

1 IN THE HOUSE BY MR. STEVENS

2 HOUSE BILL NO. 263

3 IN THE LEGISLATURE OF THE STATE OF ALASKA

4 FOURTH LEGISLATURE - FIRST SESSION

5 A BILL

6 For an Act entitled: "An Act establishing an agency to provide  
7 legal representation to indigent defendants."

8 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF ALASKA:

9 \* Section 1. The United States Supreme Court in Gideon v.  
10 Wainwright, 372 US 335, 83 Sup. Ct. 792 (1963) ruled that the  
11 Fourteenth Amendment to the U. S. Constitution requires that in-  
12 digent defendants be provided counsel by the states. This case  
13 was limited in application to the defense of indigents charged  
14 with felonies. The doctrine in Gideon has since been expanded at  
15 the lower federal court level to include the defense of indigents  
16 charged with misdemeanors. In order to insure that indigent  
17 defendants in Alaska are provided due process of law, this Act  
18 establishes an Agency for Public Defense to provide free legal  
19 counsel and representation. Since the existing arrangement in  
20 Alaska by which court-appointed private counsel represent defend-  
21 ants accused of felonies is thought to be adequate at this time,  
22 the Agency for Public Defense is limited in function to the  
23 defense of indigents accused of misdemeanors.

24 \* Sec. 2. AS 44.19 is amended by adding new sections to read:

25 ARTICLE 10. AGENCY FOR PUBLIC DEFENSE

26 Sec. 44.19.700. AGENCY FOR PUBLIC DEFENSE. There is  
27 established in the Office of the Governor the Agency for  
28 Public Defense.

29 Sec. 44.19.710. PUBLIC DEFENDER. The agency is

1 administered by the public defender who is appointed by, and  
2 serves at the pleasure of, the governor.

3 Sec. 44.19.720. DUTIES OF THE AGENCY. The agency shall  
4 provide legal counsel and representation to a person who is  
5 accused of committing a misdemeanor and who is not financi-  
6 ally able to retain private counsel for his defense.

7 Sec. 44.19.730. ORGANIZATION. (a) The legal staff of  
8 the agency consists of the public defender and two assistant  
9 attorneys.

10 (b) The public defender may hire employees to provide  
11 the clerical assistance considered necessary for the proper  
12 operation of the agency.

13 (c) The location of the principal office of the agency  
14 shall be determined by the public defender.

15 Sec. 44.19.740. QUALIFICATIONS. (a) The public  
16 defender shall be licensed to practice law in this state and  
17 shall have actively practiced law in the state for at least  
18 one year before the date of his appointment. An assistant  
19 attorney shall be a graduate of a law school accredited by  
20 the American Bar Association and must be admitted to the  
21 Alaska bar within one year after hire.

22 (b) The public defender or an assistant attorney to the  
23 public defender may not engage in the practice of law except  
24 in the capacity as a member of the agency.

25 Sec. 44.19.750. COUNSEL AND REPRESENTATION. (a) At  
26 the request of an indigent defendant, or upon order of the  
27 court, the agency shall, without charge to the defendant,  
28 counsel and represent the defendant at every stage of the  
29 proceedings following arrest.

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(b) The agency may institute any proceeding on behalf of a defendant which is considered necessary to protect his rights and may take any appeal in his behalf which is warranted by the facts and circumstances.

Sec. 44.19.760. DETERMINATION OF INDIGENCY. (a) Before arraignment, the agency shall make a preliminary determination of indigency. At or after arraignment, the court shall make the determination of indigency.

(b) If at any time after representation is commenced it is determined that the defendant or his family is able to afford private counsel, the agency is not required to continue representation of the defendant.

Sec. 44.19.770. APPOINTMENT OF OTHER COUNSEL. Nothing in secs. 700 - 760 of this chapter precludes a court, either on its own motion or upon application of the agency or an indigent defendant, from appointing an attorney other than one employed by the agency to represent, or to assist in the representation of, an indigent defendant at any stage of the proceedings or on appeal.

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