

HB

370

FISCAL NOTE

BILL NO. CSHB 370 JUD)

STATE OF ALASKA
1996 LEGISLATIVE SESSION

Revision Date: _____ Dept. Affected: Alaska Court System
 Title: Legal counsel for accused criminals BRU: Trial Courts
 Component: _____
 Sponsor: Reps. Martin, Forner, Toohay
 Requester: Judiciary COMPONENT SERIAL NO. 768

Expenditures/Revenues		(Thousands of Dollars)					
OPERATING EXPENDITURES	FY 97	FY 98	FY 99	FY 00	FY 01	FY 02	
PERSONAL SERVICES							
TRAVEL							
CONTRACTUAL							
SUPPLIES							
EQUIPMENT							
LAND & STRUCTURES							
JUDGMENTS & CLAIMS							
MISCELLANEOUS							
TOTAL OPERATING	2.0	2.0	2.0	2.0	2.0	2.0	
CAPITAL EXPENDITURES							
CHANGE IN REVENUES							

Fund Source		(Thousands of Dollars)					
1002 Federal Receipts							
1003 GF Major							
1004 GF	2.0	2.0	2.0	2.0	2.0	2.0	
1006 GF Program Receipts							
1007 GF Mental Health							
Other							
TOTAL	2.0	2.0	2.0	2.0	2.0	2.0	

Estimate of any current year (FY 96) cost: None

Positions							
Full-Time							
Part-Time							
Temporary							

ANALYSIS: (Attach a separate page if necessary)

No fiscal impact.

Prepared by: C. S. Christensen III, Staff Counsel Phone: 264-8228
 Agency: Alaska Court System Date: 01/24/96
 Approved by: Arthur H. Snowden, II, Administrative Director Date: 01/24/96
 Agency: Alaska Court System

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FISCAL NOTE

No. 2

STATE OF ALASKA
1996 LEGISLATIVE SESSION

Bill Version: CSHB 370(JUD)

(H) Publish Date: 1/26/96

Revision Date: _____
Title: "An Act relating to the provision of legal services to criminal defendants."
Sponsor: Rep. Martin
Requestor: (H) Jud

Department Affected: Administration
BRU: Office of Public Advocacy
Component: Office of Public Advocacy
COMPONENT SERIAL NO. 43

EXPENDITURES/REVENUES: (Thousands of Dollars)

OPERATING EXPENDITURES	FY 97	FY 98	FY 99	FY 00	FY 01	FY 02
PERSONAL SERVICES						
TRAVEL						
CONTRACTUAL						
SUPPLIES						
EQUIPMENT						
LAND & STRUCTURES						
GRANTS, CLAIMS						
MISCELLANEOUS						
TOTAL OPERATING	00	00	00	00	00	00

CAPITAL EXPENDITURES						
----------------------	--	--	--	--	--	--

CHANGE IN REVENUES						
--------------------	--	--	--	--	--	--

FUND SOURCE: (Thousands of Dollars)

1002 Federal Receipts						
1003 GF Match						
1004 GF						
1005 GF/Program Receipts						
1037 GF/Mental Health						
OTHER						
TOTAL	00	00	00	00	00	00

Estimate of any current year (FY 96) cost: \$ 0

POSITIONS:

FULL-TIME						
PART-TIME						
TEMPORARY						

ANALYSIS: (Attach a separate page if necessary)

There is no fiscal impact on the Office of Public Advocacy.

Prepared by Grant McGee, Public Advocate
Division: Office of Public Advocacy

Phone: 274-1684
Date: _____

Approved by Commissioner Mark Boyer
Agency: Administration

Date: 1/23/96

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FISCAL NOTE

STATE OF ALASKA
1996 LEGISLATIVE SESSION

No. 3
Bill Version: CSHB 370 (JUD)
(H) Publish Date: 1/26/96

Revision Date: _____
Title: "An Act relating to the provision of legal services to criminal defendants"
Sponsor: Representative Martin
Requestor: (H) Jud

Department Affected: Administration
BRU: Public Defender Agency
Component: Public Defender Agency
COMPONENT SERIAL NO. 1631

EXPENDITURES/REVENUES: (Thousands of Dollars)

OPERATING EXPENDITURES	FY 97	FY 98	FY 99	FY 00	FY 01	FY 02
PERSONAL SERVICES	***	***	***	***	***	***
TRAVEL						
CONTRACTUAL						
SUPPLIES						
EQUIPMENT						
LAND & STRUCTURES						
GRANTS, CLAIMS						
MISCELLANEOUS						
TOTAL OPERATING	***	***	***	***	***	***

