

**First Regular Session
Seventy-second General Assembly
STATE OF COLORADO**

INTRODUCED

LLS NO. 19-0345.01 Jacob Baus x2173

SENATE BILL 19-026

SENATE SPONSORSHIP

Cooke,

HOUSE SPONSORSHIP

(None),

Senate Committees
Judiciary

House Committees

A BILL FOR AN ACT

101 **CONCERNING POSTCONVICTION REMEDY PROCEEDINGS.**

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://leg.colorado.gov>.)

The bill prohibits a defendant from bringing a second or subsequent claim for postconviction remedy on the grounds of ineffective assistance of counsel in a prior postconviction proceeding.

The bill creates discovery procedures for postconviction remedy hearings.

In the event a motion for postconviction remedy is denied, the bill requires the court to enter a judgment against the defendant for the amount of the costs of prosecution, the amount of the cost of care, and

Shading denotes HOUSE amendment. Double underlining denotes SENATE amendment.
Capital letters or bold & italic numbers indicate new material to be added to existing statute.
Dashes through the words indicate deletions from existing statute.

any fine imposed. Furthermore, the bill allows the court to assess against the defendant the costs of transporting and housing the defendant from another facility to appear in court on a motion for postconviction remedy.

The bill prohibits the state public defender or an attorney who contracts with the office of alternate defense counsel from representing or advising a defendant on a second or subsequent claim for postconviction remedy, unless the motion is based upon newly discovered evidence of innocence.

The bill requires the state public defender and an attorney who contracts with the office of alternate defense counsel to retain records related to the representation of defendants for 7 years, or until the defendant's death, if the defendant was convicted of a class 1 felony.

The bill limits the time period that a defendant may collaterally attack the validity of the conviction or adjudication to 5 years.

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

2 **SECTION 1.** In Colorado Revised Statutes, **add** 18-1-409.7 as
3 follows:

4 **18-1-409.7. Postconviction remedy - legislative declaration.**

5 (1) THE GENERAL ASSEMBLY FINDS AND DECLARES THAT:

6 (a) CRIMINAL DEFENDANTS ARE PROVIDED SUFFICIENT AND
7 RECOGNIZABLE AVENUES OF APPEAL AND POSTCONVICTION RELIEF TO
8 ENSURE THE PROTECTION OF CONSTITUTIONAL RIGHTS; AND

9 (b) THE VICTIMS OF CRIMES AND THE PEOPLE OF COLORADO
10 DESERVE FINALITY IN CRIMINAL JUDGMENTS.

11 (2) THE GENERAL ASSEMBLY HEREBY DECLARES THAT
12 POSTCONVICTION RELIEF IS SUBJECT TO THE LIMITS IMPOSED BY THE LAWS
13 OF THIS STATE AND MUST NOT BE EXPANDED BEYOND THE EXPRESSED WILL
14 OF THE GENERAL ASSEMBLY.

15 **SECTION 2.** In Colorado Revised Statutes, 18-1-410, **amend**
16 (2)(a); and **add** (2)(c) as follows:

17 **18-1-410. Postconviction remedy.** (2) (a) Except as otherwise

1 required by ~~paragraph (b)~~ of this subsection (2), THE COURT, THE
2 DEFENDANT OR THE DEFENDANT'S COUNSEL, AND THE PROSECUTING
3 ATTORNEY SHALL FOLLOW THE ~~procedures to be followed in~~
4 ~~implementation of the right to postconviction remedy shall be as~~
5 prescribed by rule of the supreme court of the state of Colorado
6 CONCERNING THE RIGHT TO POSTCONVICTION REMEDY.

7 (c) (I) NO CLAIM CAN BE BROUGHT, AND NO POSTCONVICTION
8 REMEDY IS AVAILABLE, BASED UPON INEFFECTIVE ASSISTANCE OF
9 POSTCONVICTION COUNSEL.

10 (II) THE COURT SHALL NOT APPOINT COUNSEL FOR AN INDIGENT
11 DEFENDANT AT THE STATE'S EXPENSE FOR A CLAIM BASED UPON
12 INEFFECTIVE ASSISTANCE OF POSTCONVICTION COUNSEL.

13 **SECTION 3.** In Colorado Revised Statutes, **add** 18-1-410.5 as
14 follows:

15 **18-1-410.5. Discovery in postconviction remedy hearing.**

16 (1) UPON SETTING A POSTCONVICTION REVIEW HEARING, THE DEFENDANT
17 OR THE DEFENDANT'S COUNSEL AND THE PROSECUTING ATTORNEY SHALL
18 COMPLY WITH THE DISCOVERY REQUIREMENTS OF THIS SECTION NO LATER
19 THAN THIRTY-FIVE DAYS PRIOR TO THE HEARING.

