

HB

121

HOUSE COMMITTEE REPORT

(11)

Date referred: 2/25/87

FURTHER REFERRALS:

DATE: 4-6-87

The Finance Committee has considered HB 121

"An Act repealing a provision related to payment of costs by private prosecutor.

RECOMMENDS:

- replace with _____ the same title
- attached amendment(s) a new title
- do pass
- do not pass
- no recommendation
- individual recommendations
- additional referral to the _____ Committee

ADOPTS: JUDICIARY letter of intent

ATTACHES NEW FISCAL NOTE(s):

- fiscal impact same as previous fiscal note published _____
- zero fiscal note same as previous zero fiscal note published 2-11-87
- zero with analysis

SIGNING DO PASS:

Ces Adams

Pat Kowalot

Mark Palmer

Robert [unclear]

[unclear]

Ray [unclear]

Al [unclear]

Ken [unclear]

Ronald [unclear]

SIGNING OTHER RECOMMENDATIONS:

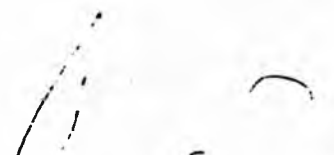
Alme [unclear]

[unclear] NO REC.

Albert [unclear]
Chairman's signature

LETTER OF INTENT
HOUSE JUDICIARY COMMITTEE
HOUSE BILL 121

By repealing AS 12.45.150, the Legislature does not intend to limit the present practice allowing the filing, by private parties, of motions for orders to show cause for criminal contempt of court.



Rep. John Sund, Chair,
House Judiciary Committee

STATE OF ALASKA 1987 LEGISLATIVE SESSION
FISCAL NOTE

Bill version: HB 121
Published Date: 2/11/87

REQUEST

Bill/Resolution No. : _____
Title: "An Act repealing a provision
related to payment of costs by pri-
vate prosecutors."
Sponsor: House Rules/By req. of the Gov.
Requestor: Office of the Governor/OMB
Date of Request: December 29, 1986

FISCAL DETAIL

Agency Affected: Department of Law
BRU: Prosecution

Components: All

EXPENDITURES/REVENUES : (Thousands of Dollars)

OPERATING	FY 87	FY 88	FY 89	FY 90	FY 91	FY 92
PERSONAL SERVICES						
TRAVEL						
CONTRACTUAL						
SUPPLIES						
EQUIPMENT						
LAND & STRUCTURES						
GRANTS, CLAIMS						
MISCELLANEOUS						
TOTAL OPERATING	-0-	-0-	-0-	-0-	-0-	-0-

CAPITAL						
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REVENUE						
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FUNDING : (Thousands of Dollars)

GENERAL FUND	-0-	-0-	-0-	-0-	-0-	-0-
FEDERAL FUNDS						
OTHER						
TOTAL						

POSITIONS :

FULL-TIME	-0-	-0-	-0-	-0-	-0-	-0-
PART-TIME						
TEMPORARY						

ANALYSIS : Attach a separate page if necessary

Please see the attached analysis.

Prepared by: Richard I. Pegues, Director

Division: Administrative Services
Approved by Commissioner: Richard I. Pegues/102/Ronald W. Lorensen,
Acting Attorney General
Agency: Department of Law

Phone: 465-3672

Date: 12/30/86

Date: 12/30/86

Distribution (by Agency preparing fiscal note):

- Legislative Finance
- Legislative Sponsor
- Requestor
- Office of Management and Budget
- Impacted Agency(ies)

CONTINUATION of FISCAL NOTE ANALYSIS

For Bill/Resolution No. _____ HB 121

Page 2 of 2
2/11/87

This bill repeals AS 12.45.150, which provides that malicious accusations, or those lacking probable cause, will subject the complainant to immediate judgment "for the costs of disbursements of the action." This statute, drafted in 1900, has also created confusion in lay persons as to their independent authority to file private criminal actions. This authority simply does not exist in Alaska. Both the Department of Law and the Alaska Court System are recommending repeal of the statute due to the confusion and the cost involved when lay persons attempt to bring complaints as "private prosecutors."

Introduced: 2/11/87
Referred: Judiciary and
Finance

wo0677h

1 IN THE HOUSE

BY THE RULES COMMITTEE BY
REQUEST OF THE GOVERNOR

2

HOUSE BILL NO. 121

3

IN THE LEGISLATURE OF THE STATE OF ALASKA

4

FIFTEENTH LEGISLATURE -- FIRST SESSION

5

A BILL

6 For an Act entitled: "An Act repealing a provision related to payment of
7 costs by private prosecutor."

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

9 * Section 1. AS 12.45.150 is repealed.

