the performance of his duties and shall not engage in the private practice of law.

(2) The compensation of the state public defender shall be fixed by the general assembly and may not be reduced during the term of his appointment.

(3) The state public defender shall employ and fix the compensation of a chief deputy public defender, deputy state public defenders, investigators, and any other employees necessary to discharge the functions of the office. All salaries shall be reviewed and approved by the Colorado supreme court. The chief deputy public defender and deputy public defenders shall serve, on a full-time basis, at the pleasure of the state public defender and shall not otherwise engage in the practice of law.

(4) The state public defender shall establish such regional offices as he deems necessary to carry out his duties under this article.

Source: L. 69: R&RE, p. 255, § 30. **C.R.S. 1963:** § 39-21-2. **L. 79:** Entire section R&RE, p. 771, § 2, effective July 1.

ANNOTATION

No conflict of interest in private representation of defendant by public defender. Since employment in a public defender's office is not the type of public employment contemplated in Ethical Consideration 9-3 and Disciplinary Rule 9-101(B) of the code of professional responsibility, no conflict of interest can be perceived in the representation of a defendant by a deputy public defender and the subsequent representation by the same attorney in a private capacity of the defendant in the same case. Coles, Manter & Watson v. Denver Dist. Court, 177 Colo. 210, 493 P.2d 374 (1972).

21-1-103. Representation of indigent persons - definition.

(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:

(a) The defendant requests it and he complies with subsection (3) of this section; or

(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.

(2) The state public defender shall represent indigent persons charged in any court with crimes that constitute misdemeanors and in which the charged offense includes a possible sentence of incarceration; 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 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:

(a) The indigent person or the indigent person's parent or legal guardian in delinquency or other actions pursuant to article 2.5 of title 19 requests it and complies with subsection (3) of this section; or

(b) The court, on its own motion or otherwise, so orders or requests and the defendant or the defendant's parent or legal guardian in delinquency or other actions pursuant to article 2.5 of title 19 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 the defendant's parent or legal guardian, if the person does not fall within the fiscal standards or guidelines established by the supreme court.

(3) (a) The state public defender shall make the determination of indigency, subject to review by the court. When a defendant or, if applicable, the defendant's parent or legal guardian requests representation by a public defender, such person shall submit an appropriate application, the form of which states that the application is signed under oath and under the penalty of perjury and that a false statement may be prosecuted as such. The applicant shall pay a nonrefundable processing fee of twenty-five dollars if the court-appointed counsel enters an appearance based upon the application; except that a person under the jurisdiction of the juvenile court, as defined in section 19-1-103; a juvenile; or the person's or juvenile's parent, guardian, or legal custodian, is not required to pay the processing fee. A court or the state shall not enforce or collect a processing fee assessed by the court on or after July 6, 2021, that is outstanding against a person under the jurisdiction of the juvenile court, as defined in section 19-1-103; a juvenile; or the person's or juvenile's parent, guardian, or legal custodian. The fee is assessed at the time of sentencing, if sentencing occurs, or upon other final disposition of the case; except that the court may, at sentencing or other final disposition, waive the fee if the court determines, based upon the financial information submitted by the party being represented by the court-appointed counsel, that the person does not have the financial resources to pay the fee. Before the court appoints a public defender based on the application, the court shall advise the defendant or, if applicable, the defendant's parent or legal guardian that the application is signed under oath and under the penalty of perjury. A copy of the application must be sent to the prosecuting attorney for review, and, upon request, the court shall hold a hearing on the issue of the eligibility for appointment of the public defender's office. Processing fees collected pursuant to this subsection (3) are transmitted to the state treasurer, who shall credit the same to the general fund.

(b) As used in this subsection (3), "juvenile" means a person who is under eighteen years old when the crime is committed.

(4) Nothing is this section shall be construed to authorize the public defender to represent or advise any person who is physically outside the state of Colorado and who has not made a court appearance in the pending matter in the state of Colorado.

(5) Nothing in this section may be construed to prevent the public defender, before determining indigency, from providing representation to juveniles in detention hearings.

Source: L. 69: R&RE, p. 255, § 30. **C.R.S. 1963:** § 39-21-3. **L. 81:** (2) amended, p. 929, § 3, effective September 1. **L. 81:** (4) added, p. 924, § 2, effective May 26. **L. 88:** (1)(a), (1)(b), (2)(a), (2)(b), and (3) amended, p. 665, § 6, effective July 1. **L. 90:** IP(1) and (3) amended, p. 1038, § 1, effective July 1. **L. 92:** (2)(a) and (2)(b) amended, p. 2176, § 31, effective June 2; (3) amended, p. 466, § 3, effective July 1. **L. 2000:** (1)(b), IP(2), and (2)(b) amended, p. 1480, § 5, effective August 2. **L. 2004:** (3) amended, p. 725, § 1, effective August 4. **L. 2013:** IP(2) amended, (HB 13-1210), ch. 306, p. 1624, § 4, effective January 1, 2014. **L. 2014:** (5) added, (HB 14-1032), ch. 247, p. 954, § 6, effective November 1. **L. 2021:** (2) amended, (SB 21-059),

ch. 136, p. 738, § 93, effective October 1; (3) amended, (HB 21-1315), ch. 461, p. 3107, § 4, effective July 6. **L. 2026:** (3) amended, (HB 26-1232), ch. 98, p. 389, § 7, effective May 4.

Cross references: (1) For appointment of counsel for indigent persons in insanity or incompetency proceedings, see § 16-8-119.

(2) For the legislative declaration in HB 21-1315, see section 1 of chapter 461, Session Laws of Colorado 2021. For the legislative declaration in HB 26-1232, see section 1 of chapter 98, Session Laws of Colorado 2026.