20 (2) THE DEFENDANT OR THE DEFENDANT'S COUNSEL SHALL
21 DISCLOSE TO THE PROSECUTING ATTORNEY THE FOLLOWING MATERIAL
22 AND INFORMATION THAT IS WITHIN THE DEFENDANT'S OR THE
23 DEFENDANT'S COUNSEL'S POSSESSION OR CONTROL:

24 (a) ANY REPORTS OR STATEMENTS OF AN EXPERT MADE IN
25 CONNECTION WITH THE PARTICULAR CASE, INCLUDING THE RESULTS OF
26 PHYSICAL OR MENTAL EXAMINATIONS AND OF SCIENTIFIC TESTS,
27 EXPERIMENTS, OR COMPARISONS. AN EXPERT WHO HAS NOT SUBMITTED

1 REQUIRED REPORTS OR STATEMENTS PURSUANT TO THIS SUBSECTION (2)(a)
2 IS PROHIBITED FROM TESTIFYING AT THE HEARING.

3 (b) STATEMENTS OF ALL WITNESSES;

4 (c) A WRITTEN LIST OF THE NAMES AND CONTACT INFORMATION OF
5 THE WITNESSES THEN KNOWN TO THE DEFENDANT OR THE DEFENDANT'S
6 COUNSEL WHOM HE OR SHE INTENDS TO CALL AT THE HEARING; AND

7 (d) ANY CONTENTS OF THE ALLEGEDLY INEFFECTIVE COUNSEL'S
8 FILE THAT ARE RELATED TO THE DEFENDANT'S CLAIM OF INEFFECTIVE
9 ASSISTANCE OF COUNSEL IF THE GROUNDS FOR RELIEF INCLUDE
10 INEFFECTIVE ASSISTANCE OF COUNSEL. PRODUCTION OF ANY CONTENTS OF
11 THE ALLEGEDLY INEFFECTIVE COUNSEL'S FILE DOES NOT REQUIRE A COURT
12 ORDER OR SUBPOENA.

13 (3) THE PROSECUTING ATTORNEY SHALL DISCLOSE TO THE
14 DEFENDANT OR THE DEFENDANT'S COUNSEL THE FOLLOWING MATERIAL
15 AND INFORMATION THAT IS WITHIN THE PROSECUTING ATTORNEY'S
16 POSSESSION OR CONTROL IF NOT PREVIOUSLY DISCLOSED:

17 (a) POLICE, ARREST, AND CRIME OR OFFENSE REPORTS, INCLUDING
18 STATEMENTS OF ALL WITNESSES;

19 (b) ANY REPORTS OR STATEMENTS OF AN EXPERT MADE IN
20 CONNECTION WITH THE PARTICULAR CASE, INCLUDING THE RESULTS OF
21 PHYSICAL OR MENTAL EXAMINATIONS AND OF SCIENTIFIC TESTS,
22 EXPERIMENTS, OR COMPARISONS. AN EXPERT WHO HAS NOT SUBMITTED
23 REQUIRED REPORTS OR STATEMENTS PURSUANT TO THIS SUBSECTION
24 (3)(b) IS PROHIBITED FROM TESTIFYING AT THE HEARING.

25 (c) ANY BOOKS, PAPERS, DOCUMENTS, PHOTOGRAPHS, OR
26 TANGIBLE OBJECTS HELD AS EVIDENCE IN CONNECTION WITH THE CASE;

27 (d) ANY RECORD OF PRIOR CRIMINAL CONVICTIONS OF ANY PERSON

1 THE PROSECUTING ATTORNEY INTENDS TO CALL AS A WITNESS AT THE
2 HEARING;

3 (e) ALL TAPES AND TRANSCRIPTS OF ANY ELECTRONIC
4 SURVEILLANCE, INCLUDING WIRETAPS, OF CONVERSATIONS INVOLVING THE
5 DEFENDANT OR A WITNESS THAT ARE RELEVANT TO THE ISSUES
6 CONTAINED IN THE MOTION FOR POSTCONVICTION RELIEF;

7 (f) A WRITTEN LIST OF THE NAMES AND ADDRESSES OF THE
8 WITNESSES THEN KNOWN TO THE PROSECUTING ATTORNEY WHOM HE OR
9 SHE INTENDS TO CALL AT THE HEARING; AND

10 (g) ANY CONTENTS OF THE ALLEGEDLY INEFFECTIVE COUNSEL'S
11 FILE THAT ARE RELATED TO THE DEFENDANT'S CLAIM OF INEFFECTIVE
12 ASSISTANCE OF COUNSEL IF THE GROUNDS FOR RELIEF INCLUDE
13 INEFFECTIVE ASSISTANCE OF COUNSEL AND IF THE CONTENTS ARE IN THE
14 ACTUAL POSSESSION OF THE PROSECUTING ATTORNEY. PRODUCTION OF
15 ANY CONTENTS OF THE ALLEGEDLY INEFFECTIVE COUNSEL'S FILE DOES NOT
16 REQUIRE A COURT ORDER OR SUBPOENA.

