

First Regular Session  
Sixty-seventh General Assembly  
STATE OF COLORADO

INTRODUCED

LLS NO. 09-0399.01 Nancy Dalien

SENATE BILL 09-058

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SENATE SPONSORSHIP

White,

HOUSE SPONSORSHIP

(None),

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Senate Committees  
Judiciary

House Committees

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A BILL FOR AN ACT

101 CONCERNING IMMUNITY FOR ATTORNEYS CONTRACTING WITH STATE  
102 JUDICIAL DEPARTMENT AGENCIES TO PROVIDE STATUTORILY  
103 MANDATED SERVICES.

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Bill Summary

*(Note: This summary applies to this bill as introduced and does not necessarily reflect any amendments that may be subsequently adopted.)*

Provides governmental immunity to attorneys who contract with the alternate defense counsel and the office of the child's representative to provide statutorily mandated services. Clarifies that an attorney who contracts with a state judicial department agency has immunity only when providing legal representation within the course and scope of the legal duties of his or her contract.

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.*

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

2           **SECTION 1. Legislative declaration.** (1) The general assembly  
3 hereby finds that:

4           (a) State employees currently have the benefit of governmental  
5 immunity;

6           (b) Several statutorily mandated agencies in the judicial  
7 department contract with attorneys to provide their statutorily mandated  
8 services;

9           (c) The attorneys providing the statutorily mandated services  
10 through contracts with judicial department agencies perform the same or  
11 similar tasks as the attorneys who work for the public defender and the  
12 attorney general who have governmental immunity;

13           (d) In many circumstances, it is more cost-effective for the state  
14 to provide these statutorily mandated services through independent  
15 contractors rather than through full-time employees; and

16           (e) Attorneys would be more willing to contract with the state to  
17 provide these statutorily mandated services if the attorneys were granted  
18 governmental immunity, since the state pays these attorneys a contract  
19 rate that is significantly below market value.

20           (2) Therefore, the general assembly concludes that extending  
21 governmental immunity to attorneys who contract with state judicial  
22 department agencies is in the best interest of the state.

23           **SECTION 2.** 24-10-103 (4) (a), Colorado Revised Statutes, is  
24 amended to read:

25           **24-10-103. Definitions.** As used in this article, unless the context  
26 otherwise requires:

1 (4) (a) "Public employee" means an officer, employee, servant, or  
2 authorized volunteer of the public entity, whether or not compensated,  
3 elected, or appointed, but does not include an independent contractor,  
4 EXCEPT AS PROVIDED BY SUBPARAGRAPHS (VII), (VIII), AND (IX) OF  
5 PARAGRAPH (b) OF THIS SUBSECTION (4), or ~~any~~ A person who is  
6 sentenced to participate in any type of useful public service. For the  
7 purposes of this subsection (4), "authorized volunteer" means a person  
8 who performs an act for the benefit of a public entity at the request of and  
9 subject to the control of such public entity and includes a qualified  
10 volunteer as defined in section 24-32-2202 (6).

11 **SECTION 3.** 24-10-103 (4) (b), Colorado Revised Statutes, is  
12 amended BY THE ADDITION OF THE FOLLOWING NEW  
13 SUBPARAGRAPHS to read:

14 **24-10-103. Definitions.** As used in this article, unless the context  
15 otherwise requires:

16 (4) (b) "Public employee" includes any of the following:

17 (VIII) AN ATTORNEY CONTRACTING WITH THE OFFICE OF THE  
18 ALTERNATE DEFENSE COUNSEL, CREATED IN SECTION 21-2-101, C.R.S.,  
19 FOR THE PURPOSES OF PROVIDING CONFLICT-FREE COUNSEL AS DICTATED  
20 BY THE COLORADO AND UNITED STATES CONSTITUTIONS. AN ATTORNEY  
21 CONTRACTING WITH THE OFFICE OF THE ALTERNATE DEFENSE COUNSEL  
22 SHALL MAINTAIN THE STATUS OF A PUBLIC EMPLOYEE ONLY WHEN  
23 REPRESENTING CLIENTS PURSUANT TO HIS OR HER CONTRACT WITH THE  
24 OFFICE OF THE ALTERNATE DEFENSE COUNSEL.

25 (IX) AN ATTORNEY CONTRACTING WITH THE OFFICE OF THE  
26 CHILD'S REPRESENTATIVE CREATED IN SECTION 13-91-104, C.R.S. AN  
27 ATTORNEY CONTRACTING WITH THE OFFICE OF THE CHILD'S

1 REPRESENTATIVE SHALL MAINTAIN THE STATUS OF A PUBLIC EMPLOYEE  
2 ONLY WHEN REPRESENTING CLIENTS OR THE BEST INTERESTS OF THE CHILD  
3 PURSUANT TO HIS OR HER CONTRACT WITH THE OFFICE OF THE CHILD'S  
4 REPRESENTATIVE.

5           **SECTION 4. Applicability.** This act shall apply to attorney  
6 contracts with state judicial department agencies to provide statutorily  
7 mandated services entered into on or after the effective date of this act.

8           **SECTION 5. Safety clause.** The general assembly hereby finds,  
9 determines, and declares that this act is necessary for the immediate  
10 preservation of the public peace, health, and safety.