

1 IN THE SENATE

BY THE RULES COMMITTEE BY REQUEST  
OF THE LEGISLATIVE COUNCIL

2 SENATE BILL NO. 43

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  
13 serve the needs of indigent defendants.

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

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

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

28 Sec. 18.95.050. ELIGIBILITY. A person is not eligible to be the  
29 public defender or an assistant public defender unless he is admitted

1 to the practice of law in this state.

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

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

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

17 Sec. 18.95.090. RIGHT TO REPRESENTATION, SERVICES, AND FACILITIES.

18 (a) An indigent person who is being detained by a law enforcement  
19 officer in connection with a serious crime, or is under formal charge  
20 of having committed, or is being detained under a conviction of a  
21 serious crime, or is entitled to representation under the Supreme  
22 Court Rules of Juvenile Procedure, or against whom commitment proceed-  
23 ings for mental illness have been initiated is entitled:

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

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

28 (b) The attorney services and facilities and the court costs  
29 shall be provided at public expense to the extent that the person, at

1 the time the agency or court determines indigency, is unable to pro-  
2 vide for payment without undue hardship.

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

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

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

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

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

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

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

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

28 Sec. 18.95.110. DETERMINATION OF INDIGENCY. (a) The  
29 determination of a person's indigency shall be made by the agency or

1 by the court in which an action against him is pending. When it is  
2 made by the agency it is subject to review by the court.

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

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

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

23 Sec. 18.95.120. SUBSTITUTE DEFENDER (a) For cause, the court may,  
24 on its own motion or upon the application of the public defender or  
25 the indigent person, appoint an attorney other than the public defender  
26 to represent him at any stage of the proceedings or on appeal. The  
27 attorney shall be awarded reasonable compensation based upon the  
28 standard minimum bar fees for the area in which he regularly practices  
29 law and reimbursement for expenses necessarily incurred. Payment

1 shall be made by the court.

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

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

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

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

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

23 (b) The attorney general may bring an action on behalf of the  
24 state to recover payment from a person described in (a) of this section  
25 who refuses to make the payment. In the case of a person described in  
26 (a)(2) of this section the action shall be brought within three years  
27 after the conclusion of the proceeding for which the assistance was  
28 provided. In the case of a person described in (a)(1) of this section  
29 the action shall be brought within six years.

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

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

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

11 Sec. 18.95.160. DEFINITIONS. In this chapter

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

14 (2) "expenses", when used with reference to representation  
15 under this chapter, includes any expense of investigation, other  
16 preparation, and trial;

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

24 (4) "serious crime" includes

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

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

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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.