

BY AUTHORITY

ORDINANCE NO. _____
SERIES OF 2014

COUNCIL BILL NO. _____
COMMITTEE OF REFERENCE:

A BILL

For an ordinance amending Chapter 14, D.R.M.C. to create the Denver County Court
Municipal Public Defender’s Commission and the Office of Municipal Public Defender

BE IT ENACTED BY THE COUNCIL OF THE CITY AND COUNTY OF DENVER:

Section 1. That Chapter 14, D.R.M.C., concerning the County Court, is hereby amended by
adding a new Article VII, to read as follows:

ARTICLE VII. MUNICIPAL PUBLIC DEFENDER

Sec. 14-130. Municipal Public Defender Commission created.

The Municipal Public Defender Commission is hereby established within the Denver County
Court. The Commission, through its ability to appoint and discharge the Chief Municipal Public
Defender, shall ensure that indigent defendants in the Denver County Court who are charged with a
municipal ordinance violation which carries the potential of a jail sentence are represented free from
any political considerations or private interests, shall provide legal services to such indigent
defendants commensurate with those provided to non-indigents, and shall conduct the office in
accordance with the Colorado Code of Professional Conduct and with the American Bar Association
Standards Relating to the Administration of Criminal Justice, the defense function.

Sec. 14-131. Appointment of commissioners; qualifications of commissioners.

The Municipal Public Defender Commission shall consist of five members appointed by the
Presiding Judge of the Denver County Court. Three members of the Commission shall be attorneys
admitted to practice law in the state of Colorado, and two members shall be persons not admitted to
practice law in the state of Colorado. All members shall be residents of the City and County of
Denver. No member of the Commission shall be, at the time of or during the term of the appointment,
a judge, prosecutor, public defender, or employee of a law enforcement agency.

Sec. 14-132. Term of commissioners; vacancies; removal.

1 The members of the Municipal Public Defender Commission shall serve for a period of four
2 years except that upon the creation of the Commission one of the attorney members and one of the
3 non-attorney members shall be appointed for a provisional two-year term. Commissioners may be
4 appointed for successive terms without limitation. Upon the expiration of any term, a commissioner
5 may carry-over on the Commission until a successor is appointed. Any vacancy on the Commission
6 shall be filled by appointment of the Presiding Judge, and any person so appointed shall serve the
7 remaining portion of the term of the commissioners so replaced. Any commissioner may be removed
8 at any time with or without cause by the Presiding Judge.

9
10 **Sec. 14-133. Compensation.**

11 Members of the Municipal Public Defender Commission shall serve without compensation.
12

13 **Sec. 14-134. Powers and duties of the Commission.**

- 14 (a) *Appointment of officers.* The Commission shall elect from its membership a chair and
15 vice-chair.
- 16 (b) *Required meetings.* The Commission shall meet at least quarterly, and shall meet at
17 such other times pursuant to a call of the chair of the Commission or at the request of the
18 Chief Municipal Public Defender.
- 19 (c) *Appointment and supervision of Chief Municipal Public Defender.* The Commission shall
20 be the appointing authority for the Chief Municipal Public Defender, and shall supervise the
21 work of the Chief Municipal Public Defender in carrying out the purposes and requirements
22 of this Article VII and fulfilling the duties set forth in Section 14-135. The Chief Municipal
23 Public Defender shall have career service status, shall be an attorney admitted to practice
24 law in the state of Colorado, and shall meet such other qualifications as shall be determined
25 by the Commission in consultation with the Office of Human Resources.
- 26 (d) *Independent oversight.* The Commission shall exercise independent oversight of and
27 provide guidance to the Chief Municipal Public Defender in the administration of the Office
28 of Municipal Public Defender.
- 29 (e) *Non-interference.* No commissioner shall interfere with the discretion, professional
30 judgment or advocacy of the Chief Municipal Public Defender or any other attorney
31 employed in the Office of the Municipal Public Defender in the representation of any
32 indigent defendant in the Denver County Court.

33
34 **Sec. 14-135. Powers and Duties of Chief Municipal Public Defender**

- 1 (a) *Office of Municipal Public Defender.* The Chief Municipal Public Defender shall
2 manage the Office of Municipal Public Defender in carrying out the purposes and
3 requirements of this Article VII and shall regularly report to the Commission concerning the
4 activities of the Office.
- 5 (b) *Appointment of attorneys and staff.* The Chief Municipal Public Defender shall be the
6 appointing authority for all assistant municipal public defenders and any and all non-
7 attorneys on the staff of the Office of Municipal Public Defender, all of who shall have
8 career service status. The Chief Municipal Public Defender shall, in consultation with the
9 Office of Human Resources, establish qualifications for all attorneys and non-attorneys
10 employed in the Office.
- 11 (c) *Law students.* Pursuant to Rule 226.5, Colorado Rules of Civil Procedure, and the
12 Colorado Student Practice Act, § 12-5-116.1, C.R.S., the Chief Municipal Public Defender
13 may accept the services of law students, in addition to other volunteer workers, license
14 attorneys and consultants at no compensation other than reimbursement of actual and
15 necessary expenses, and such person shall not be considered employees of the City.
- 16 (d) *Limitation on private practice of law.* The Chief Municipal Public Defender and any
17 assistant municipal public defender shall not engage in the private practice of law.
18

