

STATE OF COLORADO

OFFICE OF THE GOVERNOR

136 State Capitol
Denver, Colorado 80203
Phone (303) 866-2471
Fax (303) 866-2003



John W. Hickenlooper
Governor

June 10, 2016

The Honorable Colorado House of Representatives
State Capitol
200 E. Colfax Ave.
Denver, CO 80203

Dear Members of the Colorado House of Representatives:

Today, we are filing with the Secretary of State House Bill 16-1309, "Concerning a Defendant's Right to Counsel in Certain Cases Considered by Municipal Courts."

As I am neither signing nor vetoing HB 16-1309, the bill will become law at 12:01 a.m. on June 11, 2016. This letter sets forth my reasons for allowing HB 16-1309 to become law absent my signature.

In Colorado, state and county courts provide a public defender for in-custody defendants facing jail as a possible penalty at their first appearance before a judge. The vast majority of Colorado municipalities do not currently follow this practice in their municipal courts. As a result, many defendants charged with violating a municipal ordinance face a judge alone at their initial appearance. House Bill 16-1309 addresses this disparity by requiring municipal courts to appoint counsel for criminal defendants at their initial appearance in municipal court if s/he is in custody and charged with an offense carrying possible incarceration. A defendant may waive the appointment of counsel.

The U.S. Supreme Court has held that defendants have the right to counsel at all "critical stages" of a criminal prosecution. At first appearances in municipal courts, defendants often enter a guilty plea, and the case is over. If the defendant pleads not guilty, the judge sets bond, thereby determining a defendant's pretrial liberty. We believe these are critical stages in the prosecution.

Under the current system in municipal courts, many defendants who cannot afford to post bond for low-level municipal offenses have the option of pleading guilty and going home after being sentenced to time served, or requesting counsel and waiting in jail until their next court appearance. Given these options, we question how many of these defendants are pleading guilty just to get out of jail, regardless of whether they are guilty or innocent. Without counsel present, many defendants do not understand the lifelong impact a guilty plea may have on a various aspects of their lives, including employment, housing, the ability to hold a driver's license, and immigration. This system not only disproportionately affects our most vulnerable citizens - many of whom suffer from mental illness or addiction - but also

imposes indirect costs on the State by interfering with the ability of defendants to live productive lives after a criminal charge has been resolved.

While HB 16-1309 enacts laudable policy, it is not perfect. We are concerned that the bill imposes costs on local governments. A commitment to protecting individual liberties and respect for local governments' financial constraints need not be mutually exclusive. As such, I have directed the Office of State Planning and Budgeting to work with municipalities to determine the costs and savings that will result from enactment of this bill. The Office will evaluate options, including a potential request in the fiscal year 2017-18 budget, for the State to offset costs for local governments.

For this reason, I am allowing HB 16-1309 to become law without my signature. We stand ready to work with the General Assembly on options to fund this worthwhile policy.

Sincerely,



John W. Hickenlooper
Governor