ANNOTATION

Public defender provided for proceedings carrying criminal sanctions. The general assembly, in establishing the public defender's office, looked to the fact of incarceration and provided for court appointed counsel in juvenile delinquency proceedings, in civil commitment and similar proceedings, and in municipal code violation cases, all of which historically were civil in nature but which carry criminal sanctions. Mora v. District Court, 177 Colo. 381, 494 P.2d 596 (1972).

Public defender appointed when requested by defendant or ordered by court. Public defender is only appointed when requested by defendant or ordered by court. Therefore, defendant's right to counsel was not violated when he continued to answer questions when public defender was present and desired to talk with him, but defendant had waived presence of counsel and had not requested counsel. People v. Page, 907 P.2d 624 (Colo. App. 1995).

Defendant who becomes indigent during course of criminal proceedings is entitled to discharge his or her retained counsel and then obtain appointed counsel. People v. Munsey, 232 P.3d 113 (Colo. App. 2009).

Trial court may, within its discretion, decline to appoint alternate defense counsel to investigate claims for the ineffective assistance of counsel in a prior case. People v. Mills, 163 P.3d 1129 (Colo. 2007).

If defendant wants the state to pay the costs of his attorney and supporting services, his only choice is to be represented by the public defender, or in the case of a conflict, a state-appointed alternate defense counsel. People v. Cardenas, 62 P.3d 621 (Colo. 2002).

Income from members of a defendant's household who contribute monetarily to the household should be excluded from an indigency determination if the income is unavailable to the defendant. People v. Greer, 2022 CO 5, 502 P.3d 1012.

Defendant's ownership of a home in foreclosure and a luxury sport utility vehicle is not in itself sufficient to

establish nonindigency. People v. Munsey, 232 P.3d 113 (Colo. App. 2009).

No constitutional right to postconviction counsel exists; however, a limited statutory right exists. The statutory right to postconviction counsel is neither automatic nor unlimited. It is limited to cases where a defendant's Crim. P. 35(c) petition is not wholly unfounded and has arguable merit, as determined by the court and the state public defender's office. Silva v. People, 156 P.3d 1164 (Colo. 2007).

If postconviction counsel is required according to the limited statutory right, that counsel must provide effective assistance as measured by the two-pronged Strickland v. Washington test. Silva v. People, 156 P.3d 1164 (Colo. 2007).

A limited statutory right to counsel exists for a Crim. P. 35 hearing pursuant to this section and § 21-1-104, and the waiver of such right to counsel must be made voluntarily but need not be knowingly and intelligent. People v. Duran, 757 P.2d 1096 (Colo. App. 1988).

There is a limited statutory right to counsel in post-conviction proceedings when the allegations are factually sufficient to warrant a hearing. People v. Hickey, 914 P.2d 377 (Colo. App. 1995).

But defendant is entitled to conflict-free counsel when trial court orders appointment of counsel to assist defendant in motion under Crim. P. 35 based upon allegations of ineffective assistance of counsel in guilty plea. Supreme court concerned that public defender did not file motion to withdraw in Crim. P. 35 case in which defendant alleged as grounds for motion prior ineffective assistance of appointed public defender during prior criminal proceeding. Murphy v. People, 863 P.2d 301 (Colo. 1993).

A limited right to counsel exists under this section and § 21-1-104 for assistance in a hearing on a motion for a new trial under Crim. P. 33. However, the trial court properly denied the defendant's request for assistance and the request for a hearing where defendant's Crim. P. 33 motion failed to allege particularized facts supporting his assertion of ineffective assistance of counsel. People v. Esquivel-Alaniz, 985 P.2d 22 (Colo. App. 1999).

Trial court did not err in failing to appoint counsel to represent defendant because the court properly concluded from the record that defendant was not entitled to relief and, therefore, was not required to hold a hearing on the motion. People v. Fernandez, 53 P.3d 773 (Colo. App. 2002).

No authority for appointment in civil contempt proceeding. There is no statutory authority for appointment of the public defender in civil contempt proceedings. Vela v. District Court, 664 P.2d 243 (Colo. 1983).

The office of the state public defender is not statutorily authorized to enter its appearance in an underlying civil forfeiture matter. People v. Shank, 2018 CO 51, 420 P.3d 240.

No authority for appointment in criminal contempt citations. The public defender's duties are limited by statute and the general assembly clearly did not intend

to grant the public defender authority to prosecute criminal contempt citations. Groves v. Dist. Ct. for 17th Jud. Dist., 806 P.2d 947 (Colo. 1991).

Review of pro se appeals. In view of the right of an indigent defendant to have counsel appointed to prosecute an appeal, the supreme court will not consider unintelligible petitions and motions which have no legal significance and which do not meet the requirements of established procedures in appellate practice. In re Griffin, 152 Colo. 347, 382 P.2d 202 (1963).

Information given public defender regarding indigency not confidential. Since the determination of indigency is subject to judicial review, information given the public defender in this regard cannot be considered confidential. People v. Lambert, 40 Colo. App. 84, 572 P.2d 847 (1977).

Indigent defendants are entitled to continued and effective representation by court-appointed counsel in the absence of a demonstrable basis in fact and law to terminate that appointment, and therefore the practice of subpoenaing the accused's attorney as a prosecution witness must be carefully monitored. Williams v. District Court, 700 P.2d 549 (Colo. 1985).

Conviction reversed where defendant's right to counsel was violated when trial court failed to appoint public defender. Despite facts in the record indicating that the defendant might be eligible for court-appointed counsel, the trial court accepted the public defender's denial of indigency without conducting its own review and making findings to support a determination for itself on the issue of indigency. People v. Steinbeck, 186 P.3d 54 (Colo. App. 2007).

Although a trial court's determination regarding indigency is reviewed for abuse of discretion, such determination is subject to careful scrutiny because it involves a fundamental constitutional right. People v. Steinbeck, 186 P.3d 54 (Colo. App. 2007).