CAPITAL EXPENDITURES	***	***	***	***	***	***
----------------------	-----	-----	-----	-----	-----	-----

CHANGE IN REVENUES ()	***	***	***	***	***	***
------------------------	-----	-----	-----	-----	-----	-----

FUND SOURCE: (Thousands of Dollars)

*002 Federal Receipts	***	***	***	***	***	***
*003 GF Match						
*004 GF						
*005 GF/Program Receipts						
*037 GF/Mental Health						
OTHER						
TOTAL	***	***	***	***	***	***

Estimate of any current year (FY 96) cost: \$ -0-

POSITIONS:

FULL-TIME	***	***	***	***	***	***
PART-TIME						
TEMPORARY						

ANALYSIS: (Attach a separate page if necessary.)

This bill would have the effect of slightly decreasing the workload of the Public Defender.

Prepared by John B. Salem, Director
Division: Public Defender Agency

Phone: (907) 264-4472
Date: _____

Approved by Commissioner Mark Royer
Agency: Department of Administration

Date: 1/26/96

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STATE OF ALASKA

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Mail Stop 3101


130 Seward Street, Suite 409
Juneau, Alaska 99801-2105

MEMORANDUM

March 14, 1996

SUBJECT: Provision of Legal Services at Public Expense - CSHB 370(JUD)
(Work Order No. 9-LS1352\C)

TO: Senator Robin Taylor
Attn: Chuck Achberger

FROM: Gerald P. Luckhaupt 
Legislative Counsel

You have asked if CSHB 370(JUD) amends Rule 5(b), Alaska Rules of Criminal Procedure? It is my opinion that CSHB 370(JUD) does not amend Rule 5(b), A.R.Cr.P.

Rule 5(b), A.R.Cr.P., provides that immediately after arrest a prisoner may telephone an attorney or a friend or relative and is entitled to visit with an attorney or relative. This rule is based upon AS 12.25.150(b). This right of a prisoner to telephone calls and to visits is unaffected directly by CSHB 370(JUD), in that a prisoner is still going to be able to telephone and visit with relatives, friends, and attorneys the prisoner is able to contact on his own. The prisoner, though, will not be able to contact the public defender and have the public defender undertake representation of the prisoner at this time, as the prisoner's initial appearance will probably not have occurred. This does not in my opinion mean that CSHB 370(JUD) amends or changes Rule 5(b), A.R.Cr.P., as that rule does not guarantee a prisoner a right to counsel at state expense but merely provides that law enforcement authorities may not hold a prisoner incommunicado.

If you have further questions, please contact me at your convenience.

GPL:pl
96-077.plm

MEMORANDUM
ALASKA PUBLIC DEFENDER AGENCY
900 W. 5TH AVE., SUITE 200
ANCHORAGE, ALASKA 99501
PHONE: (907)264-4412 (direct number)
Fax line: (907)269-5476

FAXED
3-14-96

DATE: 3-13-96

TO: Senator Robin Taylor

FROM: John B. Salemi, Public Defender

RE: HB370 (Limiting Public Defender Appointments Until after Arraignment)

Thank you for allowing my (partial) testimony regarding the above-mentioned bill. I appreciated your grasp of the legal issues. Thank you for your assurance that I will be permitted to complete my testimony so as to raise the other issues of concern which did not surface due to time constraints.

The legislative hearing process can be very frustrating when one does not get to respond to assertions made by others, whether it be the sponsor, or an APD representative. The Public Defender does not "aggressively pursue" cases; we have plenty of business, without going out drumming up more. To be likened to an "ambulance chaser" as was done by the sponsor unfairly discredits our agency in a very visible and public forum. The sponsor, through his comments, demonstrated only that he knows very little about the criminal justice system, the Public Defender Agency, and the potential impact of the bill he is sponsoring. The problem is, some people will be left with the impression that PD staff attorneys are out walking the streets telling people not to cooperate with the police. I believe you know that isn't true.

This bill is bad law. If it passes, it will generate an enormous amount of litigation. It is also bad public policy. It creates a two-tiered system of justice where people of some means can consult with lawyers, but poor people are not afforded that right. If you recall, officer Warner testified related to your question about Miranda situations, if the person wants to contact a private attorney, the police provide that opportunity. She went on to say if the individual being detained has no private lawyer, but instead asks for a free lawyer, the police are instructed to shut down the interrogation. That policy is illegal. It is an equal protection violation, violative of Miranda and the 6th Amendment. Even with Miranda in place the police are apparently making efforts to circumvent an individual's right to counsel.

