

HOUSE BILL NO. 321

IN THE LEGISLATURE OF THE STATE OF ALASKA

THIRTY-SECOND LEGISLATURE - SECOND SESSION

BY REPRESENTATIVE CLAMAN

Introduced: 2/14/22

Referred: State Affairs, Judiciary

A BILL

FOR AN ACT ENTITLED

1 "An Act relating to the public defender agency; relating to the office of public advocacy;
2 and establishing the Alaska Public Counsel Commission."

3 **BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF ALASKA:**

4 * **Section 1.** AS 18.85.020 is amended to read:

5 **Sec. 18.85.020. Administration.** The public defender agency is administered
6 by the Alaska Public Counsel Commission [PUBLIC DEFENDER].

7 * **Sec. 2.** AS 18.85.020 is amended by adding a new subsection to read:

8 (b) The executive director of the Alaska Public Counsel Commission may
9 make recommendations to the commissioner of administration regarding regulations
10 that the commission considers necessary to implement AS 18.85.020 - 18.85.180.

11 * **Sec. 3.** AS 18.85.030 is amended to read:

12 **Sec. 18.85.030. Appointment and term.** The Alaska Public Counsel
13 Commission [GOVERNOR] shall appoint the public defender from among two or
14 more persons nominated for that position by the judicial council. [THE

1 APPOINTMENT IS SUBJECT TO CONFIRMATION BY MAJORITY OF THE
 2 MEMBERS OF THE LEGISLATURE IN JOINT SESSION.] The public defender
 3 shall serve a term of six [FOUR] years. [IF THE GOVERNOR DECIDES TO
 4 RETAIN THE PUBLIC DEFENDER FOR ANOTHER TERM, THE GOVERNOR
 5 NEED NOT CALL FOR NOMINATIONS FROM THE JUDICIAL COUNCIL;
 6 HOWEVER, THE RETENTION MUST BE APPROVED BY A MAJORITY OF
 7 THE MEMBERS OF THE LEGISLATURE IN JOINT SESSION.]

8 * **Sec. 4.** AS 18.85.040 is amended to read:

9 **Sec. 18.85.040. Removal.** The public defender is subject to removal by the
 10 Alaska Public Counsel Commission [GOVERNOR] for good cause. If the public
 11 defender is removed, the Alaska Public Counsel Commission [GOVERNOR] shall
 12 submit to the legislature a report stating the reasons for removal. The report shall be
 13 submitted within 10 days after the action has been taken if the legislature is in session,
 14 or if the legislature is not in session, within 10 days after the convening of the next
 15 regular or special session.

16 * **Sec. 5.** AS 18.85.050 is amended to read:

17 **Sec. 18.85.050. Vacancy.** If the position of public defender becomes vacant
 18 for any reason, the Alaska Public Counsel Commission [GOVERNOR] may appoint
 19 an acting public defender to serve until the commission appoints a new public
 20 defender [REGULAR APPOINTMENT PROCEDURES] under AS 18.85.030 [ARE
 21 COMPLIED WITH]. The Alaska Public Counsel Commission [GOVERNOR] and
 22 the judicial council shall act under AS 18.85.030 as soon as possible after a [THE]
 23 vacancy occurs. A person appointed under that section to fill a vacancy begins a new
 24 six-year [FOUR-YEAR] term.

25 * **Sec. 6.** AS 18.85.090 is amended to read:

26 **Sec. 18.85.090. Agency staff.** The public defender, in consultation with the
 27 executive director of the Alaska Public Counsel Commission, may appoint and
 28 remove assistant public defenders, clerks, investigators, stenographers, and other
 29 employees the public defender considers necessary to enable the public defender to
 30 carry out the responsibilities of the public defender, subject to existing appropriations.
 31 Each person appointed to a subordinate position established by the public defender is

1 under the supervision and control of the public defender.

2 * **Sec. 7.** AS 18.85.090 is amended by adding a new subsection to read:

3 (b) An employee of the agency is in the partially exempt service and is entitled
4 to a monthly salary equal to a step in the same range of the salary schedule in
5 AS 39.27.011(a) that a person employed by the Department of Law in a similar
6 position and with equivalent experience and job duties receives.