A district court has no authority to collect the fee imposed pursuant to subsection (3) after the completion of a deferred sentence and dismissal of the underlying charges. Pineda-Liberato v. People, 2017 CO 95, 403 P.3d 160.

Applied in Brown v. District Court, 189 Colo. 469, 541 P.2d 1248 (1975); Godbold v. Wilson, 518 F. Supp. 1265 (D. Colo. 1981).

21-1-104. Duties of public defender - report.

(1) When representing an indigent person, the state public defender, only after the conditions of section 21-1-103 have been met, shall:

(a) Counsel and defend him, whether he is held in custody, filed on as a delinquent, or charged with a criminal offense or municipal code violation at every stage of the proceedings following arrest, detention, or service of process; and

(b) Prosecute any appeals or other remedies before or after conviction that the state public defender considers to be in the interest of justice, except as limited in subsection (3) of this section.

(2) In no case, however, shall the state public defender be required to prosecute any appeal or other remedy unless the state public defender is satisfied first that there is arguable merit to the proceeding.

(3) In order to expedite death penalty appeals, state moneys shall not be used to prosecute any appeal on behalf of the defendant in any class 1 felony case where the death penalty has been imposed that is not an appeal as of right in state court. In addition, in any class 1 felony case where the death penalty has been imposed, state moneys shall not be used to prosecute any federal habeas corpus proceeding on behalf of the petitioner, unless the petitioner is seeking to prevent extradition. For purposes of this subsection (3), "appeal as of right" means a direct appeal on behalf of the defendant of the validity of the underlying conviction and the propriety of the sentence and a motion for postconviction relief properly brought by the defendant in accordance with rule 35 of the Colorado rules of criminal procedure and any appeal on behalf of the defendant of the denial of such motion.

(4) Notwithstanding section 24-1-136 (11)(a)(I), pursuant to section 2-7-203, the state public defender shall report annually to the judiciary committees of the house of representatives and senate, or to any successor committees, information concerning:

(a) The number of juvenile delinquency cases for which counsel from the office is appointed;

(b) The number of juvenile cases that involve a conflict of interest;

(c) The process of selecting, training, and supporting attorneys who represent children in juvenile delinquency court;

(d) The average length of time attorneys are assigned to juvenile court;

(e) The outcome of efforts to reduce juvenile court rotations and increase opportunities for promotional advancement in salaries for attorneys in juvenile court; and

(f) The process of training attorneys and other employees of the office concerning determinations of competency to proceed for juveniles and adults, competency evaluation reports, services to restore competency, and certification proceedings governed by article 65 of title 27.

(5) The state public defender shall hire social workers, as defined in section 12-245-401 (9), to assist in defending juvenile defendants.

(6) (a) The office of state public defender shall provide one or more public defender liaisons to the department of corrections and the state board of parole to assist inmates or inmate liaisons with legal matters related to detainers, bonds, holds, warrants, competency, special needs parole

applications, and commutation applications. The office of state public defender, in consultation with the state board of parole and the department of corrections, shall develop any necessary policies and procedures for implementation of this subsection (6).

(b) The office of state public defender shall designate an email address for the public defender liaisons to the department of corrections to receive notifications made pursuant to section 17-33-104 from the department of corrections about offenders' outstanding warrants and pending Colorado court cases.

Source: L. 69: R&RE, p. 256, § 30. **C.R.S. 1963:** § 39-21-4. **L. 81:** IP(1) amended, p. 924, § 3, effective May 26. **L. 94:** (1)(b) amended and (3) added, p. 1475, § 4, effective July 1. **L. 2014:** (5) added, (HB 14-1023), ch. 177, p. 649, § 1, effective May 14; (4) added, (HB 14-1032), ch. 247, p. 955, § 9, effective November 1. **L. 2017:** IP(4) amended, (SB 17-233), ch. 175, p. 637, § 1, effective August 9. **L. 2019:** (4)(d) and (4)(e) amended and (4)(f) added, (SB 19-223), ch. 227, p. 2291, § 16, effective July 1; (5) amended, (HB 19-1172), ch. 136, p. 1682, § 114, effective October 1. **L. 2021:** (6) added, (SB 21-146), ch. 459, p. 3084, § 6, effective July 6. **L. 2025:** (6) amended, (HB 25-1116), ch. 153, p. 620, § 2, effective August 6.

ANNOTATION

A limited statutory right to counsel exists for a Crim. P. 35 hearing pursuant to § 21-1-103 and this section, and the waiver of such right to counsel must be made voluntarily but need not be knowingly and intelligent. People v. Duran, 757 P.2d 1096 (Colo. App. 1988).

There is a limited statutory right to counsel in post-conviction proceedings when the allegations are factually sufficient to warrant a hearing. People v. Hickey, 914 P.2d 377 (Colo. App. 1995).

A limited right to counsel exists under this section and § 21-1-103 for assistance in a hearing on a motion for a new trial under Crim. P. 33. However, the trial court properly denied the defendant's request for assistance and the request for a hearing where defendant's Crim. P. 33 motion failed to allege particularized facts supporting his assertion of ineffective assistance of counsel. People v. Esquivel-Alaniz, 985 P.2d 22 (Colo. App. 1999).

No constitutional right to postconviction counsel exists; however, a limited statutory right exists. The statutory right to postconviction counsel is neither automatic nor unlimited. It is limited to cases where a defendant's Crim. P. 35(c) petition is not wholly unfounded and has arguable merit, as determined by the court and the state public defender's office. Silva v. People, 156 P.3d 1164 (Colo. 2007).

This section cannot form an independent basis to provide representation because its applicability is

predicated on prior satisfaction of § 21-1-103. The discretion afforded by subsection (1)(b)'s "in the interest of justice" determination relates to the public defender's actions when representing a party pursuant to § 103. People v. Shank, 2018 CO 51, 420 P.3d 240.