The police are involved in the "competitive enterprise of ferreting out crime". Every citizen should applaud their considerable efforts in this regard. However, they are not objective about what the law should be in the area of access to counsel for suspects or accused persons. If it were up to the police there would be no right to a lawyer, period. But that's not the law. The police are the moving force behind this bill. Representative Porter told

me this directly. Law enforcement is frustrated when lawyers give people legal advice which goes like this: "you don't have to talk to the police if you don't want to, and no one can force you to". This right is one of the concepts which distinguishes us from totalitarian forms of government. We should be reinforcing a citizen's ability to receive this advice, not eliminating it.

This bill allows people who have money access to that advice, but for poor people, they will be kept in the dark. When Officer Warner said the PD has dispensed this advice "hundreds and hundreds of times", she was making a wildly exaggerated claim. My intake lawyers in Anchorage, our busiest office by far, say they help individuals make decisions about talking to the police once or twice a month, on average. More often than not, they say, they either advise the person to co-operate with the police (often these individuals have nothing to hide as they are only witnesses), or they begin negotiating directly with the prosecutor regarding a resolution of the case. Sure, there are times we tell an individual not to submit to interrogation. Any criminal defense lawyer worth his or her salt better be giving out that advice under appropriate circumstances.

I've been a PD lawyer for 16 years. I've told people not to talk to the police no more than a dozen times in all those years. As I stated in my testimony, 99% of our cases/contacts are court appointments which occur after formal charges have been filed. The police aren't permitted to talk to our clients once we're appointed, so there is no need for us to focus on this issue.

There are other legal problems with this bill. Alaska Criminal Rule 5(b) is in direct conflict with this proposal. This bill would have to include a rule change in order for it to be legal.

Then there is the intoximeter/DWI issue. Before the police can make someone take the alcohol breath test, they have to give them an opportunity to consult with counsel. See Copelin v. St., 659 P2d 1206. We have a 24 hour answering service where lawyers are on call around the clock to take these calls. If this bill passes, there won't be anyone to take those to answer the phone. I'd frankly be happy to shut down the answering service and on-call list (its expensive and I am on call along with the other PDs. I don't like talking to drunks at 4:00 a.m.). On the other hand, the prosecutor isn't going to be very happy when they can't get the intoximeter result into evidence because the DWI suspect had no reasonable opportunity to consult with counsel.

There's more, but I'll wait until the bill is heard again. I am crossing my fingers that this bill will be seen as an inappropriate change in the law. I sincerely believe the committee's time could be taken up with more pressing and immediate concerns.

Thanks for your time. Please give me a call if I can answer questions.

LEGAL SERVICES

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Juneau, Alaska 99801-2105

MEMORANDUM

March 14, 1996

SUBJECT: CSHB 370(JUD) - Constitutional Requirements Concerning
Appointment of Counsel in Criminal Proceedings
(Work Order No. 9-LS1352\C)

TO: Representative Brian Porter
Attn: Daniella Loper

FROM: Gerald P. Luckhaupt 
Legislative Counsel

You have asked when the appointment of counsel is required by the constitution in a criminal proceeding and does bill sec. 1 of CSHB 370(JUD) comport with the constitutional requirement?

Sixth Amendment, United States Constitution

Under the United States Constitution, the Sixth Amendment right to counsel attaches only upon the commencement of adversary criminal proceedings and then only at "critical stages" of criminal proceedings following the arraignment. The arraignment signals "the initiation of adversary criminal proceedings." United States v. Gouveia, 467 U.S. 180, 188, 104 S.Ct. 2292, 81 L.Ed.2d 146 (1984). The arraignment itself may or may not be a "critical stage" at which the presence and assistance of counsel is necessary unless waived. Michigan v. Jackson, 475 U.S. 625, 630, n. 3, 106 S.Ct. 1404, 89 L.Ed.2d 631, 638 (1986).¹ Generally a determination of what is and is not a "critical stage" depends upon whether the "substantial rights of the accused may be affected" at the particular proceeding. Mempa v. Rhay, 389 U.S. 128, 88 S.Ct. 254, 19 L.Ed.2d 336 (1967). In Coleman v. Alabama, 399 U.S. 1, 90 S.Ct. 1999, 26 L.Ed.2d 387 (1970), the United States Supreme Court concluded that a preliminary hearing granted under state law at which a plea is taken or entered is a "critical stage."

Article I, § 11, Alaska Constitution

The Alaska Supreme Court has stated with regard to the right to counsel:

¹In Hamilton v. Alabama, 368 U.S. 52, 82 S.Ct. 157, 7 L.Ed.2d 114 (1961), the United States Supreme Court found an Alabama arraignment to be a "critical stage".