17 (4) THE PROSECUTING ATTORNEY SHALL DISCLOSE TO THE
18 DEFENDANT OR THE DEFENDANT'S COUNSEL ANY MATERIAL OR
19 INFORMATION WITHIN THE PROSECUTING ATTORNEY'S POSSESSION OR
20 CONTROL THAT TENDS TO NEGATE THE GUILT OF THE DEFENDANT AS TO
21 THE OFFENSE CHARGED OR TENDS TO SUPPORT THE GROUNDS ASSERTED IN
22 THE MOTION FOR POSTCONVICTION RELIEF.

23 **SECTION 4.** In Colorado Revised Statutes, 18-1.3-701, **amend**
24 (1)(a); and **add** (2)(n) as follows:

25 **18-1.3-701. Judgment for costs and fines - definitions.**

26 (1) (a) Where any person, association, or corporation is convicted of an
27 offense, ~~or~~ any juvenile is adjudicated a juvenile delinquent for the

1 commission of an act that would have been a criminal offense if
2 committed by an adult, OR A MOTION FOR POSTCONVICTION REMEDY IS
3 DENIED, the court shall give judgment in favor of the state of Colorado,
4 the appropriate prosecuting attorney, or the appropriate law enforcement
5 agency and against the ~~offender or juvenile~~ OFFENDER, JUVENILE, OR
6 DEFENDANT for the amount of the costs of prosecution, the amount of the
7 cost of care, and any fine imposed. ~~No fine shall be imposed~~ A COURT
8 SHALL NOT IMPOSE A FINE for conviction of a felony except as provided
9 in section 18-1.3-401 or 18-7-203 (2)(a). Such judgments ~~shall be~~ ARE
10 enforceable in the same manner as are civil judgments, and, in addition,
11 the provisions of section 16-11-101.6 ~~C.R.S.~~, and section 18-1.3-702
12 apply. A county clerk and recorder ~~may~~ SHALL not charge a fee for the
13 recording of a transcript or satisfaction of a judgment entered pursuant to
14 this section.

15 (2) The costs assessed pursuant to subsection (1) of this section
16 or section 16-18-101 may include:

17 (n) THE COSTS OF TRANSPORTING AND HOUSING A PRISONER FROM
18 ANOTHER FACILITY TO APPEAR IN COURT ON A MOTION FOR
19 POSTCONVICTION REMEDY.

20 **SECTION 5.** In Colorado Revised Statutes, 21-1-103, **add** (6) as
21 follows:

22 **21-1-103. Representation of indigent persons.** (6) (a) THE
23 STATE PUBLIC DEFENDER SHALL REPRESENT INDIGENT PERSONS IN THE
24 PROSECUTION OF POSTCONVICTION RELIEF PROCEEDINGS WHEN APPOINTED
25 BY THE COURT FOLLOWING THE FILING OF A MOTION FOR POSTCONVICTION
26 RELIEF BY AN INDIGENT PERSON.

27 (b) NOTHING IN THIS SUBSECTION (6) AUTHORIZES THE STATE

1 PUBLIC DEFENDER TO REPRESENT OR ADVISE AN INDIGENT PERSON IN A
2 SECOND OR SUBSEQUENT POSTCONVICTION MOTION, EXCEPT WHEN THE
3 MOTION IS BASED UPON NEWLY DISCOVERED EVIDENCE OF ACTUAL
4 INNOCENCE.

5 **SECTION 6.** In Colorado Revised Statutes, **add** 21-1-107 as
6 follows:

7 **21-1-107. Record retention - definition.** (1) THE OFFICE OF THE
8 STATE PUBLIC DEFENDER SHALL RETAIN ALL RECORDS FROM THE
9 REPRESENTATION OF A DEFENDANT FOR SEVEN YEARS FOLLOWING THE
10 DATE OF CONVICTION, RESENTENCING, OR ISSUANCE OF A MANDATE,
11 WHICHEVER COMES LAST. IN ANY CASE IN WHICH THE DEFENDANT WAS
12 CONVICTED OF A CLASS 1 FELONY, THE RECORDS MUST BE MAINTAINED
13 UNTIL THE DEATH OF THE DEFENDANT.