Trial court did not err in failing to appoint counsel to represent defendant because the court properly concluded from the record that defendant was not entitled to relief and, therefore, was not required to hold a hearing on the motion. People v. Fernandez, 53 P.3d 773 (Colo. App. 2002).

Strickland test, while based on the constitutional right to counsel, is applicable to the determination of whether a defendant has received effective assistance of counsel in a post-conviction proceeding. People v. Hickey, 914 P.2d 377 (Colo. App. 1995).

If postconviction counsel is required according to the limited statutory right, that counsel must provide effective assistance as measured by the two-pronged Strickland v. Washington test. Silva v. People, 156 P.3d 1164 (Colo. 2007).

Although the right to effective counsel under subsection (2) is limited, defendant had the right to raise the issue of whether postconviction counsel was ineffective when the trial court appointed postconviction counsel to deal with defendant's letter asserting ineffective assistance of trial counsel, thus demonstrating that defendant's claims had some merit. Furthermore, postconviction counsel, by filing a supplemental motion detailing allegations of ineffective assistance of trial counsel, also demonstrated that defendant's motion had some arguable merit. People v. Valdez, 178 P.3d 1269 (Colo. App. 2007).

The provisions of this article in no way attempt to control or otherwise influence professional judgment of a lawyer employed as a public defender. Espinoza v. Rogers, 470 F. 2d 1174 (10th Cir. 1972).

Control of client over defense strategy. It is only when the question arises whether the defendant should plead guilty, waive a jury trial, or take the stand that defense counsel must be governed by and abide by the wishes of his client. McClendon v. People, 174 Colo. 7, 481 P.2d 715 (1971).

Under this section, public defender who undertakes an appeal cannot abandon representation on the grounds that the appeal lacks arguable merit. People v. Demarest, 801 P.2d 6 (Colo. App. 1990); People v. Ray, 801 P.2d 8 (Colo. App. 1990).

Standard of advocacy on appeal met. In considering the questions of when the public defender is required to prosecute an appeal and the duties which he has on appeal, the Colorado supreme court held that since the public defender had prepared a brief presenting each of the points that the defendant urged as a basis for appeal, the public defender had carried out the highest standards of the advocate in presenting his client's case, although recognizing the law as it related to the facts, he had submitted his case without oral argument in accordance with the standards of criminal justice.

McClendon v. People, 174 Colo. 7, 481 P.2d 715 (1971).

As a matter of law, public defender's seven-year delay in filing a supplemental motion in a challenge that was filed within the time limits prescribed by § 16-5-402 was, in light of all the circumstances, outside the wide range of professionally competent assistance. People v. Valdez, 178 P.3d 1269 (Colo. App. 2007).

When defendant claims that his or her limited statutory right to effective assistance of counsel was violated, the right is not constitutional. Violations of statutory rights do not necessarily require the same remedies as violations of constitutional rights. People v. Valdez, 178 P.3d 1269 (Colo. App. 2007).

When defense counsel's ineffective assistance deprives a defendant of a hearing on the merits of his or her postconviction claim, the remedy is to provide such a hearing, not to order that defendant be granted a new trial. Vindication of this statutory right trumps society's interest in the finality of convictions. People v. Valdez, 178 P.3d 1269 (Colo. App. 2007).

Appointed counsel undertook appeal where he resisted his appointment only after prosecuting two prior appeals and the passage of more than ten months since his appointment. People v. Demarest, 801 P.2d 6 (Colo. App. 1990).

Appeal undertaken where counsel represented defendant throughout the trial proceedings and took no action resisting his appointment on appeal until more than one month after the appointment. People v. Ray, 801 P.2d 8 (Colo. App. 1990).

When defendant received numerous advisements to which he indicated his understanding as to the consequences of his refusal to proceed with appointed counsel, he did not overcome the court's finding that his waiver was voluntarily, knowingly, and intelligently made. People v. Haynie, 826 P.2d 371 (Colo. App. 1991).

A court-appointed public defender does not have a duty to prosecute a claim for post-conviction relief after determining that there is no arguable merit to the defendant's claim. People v. Breaman, 939 P.2d 1348 (Colo. 1997).

However, it is not proper for the court to appoint an attorney solely for the purpose of investigating the merit of a defendant's claim. People v. Breaman, 939 P.2d 1348 (Colo. 1997).

Prior to appointing an alternate defense counsel to investigate a claim against another public defender for ineffective assistance of counsel, court may require a public defender to file a sealed affidavit demonstrating facts supporting the claim. People v. Mills, 163 P.3d 1129 (Colo. 2007).

Trial court may, within its discretion, decline to appoint alternate defense counsel to investigate claims for the ineffective assistance of counsel in a prior case. People v. Mills, 163 P.3d 1129 (Colo. 2007).

Applied in People v. Hubbard, 184 Colo. 243, 519 P.2d 945 (1974); People v. Maranjo, 738 P.2d 407 (Colo. App. 1987).

21-1-105. Appointment of other attorney or investigator in place of public defender - contracts for services. (Repealed)

Source: L. 69: R&RE, p. 256, § 30. **C.R.S. 1963:** § 39-21-5. **L. 95:** Entire section amended, p. 1407, § 1, effective July 1. **L. 96:** Entire section repealed, p. 1015, § 2, effective May 23.

21-1-106. Recoupment of fees and costs.

In any case when a court determines that a defendant is able to repay all or part of the expense of state-supplied or court-appointed counsel or any ancillary expenses incurred in representing such defendant, the court shall assess such fees or costs against such defendant and shall notify the judicial district's collection investigator.