Representative Brian Porter

March 14, 1996

Page 2

Unlike the privilege against self-incrimination, the right to counsel provided by the sixth amendment attaches only after formal charges have been filed. *Kirby v. Illinois*, 406 U.S. 682, 92 S.Ct. 1877, 32 L.Ed.2d 411 (1972). Although we are not limited to the scope of the sixth amendment when construing the right to counsel provided by our state constitution, when we have provided a broader right in the past we have done so only to protect the accused during the proceedings that are investigatory in nature and which are conducted in an adversary context.

Loveless v. State, 592 P.2d 1206, 1210 (Alaska 1979)(footnotes omitted). And in regard to what is a "critical stage," the Alaska Supreme Court has said that an initial appearance and examination under Rule 5, A.R.Cr.P., is not a "critical stage." The court said:

With regard to the sixth amendment claim, it is clear that the Rule 5 proceeding is not a "critical stage" requiring the assistance of counsel. No plea may be taken at that stage, Rule 5(e), and no plea was entered, unlike the situations present in *Coleman v. Alabama*, 399 U.S. 1, 90 S.Ct. 1999, 26 L.Ed.2d 387 (1970), and *White v. Maryland*, 373 U.S. 59, 83 S.Ct. 1050, 10 L.Ed.2d 193 (1963), respectively. The probable cause determination made pursuant to Rule 5(e)(1) neither involves the examination of witnesses nor precludes the state from seeking a grand jury indictment should no probable cause be found. See Rule 5.1(g)(2) ... The setting of bail is likewise not an adversary confrontation wherein "potential substantial prejudice" to "the defendant's basic right to a fair trial" inheres, but rather is limited to the issue of interim confinement.

Padgett v. State, 590 P.2d 432, 436 (Alaska 1979). See also Thiel v. State, 762 P.2d 478 (Alaska App. 1988) in which the Alaska Court of Appeals noted the similarities between the Sixth Amendment and the Article I, § 11 guarantees of counsel and explained that the existence of a "criminal proceeding" is necessary for application of the guarantees.²

²In Blue v. State, 558 P.2d 636 (Alaska 1977), the Alaska Supreme Court interpreted Art. I, § 11, to require the assistance of counsel at a pre-indictment lineup, before the initiation of formal charges. The court limited this right to counsel to situations where the provision of counsel would not interfere with a prompt and purposeful investigation. In Blue a lineup conducted at the scene of the offense within three hours of the commission of the offense did not give rise to a constitutional right to counsel. This pre-indictment right to counsel merely means that law enforcement authorities may not place a defendant into a pre-indictment lineup that is not conducted in close temporal proximity to the commission of the offense. Otherwise the court will consider the lineup a "critical stage" of the criminal proceedings. The decision to make a Rule 5, A.R.Cr.P., initial appearance, or a Rule 5.1, A.R.Cr.P., preliminary examination, the place to commence the provision of counsel, and

(continued...)

Representative Brian Porter

March 14, 1996

Page 3

It is my opinion that CSHB 370(JUD) complies with the United States and Alaska constitutional guarantees of counsel for those accused of criminal offenses. While I believe that case law would support a legislative determination that appointment of counsel would not occur until the preliminary examination stage of criminal proceedings, a legislative determination to provide counsel beginning at the Rule 5, A.R.Cr.P., initial appearance, seems reasonable and within the authority of the legislature especially considering the fact that not all defendants have preliminary examinations. It is my opinion that bill sec. 1 of CSHB 370(JUD) is constitutional.

GPL:klb

96-197.klb

²(...continued)

therefore be a statutorily determined "critical stage" is not impacted by this pre-indictment lineup ruling. To the extent that law enforcement wants to place the defendant in a pre-indictment lineup before the initial appearance, at which time counsel would be appointed under CSHB 370(JUD), law enforcement can request the appointment of counsel for the defendant under bill sec. 2 of CSHB 370(JUD).

SENATE COMMITTEE REPORT

First Committee of Referral

DATE: 2/21/96

FURTHER: Finance

DATE TURNED INTO OFFICE: _____

The Judiciary Committee considered CS FOR HOUSE BILL NO. 370(JUD)

"An Act relating to the provision of legal services at public expense."

and recommends:

- be replaced with _____ CS _____ (_____)
- adopt previous _____ CS _____ (_____)
- attached amendment(s)
- adopt Letter of Intent by _____ Committee
- further referral to the _____ Committee

- Senate Bill:**
- same title
 - new title
- House Bill:**
- same title
 - technical title
 - new: SCR' _____

SIGNING DO PASS	DP	OTHER RECOMMENDATIONS	NR	DNP	AM
Mike Miller	✓	Linda Green	✓		
		Al Adams		✗	
CHAIR: <i>John Stumpf</i>	✓	CHAIR:			