14 (2) FOR PURPOSES OF THIS SECTION, "RECORD" MEANS ANY
15 DOCUMENT, NOTE, E-MAIL, OR RECORDING RELATED TO THE
16 REPRESENTATION OF THE DEFENDANT.

17 **SECTION 7.** In Colorado Revised Statutes, 21-2-103, **add** (6) as
18 follows:

19 **21-2-103. Representation of indigent persons.** (6) (a) THE
20 OFFICE OF ALTERNATE DEFENSE COUNSEL SHALL REPRESENT INDIGENT
21 PERSONS IN THE PROSECUTION OF POSTCONVICTION RELIEF PROCEEDINGS
22 FOLLOWING THE FILING OF A MOTION FOR POSTCONVICTION RELIEF BY AN
23 INDIGENT PERSON AND WHEN APPOINTED BY THE COURT AND WHEN THERE
24 IS A CONFLICT WITH THE STATE PUBLIC DEFENDER.

25 (b) NOTHING IN THIS SUBSECTION (6) AUTHORIZES THE OFFICE OF
26 ALTERNATE DEFENSE COUNSEL TO REPRESENT OR ADVISE AN INDIGENT
27 PERSON IN A SECOND OR SUBSEQUENT POSTCONVICTION MOTION, EXCEPT

1 WHEN THE MOTION IS BASED UPON NEWLY DISCOVERED EVIDENCE OF
2 ACTUAL INNOCENCE.

3 **SECTION 8.** In Colorado Revised Statutes, **add** 21-2-109 as
4 follows:

5 **21-2-109. Record retention - definition.** (1) AN ATTORNEY WHO
6 REPRESENTS A DEFENDANT PURSUANT TO A CONTRACT WITH THE OFFICE
7 OF ALTERNATE DEFENSE COUNSEL SHALL RETAIN ALL RECORDS FROM THE
8 REPRESENTATION OF A DEFENDANT FOR A PERIOD OF SEVEN YEARS
9 FOLLOWING THE DATE OF CONVICTION, RESENTENCING, OR ISSUANCE OF
10 A MANDATE, WHICHEVER COMES LAST. IN ANY CASE IN WHICH THE
11 DEFENDANT WAS CONVICTED OF A CLASS 1 FELONY, THE RECORDS MUST
12 BE MAINTAINED UNTIL THE DEATH OF THE DEFENDANT.

13 (2) FOR PURPOSES OF THIS SECTION, "RECORD" MEANS ANY
14 DOCUMENT, NOTE, E-MAIL, OR RECORDING RELATED TO THE
15 REPRESENTATION OF THE DEFENDANT.

16 **SECTION 9.** In Colorado Revised Statutes, 16-5-402, **amend** (1)
17 as follows:

18 **16-5-402. Limitation for collateral attack upon trial judgment.**

19 (1) Except as otherwise provided in subsection (2) of this section, no
20 person who has been convicted as an adult or who has been adjudicated
21 as a juvenile under a criminal statute of this or any other state of the
22 United States shall collaterally attack the validity of that conviction or
23 adjudication unless such attack is commenced within the applicable time
24 period, as provided in this subsection (1), following the date of said
25 conviction, or for purposes of juvenile adjudication the applicable time
26 period will begin at the time of the juvenile's eighteenth birthday:

27 All class 1 felonies: No limit

1		FIVE YEARS
2	All other felonies:	Three years
3	Misdemeanors:	Eighteen months
4	Petty offenses:	Six months

5 **SECTION 10. Act subject to petition - effective date -**
6 **applicability.** (1) Sections 2 to 5, 7, and 9 of this act take effect October
7 1, 2019, and the remaining sections of this act take effect at 12:01 a.m. on
8 the day following the expiration of the ninety-day period after final
9 adjournment of the general assembly (August 2, 2019, if adjournment
10 sine die is on May 3, 2019); except that, if a referendum petition is filed
11 pursuant to section 1 (3) of article V of the state constitution against this
12 act or an item, section, or part of this act within such period, then the act,
13 item, section, or part will not take effect unless approved by the people
14 at the general election to be held in November 2020 and, in such case,
15 will take effect on the date of the official declaration of the vote thereon
16 by the governor.

17 (2) Sections 2, 5, and 7 of this act apply to all postconviction
18 motions and claims for relief filed on or after the effective date of each
19 of those sections.

20 (3) Section 3 of this act applies to postconviction relief hearings
21 conducted on or after the effective date of section 3.

22 (4) Section 4 of this act applies to orders entered on or after the
23 effective date of section 4.

24 (5) The five-year limit imposed pursuant to section 9 of this act
25 applies to all postconviction motions and claims for relief filed on or after
26 the effective date of section 9.