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AND YOUNG

1 IN THE HOUSE

2 HOUSE BILL NO. 127

3 IN THE LEGISLATURE OF THE STATE OF ALASKA

4 SIXTH LEGISLATURE - FIRST SESSION

5 A BILL

6 For an Act entitled: "An Act creating a public defender agency; and pro-
7 viding for an effective date."

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

9 * Section 1. AS 18 is amended by adding a new chapter to read:

10 CHAPTER 95. PUBLIC DEFENDER AGENCY.

11 Sec. 18.95.010. PUBLIC DEFENDER AGENCY ESTABLISHED. There is
12 created in the office of the governor a public defender agency to serve
13 the needs of indigent defendants. A public defender office shall be
14 established in each judicial district of the state.

15 Sec. 18.95.020. ADMINISTRATION. The agency is administered by
16 the public defender.

17 Sec. 18.95.030. APPOINTMENT AND TERM. The governor shall appoint
18 the public defender from among two or more persons nominated for that
19 position by the judicial council. The public defender shall serve a
20 term of four years, at the conclusion of which the active and judicial
21 members of the Alaska Bar Association shall be polled for their advice
22 as to whether he should be retained or replaced. The governor shall
23 consider this poll in determining whether to retain or replace the
24 public defender at the end of his term.

25 Sec. 18.95.040. REMOVAL. The public defender is subject to
26 removal during his term for good cause only upon recommendation of the
27 governor and upon concurrence by at least four members of the judicial
28 council.

29 Sec. 18.95.050. ELIGIBILITY. A person is not eligible to be the

1 public defender or an assistant public defender unless he is admitted
2 to the practice of law in this state.

3 Sec. 18.95.060. PRIVATE PRACTICE PROHIBITED. The public defender
4 and assistant public defenders shall devote all of their time to the
5 duties of their respective offices and may not engage in the practice
6 of law except in their official capacities in the agency.

7 Sec. 18.95.070. DELEGATION OF FUNCTIONS. The public defender
8 may assign the functions vested in the agency to subordinate attorneys
9 and employees.

10 Sec. 18.95.080. AGENCY STAFF. The public defender may appoint
11 and remove as many assistant public defenders, clerks, investigators,
12 stenographers, and other employees as he considers necessary to enable
13 him to carry out his responsibilities, subject to existing appropri-
14 ations. Each person appointed to a subordinate position established
15 by the public defender is under his supervision and control. The
16 compensation of persons appointed under this section shall be fixed by
17 the public defender.

18 Sec. 18.95.090. RIGHT TO REPRESENTATION, SERVICES, AND FACILI-
19 TIES. (a) An indigent person who is being detained by a law enforce-
20 ment officer in connection with a serious crime, or is under formal
21 charge of having committed, or is being detained under a conviction of
22 a serious crime, or is entitled to representation under the Supreme
23 Court Rules of Juvenile Procedure, or against whom commitment proceed-
24 ings for mental illness have been initiated is entitled

25 (1) to be represented by an attorney to the same extent as
26 a person having his own attorney is entitled; and

27 (2) to be provided with the necessary services and facili-
28 ties of this representation, including investigation and other
29 preparation.

1 (b) The attorney services and facilities and the court costs
2 shall be provided at public expense to the extent that the person, at
3 the time the agency or court determines indigency, is unable to pro-
4 vide for payment without undue hardship.

5 Sec. 18.95.100. NOTICE AND PROVISION FOR REPRESENTATION. (a) If
6 a person having a right to representation under sec. 90 of this chapter
7 is not represented by an attorney, the law enforcement officers con-
8 cerned upon commencement of detention, or the agency, or the court, as
9 the case may be, shall

10 (1) clearly inform him of the right of an indigent person
11 to be represented by an attorney at public expense; and

12 (2) if the person detained or charged does not have an
13 attorney, notify the agency or the court, as appropriate, that he is
14 not so represented.

15 (b) In (a) of this section "commencement of detention" includes
16 the taking into custody of a probationer or parolee.

17 (c) Upon commencement of a later judicial proceeding relating
18 to the same matter, the court shall clearly inform the person detained
19 or charged of the right of an indigent person to be represented by an
20 attorney at public expense.

21 (d) If a court determines that the person is entitled to be
22 represented by an attorney at public expense, it shall promptly notify
23 the agency or assign a private attorney for him.

24 (e) Upon notification or assignment under this section, the
25 agency or assigned private attorney shall represent the person with
26 respect to whom the notification or assignment is made.

27 (f) If the agency, before consideration by the court, determines
28 that the person is entitled to be represented by an attorney at public
29 expense, it shall promptly undertake his representation.