NEW FISCAL NOTE(S):

Department	Date	Zero	Fiscal

PREVIOUS FISCAL NOTE(S):*

Department	Date	Zero	Fiscal

APPROPRIATION -- no fiscal note

*include fiscal notes accompanying Governor's bill

1

**MUNICIPALITY OF ANCHORAGE
PUBLIC SAFETY PARTNERSHIP PROGRAM
LEGISLATIVE ISSUES**

Allow municipalities to respond to less serious juvenile behavior by expanding its jurisdiction to include the ability to subject juvenile offenders to civil infractions and/or mediation

Early intervention has been proven an effective means of changing young people's attitudes and behaviors. Because the current juvenile justice system is overwhelmed with serious offenses and offenders, many offenders who begin with lower level or less dangerous conduct receive no meaningful consequences until they graduate to the higher level.

According to the 1994 Anchorage Police Department Annual Report, juvenile arrests have increased 66% since 1990. Juvenile offenders have become increasingly dangerous and increasingly blatant regarding their offenses in the knowledge that the system can do very little to them.

Recognizing this situation, the Municipality of Anchorage would like the ability to respond to less serious juvenile behavior by expanding its jurisdiction to include the ability to subject juvenile offenders to civil infractions and/or mediation. This will allow the juvenile justice system to focus on the more serious criminal activity while assuring that juvenile offenders of less serious offenses receive more immediate consequences for their actions.

FEB 14 1996

Municipality
of
Anchorage



P.O. Box 196650
Anchorage, Alaska 99519-6650
Telephone: (907) 343-4433

Rick Mystrom, Mayor

OFFICE OF THE MUNICIPAL MANAGER

February 9, 1996

Senator Rick Halford
Alaska State Legislature
State Capitol
Juneau, AK 99801-1182

Re: S.B. 270

Dear Senator Halford:

Thank you for sponsoring S. B. 270, "An Act relating to juveniles, relating to the jurisdiction of juvenile courts; relating to the release of juveniles; and relating to records concerning juveniles."

This bill offers important reform to the way in which juvenile criminal activity is addressed.

Attached are issue summaries supporting the need for the proposed changes.

Thank you again for sponsoring this legislation. If we can offer further information, please let me know.

Sincerely,

A handwritten signature in cursive script, appearing to read "Tim Rogers".

Tim Rogers
Legislative Program Coordinator

JAN 06 1996



Anchorage - Star of the North
Chamber of Commerce

Anchorage Chamber of Commerce
Criminal Justice System Reform
Resolution 95/96-5

WHEREAS the public is unsafe due to the "Catch and Release" of drug offenders who continue to operate after arrest; and

WHEREAS Civil Abatement is a useful tool in preventing illegal activities and is available only to the State and not local municipalities; and

WHEREAS juvenile offenders are becoming more dangerous and are exempt from public censure because of confidentiality laws; and

WHEREAS the sealing of the records of juvenile offenders obscures the fact after their 18th birthday that they have a criminal history; and

WHEREAS the State has sole jurisdiction over juvenile crime and municipalities are barred from addressing juvenile crime; and

WHEREAS the "best interest of the juvenile" standard conflicts with society's expectation of accountability to and protection of the public; and

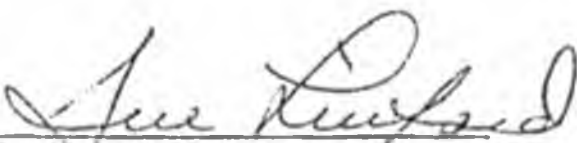
WHEREAS the Municipality of Anchorage has assumed costs of criminal justice services in excess of \$5,535,000 those costs normally reserved to the state, and yet is burdened with inadequate numbers of correctional facilities and magistrates;

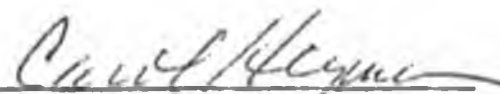
NOW THEREFORE BE IT RESOLVED that the Anchorage Chamber of Commerce does hereby support the Criminal Justice Proposals brought forward by the Municipality of Anchorage that propose more stringent conditions for bail for repeat drug offenders, allow municipalities to utilize Civil Abatement procedures, revise the confidentiality laws concerning juvenile offenders, give municipalities jurisdiction over less serious juvenile crimes, and provide for at least equal consideration of the best interest of the Public and the victims in bail and sentencing procedures for juveniles; and

BE IT FURTHER RESOLVED that the Anchorage Chamber of Commerce supports the Municipality of Anchorage's initiative to call upon the state to recognize the importance of increasing the number of correctional facilities and magistrates serving Anchorage by raising their priority within the state budget; and

BE IT FURTHER RESOLVED that the Anchorage Chamber of Commerce urges all of its members to actively support these proposals by encouraging their Senators and Representatives to support these measures.