Source: L. 81: Entire section added, p. 1051, § 1, effective September 1. **L. 96:** Entire section amended, p. 1016, § 3, effective May 23. **L. 2021:** Entire section amended, (SB 21-055), ch. 12, p. 76, § 8, effective March 21.

ANNOTATION

Priority of liens. Where notice of the attorney's lien was properly filed before the entry of judgment and before the state's assertion of a lien pursuant to this statute, the attorney's lien had priority. Matter of Estate of Benney, 771 P.2d 7 (Colo. App. 1988), rev'd on other grounds, 790 P.2d 319 (Colo. 1990).

The court should make a finding regarding defendant's ability to pay before ordering costs. People v. Villa-Villa, 983 P.2d 181 (Colo. App. 1997).

Separate reimbursement order requiring defendant to pay costs associated with services of public defender's office was not part of defendant's sentence. Whether an order directing a convicted defendant to reimburse the state for court-appointed counsel is a component of a sentence depends upon the underlying basis of the order. Because the repayment was neither stipulated as part of the plea agreement, nor ordered by the court as a component or condition of the defendant's sentence, the reimbursement order was a separate, independent judgment that did not contravene the defendant's plea agreement. People v. Scott, 176 P.3d 851 (Colo. App. 2007).

Trial court erred in not following chief justice directive in determining the amount of reimbursement. Chief justice directives are an expression of judicial branch policy and are given full force and effect in matters of court administration. Setting the amount of reimbursement based, in part, on factors other than the amount of time public defender devoted to case violated chief justice directive 04-04. People v. Scott, 176 P.3d 851 (Colo. App. 2007).

21-1-107. State public defender - gifts, grants, and donations for record sealing - sealing defense fund - created.

(1) The state public defender may apply for grants and accept gifts or donations from private or public sources for the purpose of representing indigent clients in matters pursuant to part 7 of article 72 of title 24 when such action is in accordance with the Colorado rules of professional conduct and the American bar association standards relating to criminal justice for the defense function. The state public defender shall not accept a gift, grant, or donation if the gift, grant, or donation is conditioned on its use for sealing records for a specific identified individual or individuals. The state public defender shall transmit all money received through gifts, grants, or donations to the state treasurer, who shall credit the money to the sealing defense fund created in subsection (2) of this section.

(2) (a) The sealing defense fund, referred to in this subsection (2) as the "fund", is created in the state treasury. The fund consists of gifts, grants, and donations credited to the fund pursuant to subsection (1) of this section and section 21-2-109 and any other money that the general assembly may appropriate or transfer to the fund.

(b) The state treasurer shall credit all interest and income derived from the deposit and investment of money in the fund to the fund.

(c) Money in the fund is continuously appropriated to the state public defender and the office of alternate defense counsel for the purpose of representing indigent clients in matters pursuant to part 7 of article 72 of title 24.

(3) The state public defender shall annually report on the receipt and expenditure of gifts, grants, and donations pursuant to subsection (1) of this section at its presentation to its committee of reference at a hearing held pursuant to section 2-7-203 (2)(a) of the "State Measurement for Accountable, Responsive, and Transparent (SMART) Government Act".

Source: L. 2021: Entire section added, (HB 21-1214), ch. 455, p. 3029, § 3, effective September 7.

ANNOTATION

Law reviews. For article, "2021 Updates on Sealing Criminal Records", see 51 Colo. Law. 22 (May 2022).

ARTICLE 2

Alternate Defense Counsel

21-2-100.3. Definitions.
21-2-101. Alternate defense counsel - policy - commission.
21-2-102. Alternate defense counsel - qualifications - employees.
21-2-103. Representation of persons who are indigent.
21-2-104. Duties of alternate defense counsel and contract attorneys - report.
21-2-105. Contracts with attorneys and other legal services providers.
21-2-106. Recoupment of fees and costs.
21-2-107. Complaints against contracted attorneys - procedure.
21-2-108. Conflict-free defense for indigent persons in municipal courts - fund created.
21-2-109. Office of alternate defense counsel - gifts, grants, and donations for record sealing.

21-2-100.3. Definitions.

As used in this article 2, unless the context otherwise requires:

(1) "Commission" means the alternate defense counsel commission appointed pursuant to section 21-2-101.

(2) "Conflict of interest" may include, but need not be limited to, circumstances in which the state public defender represents a codefendant or a person who is a witness in the case or other circumstances identified in the Colorado rules of professional conduct or other rules of civil procedure as creating a conflict of interest. Case overload, lack of resources, and other similar circumstances shall not constitute a "conflict of interest".

Source: L. 2025: Entire section added with relocations, (SB 25-275), ch. 377, p. 2047, § 80, effective August 6.

Editor's note: Subsection (2) of this section is similar to former § 21-2-103 (1.5)(c) as it existed prior to 2025.

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. 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 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.

(2) The Colorado supreme court shall appoint a nine-member alternate defense counsel commission. No more than five members of the commission shall be from the same political party. Six members of the commission shall be attorneys admitted to practice law in this state who have experience in the practice of criminal defense, and three members of the commission shall be citizens of Colorado not admitted to practice law in this state. There shall be one member from each of the congressional districts in the state. Members of the commission shall serve for terms of four years; except that, of the members first appointed, five shall serve for terms of two years. Vacancies on the commission shall be filled by the supreme court for the remainder of any unexpired term. In making appointments to the commission, the supreme court shall consider place of residence, sex, race, and ethnic background. No member of the commission shall be, at any time, a judge, prosecutor, public defender, or employee of a law enforcement agency. The supreme court shall establish procedures for the operation of the commission.

(3) The commission shall appoint, and may discharge for cause, a person to serve as alternate defense counsel who shall serve a term of five years and until a successor is appointed and qualified. Such person may be reappointed for one or more subsequent five-year terms. A vacancy in the office shall be filled by the commission for the remainder of the unexpired term.

