

Original sponsor: Jackson, Banfield,
Bradner et al

Offered: 4/1/69
Referred: Rules

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
7 providing 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
13 serve the needs of indigent defendants.

14 Sec. 18.85.020. ADMINISTRATION. The agency is administered
15 by the public defender.

16 Sec. 18.85.030. APPOINTMENT AND TERM. The governor shall
17 appoint the public defender from among two or more persons nominated
18 for that position by the judicial council. The appointment is
19 subject to confirmation by a majority of the members of the legis-
20 lature in joint session. The public defender shall serve a term
21 of four years, before the conclusion of which the active and judicial
22 members of the Alaska Bar Association shall be polled for their
23 advice as to whether he should be retained or replaced. The governor
24 shall consider this poll in determining whether to retain or replace
25 the public defender at the end of his term. If the governor
26 decides to retain the public defender he need not call for nomina-
27 tions from the judicial council; however, the retention must be
28 approved by a majority of the members of the legislature in joint
29 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;

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

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