Approved December 15, 1995


Sue Lirford, Chair


Carol Heyman, President

FISCAL NOTE

BILL NO. SCS CSHB370 (Jud)

STATE OF ALASKA
1996 LEGISLATIVE SESSION

Revision Date: _____
 Title: An Act relating to the provision of legal services at public expense.
 Sponsor: Representatives Martin and Porter
 Requestor: (S)Jud.

Dept. Affected: Administration
 BRU: Public Defender Agency
 Component: Public Defender Agency
 COMPONENT SERIAL NO. 1631

EXPENDITURES/REVENUES: (Thousands of Dollars)

OPERATING EXPENDITURES	FY 97	FY 98	FY 99	FY 00	FY 01	FY 02
PERSONAL SERVICES	***	***	***	***	***	***
TRAVEL						
CONTRACTUAL						
SUPPLIES						
EQUIPMENT						
LAND & STRUCTURES						
GRANTS, CLAIMS						
MISCELLANEOUS						
TOTAL OPERATING	***	***	***	***	***	***

CAPITAL EXPENDITURES	***	***	***	***	***	***
----------------------	-----	-----	-----	-----	-----	-----

CHANGE IN REVENUES ()	***	***	***	***	***	***
------------------------	-----	-----	-----	-----	-----	-----

FUND SOURCE: (Thousands of Dollars)

1002 Federal Receipts	***	***	***	***	***	***
1003 GF Match						
1004 GF						
1005 GF/Program Receipts						
1037 GF/Mental Health						
OTHER						
TOTAL	***	***	***	***	***	***

Estimate of any current year (FY 96) cost: \$ -0-

POSITIONS:

FULL-TIME	***	***	***	***	***	***
PART-TIME						
TEMPORARY						

ANALYSIS: (Attach a separate page if necessary.)

This bill would have the effect of slightly decreasing the workload of the Public Defender.

Prepared by: John B. Salome, Director
 Division: Public Defender Agency

Phone: (907)264-4412
 Date: _____

Approved by Commissioner: Mark Boyer
 Agency: Department of Administration

Date: 3/29/96

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FISCAL NOTE

STATE OF ALASKA
1996 LEGISLATIVE SESSION

BILL NO. SCS CSHB370 (Jud)

Revision Date: _____
 Title: An Act relating to the provision of legal services at public expense.
 Sponsor: Representatives Martin and Porter
 Requestor: (S)Jud.

Dept. Affected: Administration
 BRU: Office of Public Advocacy
 Component: Office of Public Advocacy
 COMPONENT SERIAL NO. 43

EXPENDITURES/REVENUES: (Thousands of Dollars)

OPERATING EXPENDITURES	FY 97	FY 98	FY 99	FY 00	FY 01	FY 02
PERSONAL SERVICES						
TRAVEL						
CONTRACTUAL						
SUPPLIES						
EQUIPMENT						
LAND & STRUCTURES						
GRANTS, CLAIMS						
MISCELLANEOUS						
TOTAL OPERATING	0.0	0.0	0.0	0.0	0.0	0.0

CAPITAL EXPENDITURES	0	0	0	0	0	0
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CHANGE IN REVENUES ()	0	0	0	0	0	0
-------------------------------	---	---	---	---	---	---

FUND SOURCE: (Thousands of Dollars)

1002 Federal Receipts						
1003 GF Match						
1004 GF						
1005 GF/Program Receipts						
1037 GF/Mental Health						
OTHER						
TOTAL	0.0	0.0	0.0	0.0	0.0	0.0

Estimate of any current year (FY 96) cost: \$ -0-

POSITIONS:

FULL-TIME						
PART-TIME						
TEMPORARY						

ANALYSIS: (Attach a separate page if necessary.)

There is no fiscal impact to the Office of Public Advocacy.