(3.5) No later than September 30, 2007, the commission shall adopt written procedures governing the office of the alternate defense counsel, including but not limited to the hiring,

evaluation, and termination of the alternate defense counsel; the resolution of contractual disputes involving the office of the alternate defense counsel; and the processing and resolution of complaints involving the office of the alternate defense counsel.

(4) The commission shall serve as an advisory board to the alternate defense counsel and shall meet at least annually. The commission shall advise the alternate defense counsel concerning the development and maintenance of competent and cost-effective representation.

(5) Members of the commission shall serve without compensation but shall be reimbursed for actual and reasonable expenses incurred in the performance of their duties.

(6) Any expenses incurred for the commission shall be paid from the general operating budget of the office of the alternate defense counsel.

Source: L. 96: Entire article added, p. 1012, § 1, effective May 23. **L. 2000:** (1) amended, p. 1479, § 1, effective August 2. **L. 2002:** (2) amended, p. 944, § 4, effective August 7. **L. 2007:** (2) amended and (3.5) added, p. 323, § 1, effective April 2. **L. 2025:** (2) amended, (SB 25-275), ch. 377, p. 2047, § 81, effective August 6.

ANNOTATION

Appointment of alternate defense counsel by court is valid even if the individual attorney is not "on the official list" established by the office of alternate defense counsel. Nor does the attorney have to be appointed directly by the office of alternate defense counsel. The existence of the "list" is not a prerequisite to the provision of alternate defense counsel representation. People v. Hodges, 134 P.3d 419 (Colo. App. 2005), aff'd on other grounds, 158 P.3d 922 (Colo. 2007).

Mandatory language in the alternate defense counsel statute limits the district court's authority to appoint counsel for indigent defendants to those attorneys on the "official list" established by the office of alternate defense counsel. The alternate defense counsel statute does not create a statutory right in defendants with regard to its procedural aspects; therefore, representation by counsel not on the "official list" did not violate any cognizable right of the defendant under this statute. Hodges v. People, 158 P.3d 922 (Colo. 2007).

21-2-102. Alternate defense counsel - qualifications - employees.

(1) The alternate defense counsel shall have been licensed to practice law for at least five years prior to appointment, and either be licensed to practice law in Colorado at the time of appointment or be able to become licensed to practice law in Colorado within six months after

appointment, and the alternate defense counsel shall devote the alternate defense counsel's full time to the performance of the alternate defense counsel's duties and shall not engage in the private practice of law.

(2) The compensation of the alternate defense counsel shall be fixed by the general assembly and may not be reduced during the term of his or her appointment.

(3) The alternate defense counsel shall employ and fix the compensation of any other employees necessary to discharge the functions of the office of alternate defense counsel.

Source: L. 96: Entire article added, p 1013, § 1, effective May 23. **L. 2024:** (1) amended, (HB 24-1102), ch. 63, p. 213, § 3, effective August 7.

21-2-103. Representation of persons who are indigent.

(1) 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.

(1.5) (a) To request withdrawal from a case due to a conflict of interest, the state public defender shall submit to the court having jurisdiction over the case a motion specifically describing the nature of the conflict of interest. If the state public defender determines that ethical obligations prevent a specific description of the nature of the conflict of interest, the state public defender shall cite any applicable legal authority for the determination, and the portion of the motion that specifically describes the nature of the conflict shall be sealed. In the event an issue arises later concerning whether an actual conflict existed, the sealed portion of the motion

may be opened and examined by the original judge or by another judge if necessary to prevent the violation of an ethical obligation.

(b) Upon review of the motion, the court shall determine whether a conflict of interest exists that would require withdrawal of the state public defender and appointment of the alternate defense counsel.

(c) Repealed.

(d) If the court allows withdrawal of the state public defender and appoints the alternate defense counsel and it is later determined that no genuine conflict of interest existed, the office of the state public defender shall reimburse the office of the alternate defense counsel for the cost of the representation.

(2) In cases involving conflicts of interest for the state public defender, the determination of indigency shall be made by the state public defender in accordance with section 21-1-103.

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

(4) The office of alternate defense counsel shall provide legal representation for persons who are indigent by contracting with licensed attorneys and other persons necessary to provide legal services commensurate with those available to persons who are not indigent pursuant to section 21-2-105.

(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 (4)(c)(II). The office of alternate defense counsel shall not perform any such evaluations without sufficient funding for personnel to perform such evaluations.

Source: L. 96: Entire article added, p. 1014, § 1, effective May 23. **L. 99:** (1)(a) and (2) amended and (1.5) added, p. 874, § 1, effective August 4. **L. 2000:** (1)(b), (3), and (4) amended, p. 1479, § 2, effective August 2 **L. 2018:** (1) amended and (5) added, (SB 18-203), ch. 354, p. 2112, § 2, effective August 8. **L. 2023:** (4) amended, (HB 23-1033), ch. 9, p. 28, § 1, effective August 7. **L. 2025:** (1.5)(c) repealed, (SB 25-275), ch. 377, p. 2109, § 336, effective August 6. **L. 2026:** (5) amended, (HB 26-1134), ch. 77, p. 311, § 7, effective April 27.

Editor's note: Subsection (1.5)(c) was relocated to § 21-2-100.3 (2) in 2025.

ANNOTATION

If defendant wants the state to pay the costs of his attorney and supporting services, his only choice is to be represented by the public defender, or in the case of a conflict, a state-appointed alternate defense counsel. People v. Cardenas, 62 P.3d 621 (Colo. 2002).

Mandatory language in the alternate defense counsel statute limits the district court's authority to appoint counsel for indigent defendants to those attorneys on the "official list" established by the office of alternate defense counsel. The alternate defense counsel statute does not create a statutory right in defendants with regard to its procedural aspects; therefore, representation by counsel not on the "official list" did not violate any cognizable right of the defendant under this statute. Hodges v. People, 158 P.3d 922 (Colo. 2007).

