

Original sponsor: Jackson, Banfield,  
Bradner et al

Offered: 4/1/69  
Referred: Rules

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1 IN THE HOUSE

BY THE FINANCE COMMITTEE

2 CS FOR 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 provid-  
7 ing 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 85. PUBLIC DEFENDER AGENCY.

11 Sec. 18.85.010. 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. 18.85.020. ADMINISTRATION. The agency is administered by  
16 the public defender.

17 Sec. 18.85.030. 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 appointment is subject to con-  
20 firmation by a majority of the members of the legislature in joint  
21 session. The public defender shall serve a term of four years, before  
22 the conclusion of which the active and judicial members of the Alaska  
23 Bar Association shall be polled for their advice as to whether he should  
24 be retained or replaced. The governor shall consider this poll in de-  
25 termining whether to retain or replace the public defender at the end  
26 of his term. If the governor decides to retain the public defender he  
27 need not call for nominations from the judicial council; however, the  
28 retention must be approved by a majority of the members of the legisla-  
29 ture in joint session.

1           Sec. 18.85.040. REMOVAL. The public defender is subject to removal  
2 during his term for good cause and only upon written recommendation of  
3 the governor and upon concurrence by at least four members of the  
4 judicial council. The decision of the council shall be made within 60  
5 days after receipt of the governor's recommendation.

6           Sec. 18.85.050. VACANCY. If the position of public defender should  
7 become vacant for any reason, the governor may appoint an acting public  
8 defender to serve until the regular appointment procedures under sec. 30  
9 of this chapter are complied with. The governor and the judicial council  
10 shall act under sec. 30 of this chapter as soon as possible after the  
11 vacancy occurs. A person appointed under that section to fill a vacancy  
12 begins a new four-year term.

13           Sec. 18.85.060. ELIGIBILITY. A person is not eligible to be the  
14 public defender or an assistant public defender unless he is admitted to  
15 the practice of law in this state or, with the approval of the Board of  
16 Governors of the Alaska Bar Association, in another state.

17           Sec. 18.85.070. PRIVATE PRACTICE PROHIBITED. The public defender  
18 and assistant public defenders shall devote all of their time to the  
19 duties of their respective offices and may not engage in the practice  
20 of law except in their official capacities in the agency.

21           Sec. 18.85.080. DELEGATION OF FUNCTIONS. The public defender may  
22 assign the functions vested in him or in the agency to subordinate  
23 attorneys and employees.

24           Sec. 18.85.090. AGENCY STAFF. The public defender may appoint and  
25 remove assistant public defenders, clerks, investigators, stenographers  
26 and other employees he considers necessary to enable him to carry out his  
27 responsibilities, subject to existing appropriations. Each person ap-  
28 pointed to a subordinate position established by the public defender is  
29 under his supervision and control.

1           Sec. 18.85.100. RIGHT TO REPRESENTATION, SERVICES AND FACILITIES.

2           (a) An indigent person who is being detained by a law enforcement  
3 officer in connection with a serious crime, or is under formal charge  
4 of having committed, or is being detained under a conviction of a  
5 serious crime, or is on probation or parole, or is entitled to repre-  
6 sentation under the Supreme Court Rules of Juvenile Procedure, or  
7 against whom commitment proceedings for mental illness have been  
8 initiated is entitled

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

11                   (2) to be provided with the necessary services and facilities  
12 of this representation, including investigation and other preparation.

13           (b) The attorney services and facilities and the court costs  
14 shall be provided at public expense to the extent that the person, at  
15 the time the agency or court determines indigency, is unable to provide  
16 for payment without undue hardship.

17           Sec. 18.85.110. NOTICE AND PROVISION FOR REPRESENTATION. (a) If  
18 a person having a right to representation under sec. 90 of this chapter  
19 is not represented by an attorney, the law enforcement officers con-  
20 cerned upon commencement of detention, or the agency, or the court, as  
21 the case may be, shall

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

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

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

29           (c) Upon commencement of a later judicial proceeding relating

1 to the same matter, the court shall clearly inform the person detained  
2 or charged of the right of an indigent person to be represented by an  
3 attorney at public expense.

4 (d) If a court determines that the person is entitled to be  
5 represented by an attorney at public expense, it shall promptly notify  
6 the agency or assign a private attorney for him under sec. 120 of this  
7 chapter.

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

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

14 Sec. 18.85.120. DETERMINATION OF INDIGENCY. (a) The determina-  
15 tion of a person's indigency shall be made by the agency or by the  
16 court in which an action against him is pending. When it is made by  
17 the agency it is subject to review by the court.

