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475

SENATE FINANCE COMMITTEE REPORT

DATE: 3/2/90

FURTHER:

DATE TURNED INTO OFFICE: 3/16/90

The Finance Committee considered

SB 475

"An Act relating to payment of legal services and related costs by indigent persons using the services of the Public Defender Agency."

and recommended:

- replace with _____ CS _____
 or adopt _____ CS _____
 attached amendment(s)
 _____ letter of intent adopted

- same title
 new title
 technical title change (HB only)

~~do~~ pass

do not pass

no recommendation

individual recommendations

further referral to _____

ATTACHES NEW FISCAL NOTE(S):

Dept/Date:

fiscal note(s) _____

zero fiscal note(s) _____

appropriation-no fiscal note

APPROVES PREVIOUS:

Dept/Date:

fiscal note(s) _____

zero fiscal note(s) DOR 2/22/90
Courts 2/21/90

SIGNING DO PASS:

OTHER RECOMMENDATIONS:

[Handwritten signatures]

1. *[Handwritten signature: Ruth Uley (DO PASS)]*

2. _____

Co-Chairs: Signatures and Recommendations

FISCAL NOTE

REQUEST:

Revision Date: _____
 Title: "An Act relating to payment of legal services by indigent persons . . ."
 Sponsor: Senator Faiks
 Requestor: Senate Judiciary

Agency Affected: Dept. of Administration
 BRU: Public Defender Agency

Components: Third Judicial District

EXPENDITURES/REVENUES: (Thousands of Dollars)

OPERATING	FY91	FY 92	FY 93	FY 94	FY 95	FY 96
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	-0-	-0-	-0-	-0-	-0-	-0-

POSITIONS:

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

ANALYSIS : (Attach a separate page if necessary) FY90 impact is zero.

This bill represents a positive emphasis on mitigating the public cost for an increasingly expensive criminal justice system. There is no fiscal impact on the Public Defender system, nor does the executive branch keep data which would enable a prediction of revenue.

Prepared by: John B. Salemi, Public Defender Phone: 279-7541
 Division: Public Defender Agency Date: 2/21/90

Approved by Commissioner: Frank S. Baxter Date: 2/22/90
 Agency: Department of Administration

Distribution (by preparer) :

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

SB 475

FISCAL NOTE

REQUEST:

Revision Date:	Agency Affected:	Alaska Court System
Title: <u>An Act relating to payment of legal services and related costs...</u>	BRU:	Trial Courts
Sponsor: <u>Faiks</u>	Components:	
Requestor:		

EXPENDITURES/REVENUES: (Thousands of Dollars)

OPERATING	FY 90	FY 91	FY 92	FY 93	FY 94	FY 95
Personal Services						
Travel						
Contractual						
Supplies						
Equipment						
Land & Structures						
Grants & Claims						
TOTAL OPERATING	0.0	0.0	0.0	0.0	0.0	0.0

CAPITAL						
---------	--	--	--	--	--	--

REVENUE						
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FUNDING: (Thousands of Dollars)

General Funds	0.0	0.0	0.0	0.0	0.0	0.0
Federal Funds						
Other						
TOTAL	0.0	0.0	0.0	0.0	0.0	0.0

POSITIONS:

Full-time						
Part-time						
Temporary						

ANALYSIS: (Attach a separate page if necessary)

No fiscal impact.

Prepared by: Jan Strandberg, General Counsel
 Division: Alaska Court System
 Approved by: *Arthur H. Snowden, II* FOR
 Agency: Alaska Court System

Phone: 264-8228
 Date: 02/21/90
 Date: 02/21/90

Distribution (by preparer):
 Legislative Finance
 Legislative Sponsor
 Requestor
 Office of Management & Budget
 Impacted Agency(ies)

BY SEN. FAIKS

1 IN THE SENATE

2

SENATE BILL NO. 475

3

IN THE LEGISLATURE OF THE STATE OF ALASKA

4

SIXTEENTH LEGISLATURE - SECOND SESSION

5

A BILL

6 For an Act entitled: "An Act relating to payment of legal services and
7 related costs by indigent persons using the services
8 of the Public Defender Agency."

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

10 * Section 1. AS 18.85.120(c) is amended to read:

11 (c) The court may order a person for whom counsel is appointed
12 to pay for [TO THE EXTENT THAT A PERSON IS ABLE TO PROVIDE FOR AN
13 ATTORNEY,] the [OTHER] necessary services and facilities of represen-
14 tation [,] and court costs. The order has the effect of a civil
15 judgment [, THE COURT MAY ORDER THE PERSON TO PAY FOR THESE ITEMS].
16 The payments shall be paid into the state general fund.