Trial court abused its discretion in disqualifying entire state public defender's office from representing defendant where no direct conflict of interest existed because neither individual public defender representing defendant was involved in prior representation of witnesses, potential conflicts that may have existed with regard to other public defenders within the statewide office could not be imputed under C.R.P.C. 1.11 to individuals representing defendant, and defendant knowingly, intelligently, and voluntarily waived any conflict. People v. Shari, 204 P.3d 453 (Colo. 2009).

21-2-104. Duties of alternate defense counsel and contract attorneys - report.

(1) When representing an indigent person, the attorney under contract with the office of alternate defense counsel shall:

(a) Counsel and defend such person, whether he or she is held in custody, filed on as a delinquent, or charged with a felony offense, at every stage of the proceedings following arrest, detention, or service of process; and

(b) Prosecute any appeals or other remedies before or after conviction that the alternate defense counsel or the contract attorney considers to be in the interest of justice.

(2) In no case shall the alternate defense counsel or a contract attorney be required to prosecute any appeal or other remedy unless the alternate defense counsel or contract attorney is satisfied that there is arguable merit to the proceeding.

(3) Notwithstanding section 24-1-136 (11)(a)(I), pursuant to section 2-7-203, the office of alternate defense counsel shall report annually to the judiciary committees of the house of representatives and senate, or to any successor committees, information concerning:

(a) The number of juvenile delinquency cases for which counsel from the office is appointed;

(b) The number of juvenile cases that involve a conflict of interest;

(c) The process of selecting, training, and supporting attorneys who represent children in juvenile delinquency court;

(d) The average length of time attorneys are assigned to juvenile court;

(e) The outcome of efforts to reduce juvenile court rotations and increase opportunities for promotional advancement in salaries for attorneys in juvenile court; and

(f) The process of training employees and contractors concerning determinations of competency to proceed for juveniles and adults, competency evaluation reports, services to restore competency, and certification proceedings governed by article 65 of title 27.

Source: L. 96: Entire article added, p. 1014, § 1, effective May 23. **L. 2000:** IP(1) amended, p. 1480, § 3, effective August 2. **L. 2014:** (3) added, (HB 14-1032), ch. 247, p. 955, § 10, effective November 1. **L. 2019:** IP(3), (3)(d), and (3)(e) amended and (3)(f) added, (SB 19-223), ch. 227, p. 2292, § 17, effective July 1.

21-2-105. Contracts with attorneys and other legal services providers.

(1) On and after January 1, 1997, the office of 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 persons who are indigent, the office of alternate defense counsel may contract, where feasible, without prior approval of the court, for the provision of necessary legal services commensurate with those available to persons who are not indigent 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 legal services providers to provide services in such cases. As a condition of placement on the approved list, the contracting attorney or legal services provider shall agree to provide services based on the terms to be established in a contract, at either a fixed fee established by the office of alternate defense counsel or the hourly rate for reimbursement set by the supreme court. Terms of the contract must be negotiated between the alternate defense counsel and the contract attorney or legal services provider. Contracts made pursuant to this section must specify that the services must be provided subject to the Colorado rules of professional conduct.

(2) (a) Contracts made pursuant to this section must provide for reasonable compensation and reimbursement for expenses necessarily incurred, to be fixed and paid from state funds appropriated therefor. The office of alternate defense counsel shall review the bills submitted for reimbursement by any contractor and may approve or deny the payment of such bills in whole or in part based on the terms set forth in the contract negotiated between the alternate defense counsel and the contractor.

(b) The rate contracted for attorney time pursuant to subsection (2)(a) of this section for fiscal year 2023-24 is one hundred dollars per hour for cases involving a type B felony as referenced in attachment D to chief justice directive 04-04 and as modified by the gradations found in attachment D to chief justice directive 04-04. That hourly rate must be increased annually by no more than five dollars each year until the hourly rate is at least seventy-five percent of the rate set pursuant to the federal "Criminal Justice Act Revision of 1986", 18 U.S.C. sec. 3006A, as amended, for indigent representation in federal court. That hourly rate may be adjusted in subsequent fiscal years to maintain the hourly rate at or above seventy-five percent of the rate set pursuant to the federal "Criminal Justice Act Revision of 1986", 18 U.S.C. sec. 3006A, as amended, for indigent representation in federal court.

(3) Colorado relies primarily on an independent contractor model of legal representation for court-appointed adult and youth representation in accordance with this section when the public defender's office has a legal conflict of interest. While the office of the alternate defense counsel provides some legal representation for indigent individuals on some cases through state employees and will continue to explore the use of state employee staff model solutions where feasible, Colorado's need for conflict-free indigent defense counsel cannot be filled or provided statewide by direct employees of the office of the alternate defense counsel. For the purpose of determining eligibility for federal public service loan forgiveness, any independent contractor, including, but not limited to, a resource advocate, an investigator, a case assistant, an attorney, a social worker, a paralegal, or a legal researcher, who is currently providing or has previously provided legal services or services through an interdisciplinary legal team has a conflict in providing these services as a state employee. The director of the office of the alternate defense counsel or the director's designee is authorized to sign a certification for any current or past independent contractor that certifies that the contractor appears to be eligible for federal public service loan forgiveness as allowed by federal law or regulations. With the authorization of an independent contractor, the director of the office of the alternate defense counsel or the director's designee may share information, including the contractor's name, social security number or federal employer identification number, and the total number of hours billed by the contractor by calendar year, with other independent judicial agencies for the purpose of certifying apparent past, current, and future eligibility for public service loan forgiveness allowed by federal law or regulations.