Prepared by: Brent McGee, Public Advocate
 Division: Office of Public Advocacy

Phone: 274-1684
 Date: _____

Approved by Commissioner: Mark Boyer
 Agency: Department of Administration

Date: 3/29/96

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FISCAL NOTE

STATE OF ALASKA
1996 LEGISLATIVE SESSION

BILL NO. SCS CSHB 370 (JUD)

Revision Date: _____ Dept. Affected: Alaska Court System
 Title: Legal counsel for accused criminals BRU: Trial Courts
 Component: _____
 Sponsor: Reps. Martin, Porter, Toohay
 Requestor: Senate Judiciary COMPONENT SERIAL NO. 768

Expenditures/Revenues (Thousands of Dollars)

OPERATING EXPENDITURES	FY 97	FY 98	FY 99	FY 00	FY 01	FY 02
PERSONAL SERVICES						
TRAVEL						
CONTRACTUAL						
SUPPLIES						
EQUIPMENT						
LAND & STRUCTURES						
GRANTS & CLAIMS						
VISCELLANEOUS						
TOTAL OPERATING	0.0	0.0	0.0	0.0	0.0	0.0
CAPITAL EXPENDITURES						
CHANGE IN REVENUES (

Fund Source (Thousands of Dollars)

1002 Federal Receipts						
1003 GF Match						
1004 GF	0.0	0.0	0.0	0.0	0.0	0.0
1005 GF Program Receipts						
1037 GF Mental Health						
Other						
TOTAL	0.0	0.0	0.0	0.0	0.0	0.0

Estimate of any current year (FY 96) cost: None

Positions

Full-Time					
Part-Time					
Temporary					

ANALYSIS: (Attach a separate page if necessary)

No fiscal impact.

Prepared by: C. S. Christensen III, Staff Counsel *CPC* Phone: 264-8228
 Agency: Alaska Court System Date: 03/25/96
 Approved by: Arthur H. Snowden, II, Administrative Director *AHS* Date: 03/25/96
 Agency: Alaska Court System

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SPONSOR STATEMENT CSHB370 (JUD)

An Act relating to the provision of
legal services to criminal defendants.

A recent audit report compiled by the Division of Legislative Audit and approved by the Legislative Budget & Audit Committee concluded that the eligibility screening process to acquire counsel as an indigent by the Public Defender Agency and Office of Public Advocacy lacks the necessary mechanism to prevent non-indigents from receiving free legal service.

HB370 attempts to resolve this problem by making sure that, in all cases, the court makes the determination of indigence and decides whether to appoint counsel. This legislation would prevent the PDA and OPA from undertaking representation before a determination has been made by the court. HB370 also sets a specific time from when the determination should be made and counsel should be appointed, thereby providing uniformity in the appointment and provision of counsel.



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SECTIONAL ANALYSIS CSHB370 (JUD)

Educational benefits for family members of deceased members of the Armed Forces

SECTION 1: References the new subsection adding specified benefits and deletes the definitions

SECTION 2: Adds a new subsection allowing the prosecution to request the court to provide representation in the interest of justice (e.g. in the circumstance of an informant).

SECTION 3: Requires that the court, instead of the law enforcement officer, at the time of the person's appearance before the court (rather than during the arrest) inform the person of the right of an indigent person to be represented by an attorney at public expense. Deletes subsection (a)(2) to reduce unnecessary information transfer since the court will be aware of the indigent's status as a result of the income verification at the initial appearance.

SECTION 4: Identifies the court as the agency that will determine indigence and notify the Public Defender Agency or Office of Public Advocacy if their services are required.

SECTION 5: Establishes that the determination of indigence by the court shall set out the basis for the finding that the person is indigent.

SECTION 6: Repeals AS18.85.110(b) because the reference "commencement of detention" is eliminated earlier in the bill. Repeals AS18.85.110(c) because the individual will have already been informed of the determination of indigence at the initial appearance. Repeals AS18.85.110(f) because the court will determine indigence, as per the changes provided in the bill, not the Public Defender Agency



Audit Report

DEPARTMENT OF ADMINISTRATION
ALASKA PUBLIC DEFENDER AGENCY
OFFICE OF PUBLIC ADVOCACY
ELIGIBILITY ISSUES AND OTHER
PROGRAM ASPECTS

May 22, 1995



Audit Control Number:

02-4507-95

Division of Legislative Audit

P.O. Box 113300, Juneau, Alaska 99811-3300

SUPPORTING DOCUMENTS

REPORT CONCLUSIONS

The Public Defender Agency (PDA) and, to a lesser degree, the Office of Public Advocacy (OPA) provides legal defense services to indigent persons. Representation is constitutionally guaranteed to individuals who are charged with crimes and face a potential sentence of imprisonment. Additionally, since the creation of PDA and OPA, the legislature and courts have extended the right to representation in other cases.

Public counsel caseloads reportedly continue to increase. The PDA reports annual caseloads growing every year since 1988 (with the exception of a decline in 1993).

While it is speculative to predict caseload size from year to year, all indications are that PDA caseload will continue to grow, particularly with the passage of new crime bills at the state and federal levels and as crime remains a priority with the public.