19 **Sec. 14-136. Representation of indigent persons.**

- 20 (a) Municipal public defender shall represent as counsel, without charge, each indigent
21 person who is charged with committing a violation of the charter or any ordinance of the
22 City, the penalty for which may be a jail sentence, if:
- 23 (1) The defendant requests it and complies with the indigence standards set forth in section
24 14-137.
- 25 (2) The court, on its own motion or otherwise, so orders and the defendant does not
26 affirmatively reject on the record the opportunity to be represented by legal counsel in
27 the proceeding. When appointed by the court, the municipal public defender shall be
28 limited to defending the indigent person. The municipal public defender shall not be
29 appointed to act as advisory counsel. The court shall not appoint a municipal public
30 defender to represent a defendant if the defendant does not meet the indigence
31 standards set forth in Section 14-137.
- 32 (b) Municipal public defenders shall not represent any indigent defendant and the court
33 shall not order the Office of Municipal Public Defender or any other attorney to represent an
34 indigent defendant when:

- 1 (1) The municipal ordinance violation of which the defendant is accused does not provide
2 for jail as a potential penalty; or
3 (2) The office of the City Attorney informs the court that it shall not request jail as a
4 punishment if the defendant is convicted of the violation, in which case the court shall be
5 prohibited from imposing jail for a conviction; or
6 (3) Any reason or basis exists indicating that the defendant will not be sentenced to jail for a
7 conviction.

8 (c) When representing an indigent person, the municipal public defender shall counsel and
9 defend the defendant whether the defendant is held in custody or charged with a municipal
10 charter or ordinance violation at every stage of the proceedings following arrest, detention,
11 or service of process.

12 (d) Only upon order of the court shall the municipal public defender represent an indigent
13 defendant in an appeal after the conviction. The court may review the financial status of the
14 convicted person in order to determine the continuing need for municipal public defender
15 representation upon appeal. The court shall not consider the propriety or merit of the
16 appeal in determining whether to provide continued representation by the public defender.
17

18 **Sec. 14-137. Determination of indigence.**

19 All determinations of indigence shall be made in accordance with standards promulgated by the
20 Colorado Supreme Court governing the appointment of state public defenders, which standards are
21 hereby incorporated by reference in this Article VII. The initial determination of a defendant's
22 indigence shall be made by the Office of the Municipal Public Defender, subject to a final
23 determination by the court. When a defendant requests representation by a municipal public
24 defender, such person shall submit an appropriate application, the form of which shall state that such
25 application is signed under oath and under the penalty that a false statement may be prosecuted as
26 such. A non-refundable twenty-five dollar (\$25.00) application fee shall be paid at the time the
27 application is submitted and no application shall be accepted without payment of the fee; except that
28 the court may, based upon the financial information submitted, waive the fee if the person is in
29 custody and the court determines that the person does not have the financial resources to pay the fee.

30 Before the court appoints a municipal public defender based on the application, the court shall
31 advise the defendant that the application is filed under oath. Upon request of the city attorney, the
32 court shall hold a hearing on the issues of the eligibility for appointment of a municipal public defender.
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1 **Sec. 14-138. Appointment of other attorney in place of municipal public defender.**

2 For cause, including but not limited to circumstances in which there may be a conflict of
3 interest, the court may on its own motion or upon the application of the municipal public defender or
4 the indigent person, appoint an attorney other than the municipal public defender to represent the
5 indigent person at any stage of the proceedings. Any attorney so appointed shall be paid reasonable
6 compensation and reimbursement for expenses necessarily incurred out of the appropriation for the
7 Office of Municipal Public Defender.

8
9 **Sec. 14-139. Recovery of fees and costs.**

10 When the court determines that a defendant is able to repay all or part of the expense of court-
11 appointed counsel or any ancillary expenses incurred in representing such defendant, the court may
12 assess such fees or costs against such defendant.

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16 COMMITTEE APPROVAL DATE: _____, 2014.

17 MAYOR-COUNCIL DATE: _____, 2014.

18 PASSED BY THE COUNCIL _____ 2014

19 _____ - PRESIDENT

20 APPROVED: _____ - MAYOR _____ 2014

21 ATTEST: _____ - CLERK AND RECORDER,
22 EX-OFFICIO CLERK OF THE
23 CITY AND COUNTY OF DENVER
24

25 NOTICE PUBLISHED IN THE DAILY JOURNAL _____ 2014; _____ 2014

26
27 PREPARED BY: _____; DATE: _____
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29 Pursuant to section 13-12, D.R.M.C., this proposed ordinance has been reviewed by the office of the
30 City Attorney. We find no irregularity as to form, and have no legal objection to the proposed
31 ordinance. The proposed ordinance **is not** submitted to the City Council for approval pursuant to §
32 3.2.6 of the Charter.
33

34 D. Scott Martinez

35 City Attorney
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1 BY: _____, _____ City Attorney

2 DATE: _____

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