7 * **Sec. 8.** AS 33.07.020 is amended to read:.

8 **Sec. 33.07.020. Duties of commissioner; pretrial services.** The commissioner
9 shall

10 (1) appoint and make available to the superior court and district court
11 qualified pretrial services officers;

12 (2) fix pretrial services officers' salaries;

13 (3) assign pretrial services officers to each judicial district;

14 (4) provide for the necessary supervision, training, expenses, including
15 clerical services, and travel of pretrial services officers;

16 (5) approve a risk assessment instrument that is objective,
17 standardized, and developed based on analysis of empirical data and risk factors
18 relevant to pretrial failure, that evaluates the likelihood of failure to appear in court
19 and the likelihood of rearrest during the pretrial period, and that is validated on the
20 state's pretrial population; and

21 (6) adopt regulations in consultation with the Department of Law, the
22 **Alaska Public Counsel Commission** [PUBLIC DEFENDER], the Department of
23 Public Safety, the office of victims' rights, and the Alaska Court System, consistent
24 with this chapter and as necessary to implement the program; the regulations must
25 include a process for pretrial services officers to make a recommendation to the court
26 concerning a pretrial release decision and guidelines for pretrial diversion
27 recommendations.

28 * **Sec. 9.** AS 39.25.120(c)(7) is amended by adding a new subparagraph to read:

29 (R) Alaska Public Counsel Commission.

30 * **Sec. 10.** AS 44.21.410(b) is amended to read:

31 (b) The **executive director of the commission** [COMMISSIONER OF

ADMINISTRATION] may

(1) **make recommendations to the commissioner of administration regarding** [ADOPT] regulations that the **commission** [COMMISSIONER] considers necessary to implement AS 44.21.400 - 44.21.470;

(2) report on the operation of the office of public advocacy when requested by the governor or legislature or when required by law;

(3) solicit and accept grants of funds from governments and from persons, and allocate or restrict the use of those funds as required by the grantor.

* **Sec. 11.** AS 44.21.410 is amended by adding new subsections to read:

(d) The commission shall appoint a public advocate to administer the office of public advocacy. The commission shall appoint the public advocate from among two or more persons nominated for that position by the judicial council. The public advocate shall serve a term of six years. A person is not eligible to be the public advocate unless admitted to the practice of law in this state.

(e) The commissioner of administration may adopt regulations to implement AS 44.21.400 - 44.21.470.

* **Sec. 12.** AS 44.21 is amended by adding new sections to read:

Sec. 44.21.412. Removal. The public advocate is subject to removal by the commission for good cause. If the public advocate is removed, the commission shall submit to the legislature a report stating the reasons for removal. The report shall be submitted within 10 days after the action has been taken if the legislature is in session, or if the legislature is not in session, within 10 days after the convening of the next regular or special session.

Sec. 44.21.414. Vacancy. If the position of public advocate becomes vacant for any reason, the commission may appoint an acting public advocate to serve until the commission appoints a new public advocate under AS 44.21.410(d). The commission and the judicial council shall act under AS 44.21.410(d) as soon as possible after a vacancy occurs. A person appointed under AS 44.21.410(d) to fill a vacancy begins a new six-year term.

* **Sec. 13.** AS 44.21.415(c) is amended to read:

(c) In addition to the functions described **in** [UNDER] (a) and (b) of this

1 section, the office of elder fraud and assistance shall provide information, referrals,
 2 and other assistance to older Alaskans who are victims of fraud and make
 3 recommendations to the commission [COMMISSIONER] for regulations on
 4 eligibility for assistance needed to implement this section.

5 * **Sec. 14.** AS 44.21.420 is amended to read:

6 **Sec. 44.21.420. Employment of office personnel.** (a) The public advocate, in
 7 consultation with the executive director of the commission, [COMMISSIONER OF
 8 ADMINISTRATION] may employ guardians ad litem, public guardians, clerical staff,
 9 and other assistants that the public advocate [COMMISSIONER] determines are
 10 needed to perform the duties set out in AS 44.21.410. Employees under this subsection
 11 are in the classified service under AS 39.25.100.