Alaska State Legislature

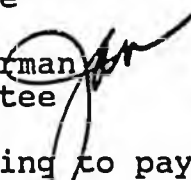


Senate Judiciary Committee

MEMORANDUM

March 9, 1990

TO: Senator Rick Uehling, Co-Chairman
Senator John Binkley, Co-Chairman
Senate Finance Committee

FROM: Senator Jan Faiks, Chairman 
Senate Judiciary Committee

SUBJECT: SB 475 "An Act relating to payment of legal services and related costs by indigent persons using the services of the Public Defender Agency."

SB 475 was introduced at the suggestion of the Alaska Court System. This bill streamlines the manner in which indigent persons are ordered to pay legal costs when represented by the Public Defender.

As you know, the state is constitutionally obligated to provide attorneys to indigent defendants in criminal prosecutions. Currently, the law provides that an indigent person may be ordered to repay the legal expenses and court costs incurred by the state to the extent that the person is able to do so. The courts have interpreted this to mean that a hearing must be held before an indigent person can be ordered to pay any expenses; calculating the value of the representation is difficult, and the ability of the court to fully consider future income is also questionable. Experience has shown that this system simply does not work. Legal costs are virtually never recovered from persons represented by the Public Defender, regardless of the person's ability to pay some of the expenses at the time of the representation or in the future.

SB 475 has the effect of eliminating the need for a hearing, and allowing a defendant's future ability to pay to be taken into account. If passed, the supreme court intends to adopt a schedule of fees for various offenses (a copy of this schedule can be found in proposed Criminal Rule 39, which you will find attached). An indigent person who received services from the Public Defender would automatically be assessed a fee depending on the type of service provided. At the end of a

criminal proceeding, a civil judgement in that amount would be entered against the defendant. During the ten year period in which a civil judgement is enforceable, the state could pursue the judgement if the defendant had the ability to pay some of the fees at the time of the representation, or in the event that the defendant ever obtained a financial windfall in the future. Obviously, the state could not enforce the judgement in cases where the defendant was truly indigent and remained so.

This method of fee collection has been endorsed by both the Department of Law and the Public Defender, because it fulfills the government's responsibility to indigent persons, while ensuring that resources available to indigent persons ultimately go to people who really are in need. I urge your support.

STEVE COWPER, GOVERNOR

DEPARTMENT OF LAW

OFFICE OF THE ATTORNEY GENERAL

P O BOX K—STATE CAPITOL
JUNEAU, ALASKA 99811-0300
PHONE: (907) 465-3600

December 14, 1989

The Honorable Warren Matthews
Alaska Supreme Court
303 K Street
Anchorage, AK 99501

Dear Chief Justice Matthews:

We understand that the Supreme Court will soon consider a proposal to amend Criminal Rule 39 that would allow the recovery of some of the costs of defense services to indigent citizens.

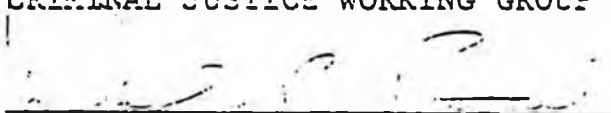
We support this concept, especially where the charges are directly related to the level of service provided to clients by the Alaska Public Defender's Agency and the Office of Public Advocacy. The fee schedule contained in the proposed amendment accomplishes this goal by setting out charges that are generally proportionate to the professional work required in individual cases.

We are particularly concerned that any recovery system include provisions designed to streamline the administrative and legal process for collection of these funds. The creation of an efficient and effective system holds the promise of recovering a significant portion of the high costs of defense services.

Finally, it is clear that the current mechanism of cost recovery has not worked. We applaud your efforts to develop a fair and effective recovery plan.

