

Original sponsor: Rules Committee by Request
of the Legislative Council

Offered: 2/20/69
Referred: Rules

1 IN THE SENATE

BY THE JUDICIARY COMMITTEE

2 CS FOR 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 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.

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

16 Sec. 18.85.030. 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 whether
22 to retain or replace the public defender at the end of his term, the
23 governor shall consider this poll.

24 Sec. 18.85.040. REMOVAL. The public defender is subject to re-
25 moval during his term for cause only upon recommendation of the governor
26 and upon written concurrence by at least four members of the judicial
27 council. The decision of the council shall be made within 60 days after
28 receipt of the governor's recommendation.

29 Sec. 18.85.050. 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. 18.85.060. 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. 18.85.070. DELEGATION OF FUNCTIONS. The public defender may
8 assign the functions vested in the agency to subordinate attorneys and
9 employees.

10 Sec. 18.85.080. AGENCY STAFF. The public defender may appoint
11 and remove assistant public defenders, clerks, investigators, stenog-
12 raphers, and other employees he considers necessary to enable him to
13 carry out his responsibilities, subject to existing appropriations.
14 Each person appointed to a subordinate position established by the
15 public defender is under his supervision and control. The compensation
16 of persons appointed under this section shall be fixed by the public
17 defender.

18 Sec. 18.85.090. RIGHT TO REPRESENTATION, SERVICES AND FACILITIES.
19 (a) An indigent person who is being detained by a law enforcement
20 officer in connection with a serious crime, or is under formal charge
21 of having committed, or is being detained under a conviction of a
22 serious crime, or is on probation or parole, or is entitled to repre-
23 sentation under the Supreme Court Rules of Juvenile Procedure, or
24 against whom commitment proceedings for mental illness have been
25 initiated is entitled:

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

28 (2) to be provided with the necessary services and facilities
29 of this representation, including investigation and other 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 provide
4 forpayment without undue hardship.

5 Sec. 18.85.100. 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,
9 as the case may be, shall:

10 (1) clearly inform him of the right of an indigent person to
11 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 to
18 the same matter, the court shall clearly inform the person detained or
19 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. 18.85.110. DETERMINATION OF INDIGENCY. (a) The determina-
2 tion of a person's indigency shall be made by the agency or by the court
3 in which an action against him is pending. When it is made by the agency,
4 it is subject to review by the court.

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

13 (c) To the extent that a person is able to provide for an
14 attorney, 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 period
21 of three years immediately preceding his first court appearance in
22 connection with each cause and for a period in the future of not less
23 than three years after the last date aid is rendered under this chapter.

24 Sec. 18.85.120. SUBSTITUTE DEFENDER. (a) For cause, the court
25 may, on its own motion, upon the application of the public defender, or
26 upon the application of the indigent person, appoint an attorney other
27 than the public defender to represent him at any stage of the pro-
28 ceedings or on appeal. The attorney shall be awarded reasonable com-
29 pensation based upon the standard minimum bar fees for the area in which

1 he regularly practices law and reimbursement for expenses necessarily
2 incurred. Payment shall be made by the agency, as ordered by the court.

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

9 Sec. 18.85.130. WAIVER. A person who has been appropriately
10 informed 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. 18.85.140. 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 proceeding
22 for which he received the assistance he is financially able to do so
23 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 in
28 (a)(2) of this section the action shall be brought within three years
29 after the conclusion of the proceeding for which the assistance was

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

3 (c) A person receiving assistance under this chapter shall be
4 advised in writing of his financial responsibilities under this section,
5 and shall, at the conclusion of that assistance, be advised in writing
6 of his exact financial obligation.

7 (d) The extent of a person's financial obligation under this
8 section shall be determined by the public defender.

9 (e) Amounts recovered under this section shall be paid into the
10 state general fund.

11 Sec. 18.85.150. RECORDS AND REPORTS. (a) The public defender
12 shall keep appropriate records respecting each needy person represented
13 by the agency under this chapter.

14 (b) The public defender shall submit an annual report to the
15 legislature and supreme court showing the number of persons represented
16 under this chapter, the crimes involved, the outcome of each case, and
17 the expenditures (totaled by kind) made in carrying out the responsi-
18 bilities imposed on the agency by this chapter.

19 Sec. 18.85.160. DEFINITIONS. In this chapter

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

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

24 (3) "expenses". when used with reference to representation
25 under this chapter, includes any expense of investigation, other
26 preparation, and trial;

27 (4) "indigent person" means a person who, at the time his
28 need is determined, does not have sufficient assets, credit, or other
29 means to provide for payment of an attorney and all other necessary

1 expenses of representation without depriving the party or his dependents
2 of food, clothing or shelter and who has not disposed of any assets
3 since the commission of the offense with the intent or for the purpose
4 of making himself eligible for assistance under this chapter;

5 (5) "serious crime" includes

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

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

11 Sec. 18.85.170. SHORT TITLE. This chapter may be cited as the
12 Public Defender Act.

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