12 (b) The public advocate [COMMISSIONER OF ADMINISTRATION] may
 13 employ attorneys needed to perform the duties set out in AS 44.21.410. Attorneys
 14 employed by the public advocate [COMMISSIONER OF ADMINISTRATION] in
 15 the office of public advocacy are in the partially exempt service under AS 39.25.120.

16 (c) The public advocate [COMMISSIONER OF ADMINISTRATION] may
 17 contract for services of court-appointed visitors and experts needed to perform the
 18 duties set out in AS 44.21.410. The public advocate [COMMISSIONER] may
 19 contract with attorneys to provide legal representation, and with other persons to
 20 provide guardian ad litem services, as needed to perform the duties set out in
 21 AS 44.21.410. The public advocate [COMMISSIONER] may determine the rate of
 22 compensation for contractual services, taking into account the time involved, the skill
 23 and experience required, and other pertinent factors.

24 * **Sec. 15.** AS 44.21.470 is amended to read:

25 **Sec. 44.21.470. Definitions** [DEFINITION]. In AS 44.21.410 - 44.21.470
 26 [AS 44.21.410 - 44.21.460],

27 (1) "commission" means the Alaska Public Counsel Commission
 28 established in AS 44.21.600;

29 (2) "volunteer guardian ad litem" means a court-appointed special
 30 advocate (CASA).

31 * **Sec. 16.** AS 44.21 is amended by adding new sections to read:

1 **Article 9. Alaska Public Counsel Commission.**

2 **Sec. 44.21.600. Alaska Public Counsel Commission established.** The Alaska
3 Public Counsel Commission is created in the Department of Administration.

4 **Sec. 44.21.610. Powers and duties.** (a) The commission shall

5 (1) elect one of its members as presiding officer;

6 (2) develop and implement policies to ensure defense services
7 provided by the Public Defender Agency and the office of public advocacy serve the
8 needs of indigent persons;

9 (3) oversee defense services provided by the Public Defender Agency
10 and the office of public advocacy for indigent persons to ensure

11 (A) the public defense function, including the selection,
12 funding, and payment of defense counsel, is independent;

13 (B) active participation by the Public Defender Agency or the
14 office of public advocacy and members of the Alaska Bar Association when
15 caseloads are high;

16 (C) clients are screened for eligibility and counsel is assigned
17 and notified of appointment as soon as feasible after arrest, detention, or
18 request for counsel;

19 (D) counsel is provided sufficient time and confidential space
20 to meet clients;

21 (E) counsel's workload is managed to provide for quality
22 representation;

23 (F) counsel's ability, training, and experience match the
24 complexity of a case;

25 (G) parity between defense counsel and the prosecution with
26 respect to resource allocation;

27 (H) counsel is provided, and required to attend annual training
28 to meet continuing legal education requirements under AS 08.08.082; and

29 (I) counsel is supervised and reviewed for quality and
30 efficiency according to national and adopted standards;

31 (4) adopt standards relating to reviewing the quality and efficiency of

1 attorney work product;

2 (5) establish qualification and training standards for attorneys in the
3 Public Defender Agency and the office of public advocacy;

4 (6) in coordination with the Department of Law, establish a uniform
5 method for counting cases; and

6 (7) approve and submit an annual budget to the Department of
7 Administration, the legislature, and the governor.

8 (b) The commission shall appoint a public defender to supervise the Public
9 Defender Agency in accordance with AS 18.85.030 and appoint a public advocate to
10 supervise the office of public advocacy in accordance with AS 44.21.410(d).

11 (c) The commission may make recommendations to the Alaska Bar
12 Association for the adoption of Alaska Bar Rules relating to qualification and training
13 standards for public defense attorneys.