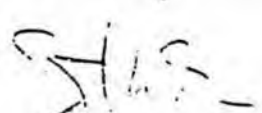
Respectfully submitted,

CRIMINAL JUSTICE WORKING GROUP



Douglas B. Bailly
Attorney General

Date



Grant McGee, Director
Office of Public Advocacy
Department of Administration

Date

[Handwritten signature] 1-15-90

John Salemi, Director Date
Public Defender Agency
Department of Administration

Myra Mynson Dec 14, 1989
Myra Mynson, Commissioner Date
Department of Health and Social Services

Susan Humphrey-Barnett 12/27/89
Susan Humphrey-Barnett, Commissioner Date
Department of Corrections

Art English 12-14-89
Art English, Commissioner Date
Department of Public Safety

Duane Udland 12-20-89
Duane Udland, Representative Date
Alaska Association of Chiefs of Police

BM/gh

IN THE SUPREME COURT FOR THE STATE OF ALASKA

ORDER NO. _____

Amending Criminal Rule 39
concerning appointment of
counsel for indigents.

IT IS ORDERED:

Criminal Rule 39 is amended to provide:

Criminal Rule 39: Appointment of Counsel.

(a) Informing Defendant of Right to Counsel. The court shall advise a defendant who appears for arraignment or trial without counsel of the right to be represented by counsel, and ask if the defendant desires the aid of counsel. The court shall not allow a defendant to proceed without an attorney unless the defendant understands the benefits of counsel and knowingly waives the right to counsel.

(b) Appointment of Counsel for Persons Financially Unable to Employ Counsel.

(1) If the defendant desires the aid of counsel but claims a financial inability to employ counsel, the court shall inquire of the defendant under oath as to his or her financial status in order to determine whether the defendant is an "indigent person," as defined by statute. The court shall advise the

defendant that a judgment will* be issued against the defendant to cover the costs of an appointed counsel. As a condition of receiving the services of counsel at public expense, the defendant shall execute a general waiver authorizing release of income information to the court. The court also may require the defendant to sign an assignment of the defendant's permanent fund dividend check to the state and may enter such orders as appear reasonably necessary to prevent the defendant from fraudulently dissipating assets to avoid a repayment order.

(2) Information provided by the defendant concerning eligibility for appointed counsel may not be used against the defendant in any criminal proceedings, except that such information may be used in a prosecution for perjury or at a hearing for determining the defendant's ability to pay a fine or make restitution. Upon request, the defendant must be allowed to present the requested financial information in a confidential setting, outside the presence of the prosecuting attorney. The court may have the financial inquiry conducted by pretrial services.

(3) If the court determines that the defendant is an "indigent person," the

* The alternative draft, under which the court would hold an "ability to pay" hearing if requested before imposing costs, would substitute "may" for "will" here.

court shall appoint counsel pursuant to Administrative Rule 12 and notify counsel of the appointment. The court may require the defendant to attempt to arrange private representation before making a final decision on indigency.

(4) In the absence of a request by a defendant otherwise entitled to appointment of counsel, the court shall appoint counsel unless the court finds that the defendant understands the benefits of counsel and knowingly waives the right to counsel.

(5) If the trial court denies the defendant's request for appointed counsel, the defendant may request review of this decision by the presiding judge of the judicial district by filing a motion with the trial court within three days of the trial court's denial of representation. The trial court shall forward the motion, relevant materials from the court file and a cassette tape of any relevant proceedings to the presiding judge. The presiding judge or his or her designee shall issue a decision within three days of receipt of these materials.

(c) Cost of Counsel.

(1) At the conclusion of the criminal proceedings in the trial court, the court or the clerk shall issue a judgement against a defendant represented by appointed

counsel for the cost of representation. The cost of appointed counsel will be determined by reference to the fee schedule in paragraph (e).**

(2) The court may require payment in installments or in any manner which the court finds is reasonable. The judgment of repayment must be in writing and a copy must be provided to the defendant.

(3) All proceedings to enforce a repayment judgment are civil in nature. The judgment has the same force and effect as a judgment in a civil action in favor of the prosecuting authority and is subject to execution. The judgment is not enforceable by contempt, nor may repayment be made a condition

** The alternative draft would replace this subparagraph with two subparagraphs which would provide:

(1) At the beginning or conclusion of the criminal proceedings in the trial court, the court may order a defendant represented by appointed counsel to pay all or part of the costs of representation in an amount not to exceed the defendant's ability to pay for these costs. The cost of appointed counsel will be determined by reference to the fee schedule in paragraph (e). A defendant with only a partial ability to pay costs may be ordered to pay one-half of the amount specified in the fee schedule.

(2) Prior to entering an order of repayment, the court shall advise the defendant that he or she may present testimonial and documentary evidence concerning an ability to pay for representation.

of a defendant's probation. Default or failure to make repayment may not affect or reduce the rendering of services on appeal or any other phase of the defendant's case in any way. The defendant does not have a right to be represented by appointed counsel in connection with any repayment proceeding.