Because representation is in most cases guaranteed there are only limited steps that can be taken to control caseload. While the guarantee to basic representation cannot be changed, steps can be taken to control the number of cases to which the guarantee applies (a legislative prerogative) and, similarly, steps can be taken to adequately screen criminal defendants for eligibility before referral to PDA (an administrative remedy).

Despite our scope constraints of being denied access to documentation within the court system and PDA and OPA offices, we have determined that the eligibility screening process as employed by the Alaska Court System (ACS) for public defender services severely lacks in scope and depth. Based on our court room observations, file review, and discussions with judges, magistrates, district attorneys, and pre-trial services coordinators it is apparent to us that the eligibility screening process for criminal defendants is not standardized, is not uniformly applied, varies widely between judicial districts and even within a district, and has resulted in the appointment of public defenders to defendants who clearly had resources to retain their own counsel.

There are no written guidelines or definitions of indigency which are used by the court to determine eligibility. The effort to determine indigency is hampered by: (1) the court not verifying income or expenses claimed by defendants, (2) the court rarely taking into consideration employment potential, and (3) the court's concern for keeping the "system" moving without any impediment or delays caused by a defendant searching for private counsel or defending themselves (Pro se). Despite our inability to review defendant financial declarations made to the court and client files at PDA and OPA, during our review we did note instances of an indigency determination process gone awry. For example:

- We observed the court appointment of a public defender for a person arraigned on

misdemeanor charges in spite of her informing the court that she had \$24,000 in savings.

- We noted the court appointment of a public defender for a person arraigned on DWI charges despite the fact she disclosed to the court she and her husband had joint annual income of \$80,000, monthly expenses of \$3,280 and liabilities of \$26,950.
- The court appointed a public defender for an individual charged with a misdemeanor who declared income of \$16,000 and an IRS liability of \$10,000, without any verification of the debt.
- We were informed of an instance where the court appointed the public defender to an individual and the public defender appealed for a continuance to the court so that his client may return to work on the North Slope.

Additional concerns center around the relationship that should exist between PDA, OPA, and ACS. PDA and OPA have invoked attorney-client privilege over their client files. ACS has denied access to defendant financial disclosures. Contrary to the court's administrative rules,⁴ PDA and OPA do not communicate with ACS about the financial matters of the defendant/client. Additionally, ACS does not provide PDA and OPA with the financial disclosures made by the defendant to the court when the court considers eligibility for public counsel. This lack of communication and extremism in keeping what is arguably public information confidential contributes to the already inadequate eligibility screening process and contributes to the lack of accountability for public counsel programs. We believe that better communication between PDA, OPA and ACS on these critical eligibility matters and a more thorough and fair public counsel eligibility screening process would result if ACS and the Department of Administration (which oversees the PDA and OPA programs) were to jointly develop eligibility and indigency standards and criteria which, within limits, can be uniformly applied.

We are of the opinion that eligibility screening procedures need to be formalized and uniformly applied and have addressed that in the Findings and Recommendations section of this report.

We have also identified other areas of the operation of ACS, PDA and OPA that warrant attention which include:

- PDA and OPA should begin honoring administrative rules governing their responsibility to inform the court when clients may no longer be eligible for public paid counsel. (Recommendation No. 3)

⁴ Court Administrative Rule 12 places a requirement upon an attorney appointed to represent an indigent person to inform the court of any changes in the financial status of the client that may render the client ineligible for publicly appointed counsel. (Also see Recommendation No. 3)

- Criminal Rule 39 judgments should be imposed on all defendants - regardless whether or not the defendant is convicted. (Recommendation No. 5)
- ACS should adopt standardized documentation between districts regarding eligibility screening and appointment and should use standardized documentation for Criminal Rule 39 judgement processing. (Recommendation Nos. 1 and 6)
- ACS should reassess defendant eligibility for public counsel when legal issues subsequent to conviction are raised. (Recommendation No. 4)
- The Department of Administration and ACS should request statutory and regulatory amendments to more clearly define indigency for public counsel purposes. (Recommendation No. 2)

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February 5, 1996

Representative Terry Martin
Alaska State Legislature
State Capitol (MS 3100)
Juneau AK 99801-1132

Dear Representative Martin,

On behalf of the Alaska Peace Officers Association, I would like to thank you for introducing House Bill 370. At a recent meeting of the APOA State Board, we unanimously decided to support this piece of legislation. As law enforcement officers, we see defense bar abuses in this area that raise concern about how the public's money is being spent.

We encourage you to call on us when there are teleconference hearings, so that we may testify about the need for this legislation. If you need assistance as you shepherd this bill through the legislative process, please contact me at 451-5316, or our business manager, Joseph Young at 277-0515.

Sincerely

Michael Corkill
State President