1 Sec. 18.95.110. DETERMINATION OF INDIGENCY. (a) The determina-
2 tion of a person's indigency shall be made by the agency or by the
3 court in which an action against him is pending. When it is made by
4 the agency it is subject to review by the court.

5 (b) In determining whether a person is indigent and in determin-
6 ing the extent of his inability to pay, the agency or the court may
7 consider such factors as income, property owned, outstanding obliga-
8 tions, and the number and ages of his dependents. Release on bail
9 does not preclude a finding that a person is indigent. In each case,
10 the person, subject to the penalties for perjury, shall certify under
11 oath, and in writing or by other record, material factors relative to
12 his ability to pay which the court prescribes.

13 (c) To the extent that a person is able to provide for an attor-
14 ney, the other necessary services and facilities of representation,
15 and court costs, the court may order him to pay for these items, which
16 payments shall be paid into the state general fund.

17 (d) As a condition of receiving services under this chapter, a
18 person shall execute a general waiver authorizing the release to the
19 court for use by the attorney general or the public defender of income
20 information regarding any income source the person has had for a
21 period of three years immediately preceding his first court appearance
22 in connection with each cause and for a period in the future of not
23 less than three years after the last date aid is rendered under this
24 chapter.

25 Sec. 18.95.120. SUBSTITUTE DEFENDER. For cause, the court may,
26 on its own motion or upon the application of the public defender or
27 the indigent person, appoint an attorney other than the public defender
28 to represent him at any stage of the proceedings or on appeal. The
29 attorney shall be awarded reasonable compensation based upon the

1 standard minimum bar fees for the area in which he regularly practices
2 law and reimbursement for expenses necessarily incurred. This shall be
3 paid by the court.

4 (b) In addition, when the public interest requires, and a person
5 is entitled to representation by the agency under this chapter, the
6 public defender may contract with one or more private attorneys to
7 assist him. The public defender shall pay for these services out of
8 appropriations to the agency.

9 Sec. 18.95.130. WAIVER. A person who has been appropriately in-
10 formed under sec. 100 of this chapter may waive in writing, or by other
11 record, any right provided by this chapter, if the court concerned, at
12 the time of or after waiver, finds of record that the person has acted
13 with full awareness of his rights and of the consequences of a waiver.
14 The court shall consider such factors as the person's age, education,
15 familiarity with the English language and the complexity of the crime
16 involved in making the finding.

17 Sec. 18.95.140. RECOVERY FROM DEFENDANT. (a) A person who has
18 received assistance under this chapter shall pay the state for the
19 assistance if

20 (1) he was not entitled to it; or

21 (2) within three years after the conclusion of the proceed-
22 ing for which he received the assistance he is financially able to do
23 so according to the standard of ability to pay applicable under this
24 chapter.

25 (b) The attorney general may bring an action on behalf of the
26 state to recover payment from a person described in (a) of this section
27 who refuses to make the payment. In the case of a person described
28 in (a)(2) of this section the action shall be brought within three
29 years after the conclusion of the proceeding for which the assistance

1 was provided. In the case of a person described in (a)(1) of this
2 section the action shall be brought within six years.

3 (c) Amounts recovered under this section shall be paid into the
4 state general fund.

5 Sec. 18.95.150. RECORDS AND REPORTS. (a) The public defender
6 shall keep appropriate records respecting each needy person represented
7 by the agency under this chapter.

8 (b) The public defender shall submit an annual report to the
9 legislature and supreme court showing the number of persons represented
10 under this chapter, the crimes involved, the outcome of each case, and
11 the expenditures (totalled by kind) made in carrying out the responsi-
12 bilities imposed on the agency by this chapter.

13 Sec. 18.95.160. DEFINITIONS. In this chapter

14 (1) "detain" means to have in custody or otherwise deprive
15 of freedom of action;

16 (2) "expenses", when used with reference to representation
17 under this chapter, includes an expense of investigation, other pre-
18 paration, and trial;

19 (3) "indigent person" means a person who, at the time his
20 need is determined, does not have sufficient assets, credit, or other
21 means to provide for payment of an attorney and all other necessary
22 expenses of representation without depriving the party or his depen-
23 dents of food, clothing or shelter and who has not disposed of any
24 assets since the commission of the offense with the intent or for the
25 purpose of making himself eligible for assistance under this chapter;

26 (4) "serious crime" includes

27 (A) a criminal matter in which a person is entitled
28 to representation by an attorney under the Constitution of the
29 State of Alaska or the United States Constitution;

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(B) an act that, but for the age of the person involved,
would otherwise be a serious crime.

Sec. 18.95.170. SHORT TITLE. This chapter may be cited as the
Public Defender Act.

* Sec. 2. This Act takes effect July 1, 1969.