(d) Appointment in the Interest of Justice. The court may appoint counsel for a criminal defendant in any case in which appointment best serves the interest of justice.

(e) Cost of Representation Schedule. The following schedules govern the assessment of the cost of representation under subparagraph (c)(1):

Misdemeanors

Trial	\$ 500.00
Change of plea	200.00
Dismissal after substantive motion	200.00
Dismissal without substantive motion	50.00

Felonies

Final Disposition	Class B & C	Class A and Unclassified (Except Murder)	Murder in the 1st and 2nd Degrees
Trial	1,500	2,500	5,000
Change of plea after substantive motion work and hearing	1,000	1,500	2,500
Dismissal after substantive motion work and hearing	500	1,000	2,000
Change of plea post-indictment but prior to substantive motion work and hearing	500	1,000	2,000
Change of plea prior to indictment	300		
Dismissal without substantive motion	200		

DATED: _____

EFFECTIVE DATE: _____

Chief Justice Matthews

Justice Rabinowitz

Justice Burke

Justice Compton

Justice Moore

IN THE SUPREME COURT FOR THE STATE OF ALASKA

ORDER NO. _____

Amending Appellate Rule 209(b)
concerning appointment of
counsel for indigents in
criminal appeals.

IT IS ORDERED:

Appellate Rule 209(b) is amended to provide:

(b) Criminal Matters.

(1) In criminal matters the trial court shall authorize appeals by appointed counsel in accordance with Criminal Rule 39 and Administrative Rule 12 [AT PUBLIC EXPENSE ON BEHALF OF PERSONS FINANCIALLY UNABLE TO PAY THE COSTS OF APPEAL IN ACCORDANCE WITH THE RULES AND DECISIONS OF THE APPELLATE COURTS OF ALASKA AND WHERE SUCH APPEALS ARE REQUIRED TO BE PROVIDED BY STATE COURTS BY DECISIONS OF THE SUPREME COURT OF THE UNITED STATES]. Where such appeals are authorized [BY THE TRIAL COURT] the costs which shall be borne at public expense [BY THE STATE SHALL] include those of providing counsel and of preparing a transcript and briefs. [CRIMINAL RULE 39 SHALL BE FOLLOWED IN MAKING THE DETERMINATION OF FINANCIAL INABILITY.]

(2) A defendant authorized to proceed at public expense in the trial court is presumed to be entitled to proceed at public expense on appeal.

(3) The action of the trial court in authorizing or declining to authorize an appeal at public expense is reviewable by a motion in the appellate court, ancillary to the appeal.

(4) Counsel appointed to represent the defendant in the trial court pursuant to Criminal Rule 39 shall remain as appointed counsel throughout an appeal at public expense authorized under this subdivision and shall not be permitted to withdraw except upon the grounds authorized in Administrative Rule 12. In addition, an attorney appointed by the court under Administrative Rule 12(b)(1)(B) will be permitted to withdraw upon a showing that either the public defender agency or the office of public advocacy is able to represent the defendant on appeal. If an appeal is to be taken, in no event will trial counsel be permitted to withdraw until the notice of appeal and the documents required to be filed therewith by Rule 204(b) have been accepted for filing by the clerk of the trial courts [COMPELLING REASONS].

(5)* At the conclusion of the appellate proceeding, the Appellate clerk shall issue a judgment against a defendant represented by appointed counsel for the cost of representation on appeal. The cost of

* This paragraph would be deleted in the alternative version.

Supreme Court Order No. _____
Effective Date: _____
Page 3

Proposed

representation will be determined based on the
following schedule:

<u>Type of Appellate Proceeding</u>	<u>Misdemeanor</u>	<u>Felony</u>
<u>Sentence Appeal</u>	<u>250</u>	<u>500</u>
<u>Merit Appeal</u>	<u>750</u>	<u>1,500</u>
<u>Combined Merit and Sentence Appeal</u>	<u>1,000</u>	<u>2,000</u>
<u>Other Appellate Actions (Petition for Review, Petition for Hearing, etc.)</u>	<u>500</u>	<u>1,000</u>

DATED: _____

EFFECTIVE DATE: _____

Chief Justice Matthews

Justice Rabinowitz

Justice Burke

Justice Compton

Justice Moore