10

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 e, Sup. Ct. Op. No.
 585 P.2d 878 (1978).

Sec. 12.45.130. Acknowledgment of satisfaction by injured party. If the party injured appears before the court in which the defendant is bound to appear, at any time before trial, and acknowledges in writing that satisfaction has been received for the injury, the court may, on payment of the costs incurred, order the prosecution dismissed and the defendant discharged. The order is a bar to another prosecution for the same crime. (§ 6.14 ch 34 SLA 1962)

NOTES TO DECISIONS

The crime of leaving the scene of an accident is not amenable to civil compromise. *Hensel v. State*, Sup. Ct. Op. No. 1755 (File No. 3719), 585 P.2d 878 (1978).

The act constituting the crime of leaving the scene of an accident is the failure to stop and make the necessary exchanges of information or assistance after the acci-

dent has occurred. This omission is not one which causes injury to the private citizen within the meaning of the civil compromise statutes. Settlement of the claim for injuries resulting from the accident cannot settle the state's claim for a violation of its laws. *Hensel v. State*, Sup. Ct. Op. No. 1755 (File No. 3719), 585 P.2d 878 (1978).

Sec. 12.45.140. Compromise or stay upon compromise by other means prohibited. A crime may not be compromised or the prosecution or punishment upon a compromise dismissed or stayed except as provided by law. (§ 6.15 ch 34 SLA 1962)

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Sec. 12.45.150. Order for private prosecutor to pay costs for malicious prosecution without probable cause. The name of a person who voluntarily appears before a judge, magistrate or grand jury to prosecute a person in a criminal action, either for a misdemeanor or felony, shall be endorsed upon the complaint, information, or indictment as a private prosecutor. If it is found by a judge, magistrate or court trying the action or hearing the proceeding that the prosecution is malicious or without probable cause, those facts shall be entered upon the record in the action or proceeding by the judge, magistrate or court. Upon making the entry, the judge, magistrate or court shall immediately render judgment against the private prosecutor for the costs and disbursements of the action or proceeding, which may be enforced by execution in the same manner as a judgment in a civil action. (§ 6.16 ch 34 SLA 1962; am § 16 ch 8 SLA 1971)

Sec. 44.23.010. Attorney general. The principal executive officer of the Department of Law is the attorney general. (§ 9 ch 64 SLA 1959)

Collateral references. — 7 Am. Jur. 7A C.J.S. Attorney General, § 1 et seq.; 2d, Attorney General, § 1 et seq.; 72 Am. 81A C.J.S. States, § 61. Jur. 2d, States, Territories and Dependencies, § 62.

Sec. 44.23.020. Duties. (a) The attorney general is the legal advisor of the governor and other state officers.

(b) The attorney general shall

(1) bring, prosecute and defend all necessary and proper actions in the name of the state for the collection of revenue;

(2) represent the state in all civil actions in which the state is a party;

(3) prosecute all cases involving violation of state law, and file informations and prosecute all offenses against the revenue laws and other state laws where there is no other provision for their prosecution;

(4) administer state legal services (including the furnishing of written legal opinions to the governor, the legislature, and all state officers and departments as the governor directs), and give legal advice on a law, proposed law or proposed legislative measure upon request by the legislature or a member of the legislature;

(5) draft legal instruments for the state;

(6) make a report to the legislature, through the governor, at each regular legislative session

(A) of the work and expenditures of the office, and

(B) on needed legislation or amendments to existing law; and

(7) perform all other duties required by law or which usually pertain to the office of attorney general in a state;

(8) prepare, publish and revise as it becomes useful or necessary to do so an information pamphlet on landlord and tenant rights and the means of making complaints to appropriate public agencies concerning landlord and tenant rights; the contents of the pamphlet and any revision shall be approved by the Department of Law, division of consumer protection, before publication. (§ 9-1-5 ACLA 1949; am § 1 ch 128 SLA 1959; § 9 ch 64 SLA 1959; am § 1 ch 8 SLA 1976)

NOTES TO DECISIONS

Powers and duties are those ascribed at common law. — This section indicates that the office of the attorney general is to function with those powers and duties normally ascribed to it at

common law. *Public Defender Agency v. Superior Court*, Sup. Ct. Op. No. 1140 (File No. 2071), 534 P.2d 947 (1975).