14 (d) The commission may not

15 (1) make any decision regarding the handling of any individual case;

16 (2) have access to the contents of any case file; or

17 (3) interfere with the executive director, public defender, or public
18 advocate, or any member of the staff of the executive director, public defender, or
19 public advocate, in carrying out professional duties involving the legal representation
20 of clients.

21 **Sec. 44.21.620. Membership, terms, vacancies, and disqualification.** (a) The
22 commission consists of

23 (1) three members appointed by the governor, two of whom must be an
24 attorney and one of whom must be a member of an organization that advocates on
25 behalf of people with addictive behavior;

26 (2) three members appointed by the chief justice of the supreme court,
27 two of whom must be an attorney and one of whom must be a member of an
28 organization that advocates on behalf of racial minorities;

29 (3) three members jointly appointed by the senate president and the
30 speaker of the house, two of whom must be an attorney and one of whom must be a
31 member of an organization that advocates on behalf of people with mental illnesses.

(b) The term of office of a member appointed under (a) of this section is three years, to be served in staggered terms. The appointing authority shall fill a vacancy on the commission for the unexpired term by appointment within 60 days after the occurrence of the vacancy. The appointing authority may not appoint more than one member from the same judicial district.

(c) A person who is employed as a judicial officer, prosecutor, public defender, office of public advocacy attorney, or member of law enforcement may not be appointed as a member of the commission.

(d) A member may be removed for cause by the appointing authority.

(e) A person may not serve on the commission unless the person has significant experience acting in defense of indigent persons or has significant experience with issues related to defense of indigent persons.

(f) Members of the commission receive no compensation, but are entitled to per diem and travel expenses authorized for boards and commissions under AS 39.20.180.

Sec. 44.21.630. Executive director. (a) The commission may appoint an executive director as the commission's executive officer. The executive director shall serve a term of six years. The executive director shall aid the commission in the development and implementation of policies.

(b) The executive director may be removed for cause by two-thirds vote of the members of the commission. If the executive director is removed, the commission shall submit to the legislature a report stating the reasons for removal. The report shall be submitted within 10 days after the action has been taken if the legislature is in session, or if the legislature is not in session, within 10 days after the convening of the next regular or special session.

(c) The executive director, in coordination with the commission, the public defender, and the public advocate, shall prepare and submit an annual budget to the commission.

(d) The executive director is in the partially exempt service and is entitled to a monthly salary equal to a step in the same range of the salary schedule in AS 39.27.011(a) that a person employed by the Department of Law in a similar

1 position and with equivalent experience and job duties receives.

2 **Sec. 44.21.690. Definition.** In AS 44.21.600 - 44.21.690, "commission" means
3 the Alaska Public Counsel Commission.

4 * **Sec. 17.** The uncodified law of the State of Alaska is amended by adding a new section to
5 read:

6 TRANSITION. (a) Notwithstanding AS 18.85.030, as amended by sec. 3 of this Act,
7 AS 44.21.410(d), enacted by sec. 11 of this Act, and AS 44.21.630, enacted by sec. 16 of this
8 Act, the Alaska Public Counsel Commission shall designate from among the commission's
9 appointments to the positions of public defender, public advocate, and executive director of
10 the commission one to a two-year term, one to a four-year term, and one to a six-year term.

11 (b) Notwithstanding AS 44.21.620(b), enacted by sec. 16 of this Act, the governor,
12 the chief justice of the supreme court, and the senate president and the speaker of the house of
13 representatives jointly shall each appoint the initial members under AS 44.21.620, enacted by
14 sec. 16 of this Act, of the Alaska Public Counsel Commission established under
15 AS 44.21.600, enacted by sec. 16 of this Act, to staggered terms as follows:

16 (1) one member each to serve a one-year term;

17 (2) one member each to serve a two-year term; and

18 (3) one member each to serve a three-year term.

19 (c) Nothing in this Act alters the status of a case assigned to the Public Defender
20 Agency or the office of public advocacy before the effective date of this Act.

21 (d) Notwithstanding AS 33.07.020, as amended by sec. 8 of this Act, a regulation
22 enacted before the effective date of this Act remains in effect unless amended or repealed.