Source: L. 96: Entire article added, p. 1015, § 1, effective May 23. **L. 2000:** (1) amended, p. 1480, § 4, effective August 2. **L. 2023:** (2) amended, (SB 23-227), ch. 77, p. 279, § 1, effective August 7; entire section amended, (HB 23-1033), ch. 9, p. 28, § 2, effective August 7. **L. 2024:** (3) added, (HB 24-1374), ch. 181, p. 980, § 4, effective May 15.

Editor's note: Amendments to subsection (2) by SB 23-227 and HB 23-1033 were harmonized.

Cross references: For the legislative declaration in HB 24-1374, see section 1 of chapter 181, Session Laws of Colorado 2024.

ANNOTATION

The phrase "where feasible" indicates that the existence of the "list" is not a prerequisite to the provision of alternate defense counsel representation. Therefore, appointment of alternate defense counsel by court is valid even if the individual attorney is not "on the official list" established by the office of alternate defense counsel. People v. Hodges, 134 P.3d 419 (Colo. App. 2005), aff'd on other grounds, 158 P.3d 922 (Colo. 2007).

Mandatory language in the alternate defense counsel statute limits the district court's authority to appoint counsel for indigent defendants to those attorneys on the "official list" established by the office of alternate defense counsel. The alternate defense counsel statute does not create a statutory right in defendants with regard to its procedural aspects; therefore, representation by counsel not on the "official list" did not violate any cognizable right of the defendant under this statute. Hodges v. People, 158 P.3d 922 (Colo. 2007).

21-2-106. Recoupment of fees and costs.

In any case when a court determines that a defendant is able to repay all or part of the expense of state-supplied or court-appointed counsel or any ancillary expenses incurred in representing such defendant, the court shall assess such fees or costs against such defendant and shall notify the judicial district's collection investigator.

Source: L. 96: Entire article added, p. 1015, § 1, effective May 23. **L. 2021:** Entire section amended, (SB 21-055), ch. 12, p. 76, § 9, effective March 21.

21-2-107. Complaints against contracted attorneys - procedure.

(1) If a person files a claim for damages arising from professional negligence as a result of an act or omission committed by an attorney during the performance of the attorney's duties pursuant to a contract with the office of alternate defense counsel pursuant to section 21-2-105:

(a) The complainant shall file with the court a certificate of review in accordance with the provisions of part 6 of article 20 of title 13, C.R.S.;

(b) The attorney shall not be required to file an answer to the complaint until twenty days after the complainant files the accompanying certificate of review; and

(c) The office of the attorney general shall represent the attorney from the time of service of the complaint until the certificate of review is filed; except that, if the office of alternate defense counsel determines that the act or omission that is the basis of the claim did not occur during the performance of the attorney's duties pursuant to a contract with the office of alternate defense counsel pursuant to section 21-2-105:

(I) The office of alternate defense counsel shall notify the attorney and the office of the attorney general of said determination; and

(II) The office of the attorney general shall not represent the attorney.

(2) Upon the timely filing of a certificate of review as required in subsection (1) of this section, the court shall:

(a) Allow the office of the attorney general to withdraw from representation of the attorney; and

(b) If requested, allow the attorney to substitute new counsel to represent him or her.

(3) If the office of the attorney general represents an attorney pursuant to paragraph (c) of subsection (1) of this section and the court determines that the act or omission that is the basis of the claim did not occur during the performance of the attorney's duties pursuant to a contract with the office of alternate defense counsel pursuant to section 21-2-105, the office of the attorney general may request, and in response to such a request the court shall order, the attorney to reimburse the office of the attorney general for reasonable costs and reasonable attorney fees incurred by the office of the attorney general during the course of the representation.

(4) If a person files a claim for damages that arise from professional negligence as a result of an act or omission committed by an attorney during the performance of the attorney's duties pursuant to a contract with the office of alternate defense counsel pursuant to section 21-2-105 and the attorney's contract for insurance with his or her malpractice insurance carrier requires the attorney to notify the insurance carrier upon the filing of a claim against the attorney, the insurance carrier may not consider the claim in determining the amount of the attorney's future malpractice insurance premiums unless a certificate of review is timely filed pursuant to paragraph (a) of subsection (1) of this section.

Source: L. 2010: Entire section added, (SB 10-063), ch. 99, p. 339, § 1, effective August 11.

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 (4)(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.

Source: L. 2018: Entire section added, (SB 18-203), ch. 354, p. 2113, § 3, effective August 8. **L. 2026:** (2) amended, (HB 26-1134), ch. 77, p. 312, § 8, effective April 27.

21-2-109. Office of alternate defense counsel - gifts, grants, and donations for record sealing.

(1) The office of alternate defense counsel may apply for grants and accept gifts or donations from private or public sources for the purpose of representing indigent clients in matters pursuant to part 7 of article 72 of title 24 when such action is in accordance with the Colorado rules of professional conduct and the American bar association standards relating to criminal justice for the defense function. The office of alternate defense counsel shall not accept a gift, grant, or donation if the gift, grant, or donation is conditioned on its use for sealing records for a specific identified individual or individuals. The office of alternate defense counsel shall transmit all money received through gifts, grants, or donations to the state treasurer, who shall credit the money to the sealing defense fund created in section 21-1-107.

(2) The office of alternate defense counsel shall annually report on the receipt and expenditure of gifts, grants, and donations pursuant to subsection (1) of this section at its presentation to its committee of reference at a hearing held pursuant to section 2-7-203 (2)(a) of the "State Measurement for Accountable, Responsive, and Transparent (SMART) Government Act".

Source: L. 2021: Entire section added, (HB 21-1214), ch. 455, p. 3030, § 4, effective September 7.

ANNOTATION

Law reviews. For article, "2021 Updates on Sealing Criminal Records", see 51 Colo. Law. 22 (May 2022).