Under the common law, an attorney general is empowered to bring any



STATE OF ALASKA
OFFICE OF THE GOVERNOR
JUNEAU

February 10, 1987

H312

The Honorable Ben Grussendorf
Speaker of the House
Alaska State Legislature
P.O. Box V
Juneau, AK 99811

Dear Representative Grussendorf:

Under the authority of art. III, sec. 18, of the Alaska Constitution, I am transmitting a bill that repeals AS 12.45.150, an obsolete statute that provides for the payment of costs for "malicious prosecutions" brought by private persons. 1/ This provision has been the cause of some confusion regarding who has the authority to institute criminal charges. In recent months several persons in the Kenai area have attempted to file "criminal charges" against other persons, primarily police officers who have arrested them, citing AS 12.45.150 as their authority to do so.

Well-established principles of statutory construction require that the language of AS 12.45.150 be interpreted in conjunction with AS 44.23.020(b)(3), which places responsibility in the attorney general to "prosecute all cases involving violation of state law." 2/ Thus AS 12.45.150 does not provide authority for

1/ The precursor of present AS 12.45.150 appears to first have been adopted in 1900; it was apparently based upon an 1882 statute from Oregon. See Ann. Alaska Codes, Pt. II, ch. 19, § 193-194 (Carter 1900). The provision was included in the first codification of Alaska's criminal laws after statehood. See § 6.16, ch. 34, SLA 1962. Except for minor technical amendments (for example, ch. 8, SLA 1971, a revisor's bill which made technical corrections relating to the court system, inserted the word "judge" in four places in the statute), the language of AS 12.45.150 has remained virtually unchanged since 1900.

2/ There are rare instances in solely private disputes where it might be appropriate for private litigants to "prosecute" cases of criminal contempt as a way of

(Footnote Continued)

the private prosecution of a criminal case (i.e., motions, pretrial hearings, trial, appeals, etc.). Instead, the statute refers only to a person who unilaterally, and without the advice or concurrence of the police or prosecutors, "voluntarily appears before a judge" to complain about a matter or before a grand jury to testify. At that point the attorney general, through a state prosecutor, has the statutory authority under AS 44.23.020 to review the matter and to handle the case as appropriate. 3/

The primary purpose of AS 12.45.150 was not to authorize the filing of criminal actions by private persons, but rather to make it clear that malicious accusations, or those lacking probable cause, will subject the complainant to immediate judgment "for the costs of disbursements of the action." However, the statute is poorly drafted and, as already noted, has created confusion in lay persons as to their independent authority to file private criminal actions. Moreover, to the extent that the statute provides for a judgment of costs to be rendered automatically and "immediately" it is probably unconstitutional as a violation of due process. It does not allow a person to have his "day in court" to try to show that the accusation was in good faith. Thus the statute might also be a disincentive for people who might otherwise bring close or marginal cases to the attention of a judge or grand jury. The repeal of the statute will eliminate any lingering confusion regarding the existence of "private prosecutors", while leaving the common law protections against malicious prosecutions intact.

The filing of a criminal action is obviously a very serious matter. The fact that a criminal charge has been filed against a person may have a negative effect upon that person's reputation, position in the community, employment opportunities, etc. The need to defend oneself against criminal charges may also impose a

(Footnote Continued)

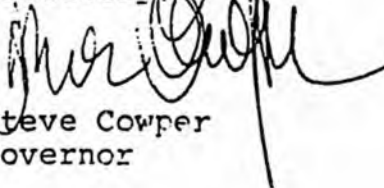
enforcing orders in contested divorce cases. See, e.g., Diggs v. Diggs, 663 P.2d 950 (Alaska 1983). In all other situations, however, AS 44.23.020(b)(3) gives the attorney general sole responsibility for handling criminal matters.

3/ Also see Rule 7(c), Alaska Rules of Criminal Procedure, which permits prosecution by indictment only if the indictment is signed by the prosecuting attorney.

great deal of financial expense and emotional strain. Thus the power to institute criminal proceedings ought not to rest with a private party involved in some sort of vendetta or a personal dispute with another.

There is no such thing as a "private prosecutor" in Alaska, nor should there be. Because AS 12.45.150 is apparently being interpreted by some persons as implicitly recognizing such a procedure, and because it probably violates due process requirements, this obsolete statute should be repealed.

Sincerely,

A handwritten signature in black ink, appearing to read "Steve Cowper", written over the word "Sincerely,".

Steve Cowper
Governor

Introduced: 2/11/87
Referred: Judiciary and
Finance

wo0677h

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