18 (b) In determining whether a person is indigent and in determining  
19 the extent of his inability to pay, the agency or the court shall con-  
20 sider such factors as income, property owned, outstanding obligations,  
21 and the number and ages of his dependents. Release on bail does not  
22 preclude a finding that a person is indigent. In each case, the person  
23 subject to the penalties for perjury, shall certify under oath, and in  
24 writing or by other record, material factors relative to his ability to  
25 pay which the court prescribes.

26 (c) To the extent that a person is able to provide for an attorney,  
27 the other necessary services and facilities of representation, and  
28 court costs, the court may order him to pay for these items, which  
29 payments shall be paid into the state general fund.

1 (d) As a condition of receiving services under this chapter, a  
2 person shall execute a general waiver authorizing the release to the  
3 public defender of income information regarding any income source the  
4 person has had for a period of three years immediately preceding his  
5 first court appearance in connection with each cause and for a period  
6 in the future of not less than three years after the last date aid is  
7 rendered under this chapter. At the conclusion of all services by the  
8 public defender to the person, the public defender shall release to the  
9 attorney general all information received under this subsection except  
10 information that might incriminate or tend to incriminate the person.

11 Sec. 18.85.130. SUBSTITUTE DEFENDER. (a) For cause, the court  
12 may, on its own motion or upon the application of the public defender,  
13 appoint an attorney other than the public defender to represent the  
14 indigent person at any stage of the proceedings or on appeal. The  
15 attorney shall be awarded reasonable compensation based upon the  
16 standard minimum bar fees for the area in which he regularly practices  
17 law and reimbursement for expenses necessarily incurred. This shall be  
18 paid by the agency.

19 (b) In addition to substitution under (a) of this section, when  
20 the public interest requires, and a person is entitled to representation  
21 by the agency under this chapter, the public defender may contract with  
22 one or more private attorneys to assist him. The public defender shall  
23 pay for these services out of appropriations to the agency.

24 Sec. 18.85.140. WAIVER. A person who has been appropriately in-  
25 formed under sec. 100 of this chapter may waive in writing, or by other  
26 record, any right provided by this chapter, if the court concerned,  
27 at the time of or after waiver, finds of record that the person has  
28 acted with full awareness of his rights and of the consequences of a  
29 waiver. The court shall consider such factors as the person's age,

1 education, familiarity with the English language and the complexity of  
2 the crime involved in making the finding.

3 Sec. 18.85.150. RECOVERY FROM DEFENDANT. (a) A person who has  
4 received assistance under this chapter shall pay the state for the  
5 assistance if

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

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

11 (b) The attorney general may bring an action on behalf of the  
12 state to recover payment from a person described in (a) of this section  
13 who refuses to make the payment. The action shall be brought within six  
14 years after the conclusion of the proceeding for which the assistance  
15 was provided.

16 (c) A person receiving assistance under this chapter shall be ad-  
17 vised in writing of his financial responsibilities under this section,  
18 and shall, at the conclusion of that assistance, be advised in writing  
19 of the full value of the services rendered, as determined by the public  
20 defender.

21 (d) Amounts recovered under this section shall be paid into the  
22 state general fund.

23 Sec. 18.85.160. RECORDS AND REPORTS. (a) The public defender  
24 shall keep appropriate records respecting each needy person represented  
25 by the agency under this chapter.

26 (b) The public defender shall submit an annual report to the  
27 legislature and supreme court showing the number of persons represented  
28 under this chapter, the crimes involved, the outcome of each case, and  
29 the expenditures (totalled by kind) made in carrying out the

1 responsibilities imposed on the agency by this chapter.

2 Sec. 18.85.170. DEFINITIONS. In this chapter

3 (1) "agency" means the public defender agency created by  
4 sec. 10 of this chapter;

5 (2) "detain" means to have in custody or otherwise deprive  
6 of freedom of action;

7 (3) "expenses", when used with reference to representation  
8 under this chapter, includes an expense of investigation, other prepara-  
9 tion, and trial;

10 (4) "indigent person" means a person who, at the time his  
11 need is determined, does not have sufficient assets, credit, or other  
12 means to provide for payment of an attorney and all other necessary  
13 expenses of representation without depriving the party or his depen-  
14 dents of food, clothing or shelter and who has not disposed of any  
15 assets since the commission of the offense with the intent or for the  
16 purpose of making himself eligible for assistance under this chapter;

17 (5) "serious crime" includes

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

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

23 Sec. 18.85.180. SHORT TITLE. This chapter may be cited as the  
24 Public Defender Act.

25 \* Sec. 2. AS 39.25.120(5) is amended to read:

26 (5) all employees of the office of the governor and the  
27 secretary of state, including the staff of the governor's mansion  
28 and the attorney members of the staff of the public defender agency,  
29 but not including the nonattorney members of the staff of that agency;

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\* Sec. 3. This Act takes effect July 1, 1969.