

**SB**

**100**

# FISCAL NOTE

STATE OF ALASKA  
1999 LEGISLATIVE SESSION

BILL NO. SB 100

|   |                      |                       |
|---|----------------------|-----------------------|
| Revision Date/Time (Note if correction) _____   | Dept. Affected       | Law                   |
| Title <u>"An Act relating to the payment by indigent persons for legal services and related costs."</u> | BRU                  | Civil Division        |
| Sponsor <u>Senate Judiciary Committee by Request</u>  | Component            | Collections & Support |
| Requester <u>Senate Judiciary Committee</u>   | Component Serial No. | <u>2210</u>           |

**Expenditures/Revenues** (Thousands of Dollars)

Note: Amounts do not include inflation unless otherwise noted below.

| OPERATING EXPENDITURES | FY 2000     | FY 2001     | FY 2002     | FY 2003     | FY 2004     | FY 2005     |
|------------------------|-------------|-------------|-------------|-------------|-------------|-------------|
| Personal Services      | 15.2        | 15.2        | 15.2        | 15.2        | 15.2        | 15.2        |
| Travel                 | 0.2         | 0.2         | 0.2         | 0.2         | 0.2         | 0.2         |
| Contractual            | 3.3         | 3.3         | 3.3         | 3.3         | 3.3         | 3.3         |
| Supplies               | 1.0         | 1.0         | 1.0         | 1.0         | 1.0         | 1.0         |
| Equipment              | 6.5         |             |             |             |             |             |
| Land & Structures      |             |             |             |             |             |             |
| Grants & Claims        |             |             |             |             |             |             |
| Miscellaneous          |             |             |             |             |             |             |
| <b>TOTAL OPERATING</b> | <b>26.2</b> | <b>19.7</b> | <b>19.7</b> | <b>19.7</b> | <b>19.7</b> | <b>19.7</b> |

|                             |  |  |  |  |  |  |
|-----------------------------|--|--|--|--|--|--|
| <b>CAPITAL EXPENDITURES</b> |  |  |  |  |  |  |
|-----------------------------|--|--|--|--|--|--|

|                                     |       |       |       |       |       |       |
|-------------------------------------|-------|-------|-------|-------|-------|-------|
| <b>CHANGE IN REVENUES (1004 GF)</b> | 100.0 | 100.0 | 100.0 | 100.0 | 100.0 | 100.0 |
|-------------------------------------|-------|-------|-------|-------|-------|-------|

**FUND SOURCE** (Thousands of Dollars)

|                          |             |             |             |             |             |             |
|--------------------------|-------------|-------------|-------------|-------------|-------------|-------------|
| 1002 Federal Receipts    |             |             |             |             |             |             |
| 1003 GF Match            |             |             |             |             |             |             |
| 1004 GF                  |             |             |             |             |             |             |
| 1005 GF/Program Receipts | 26.2        | 19.7        | 19.7        | 19.7        | 19.7        | 19.7        |
| 1037 GF/Mental Health    |             |             |             |             |             |             |
| Other (Specify Type)     |             |             |             |             |             |             |
| <b>TOTAL</b>             | <b>26.2</b> | <b>19.7</b> | <b>19.7</b> | <b>19.7</b> | <b>19.7</b> | <b>19.7</b> |

Estimate of any current year (FY99) cost: \_\_\_\_\_

**POSITIONS**

|           |   |   |   |   |   |   |
|-----------|---|---|---|---|---|---|
| Full-time |   |   |   |   |   |   |
| Part-time | 1 | 1 | 1 | 1 | 1 | 1 |
| Temporary |   |   |   |   |   |   |

**ANALYSIS:** (Attach a separate page if necessary)

SB 100 amends AS 18.85.120(c) to require all criminal defendants receiving state-funded legal representation reimburse the state for a portion of that representation. Under current law, and Criminal Rule 39, Alaska Rules of Court (CR39), only those defendants who are convicted must repay the state.

The Collections Unit in the Department of Law currently handles the collection of CR39 judgments for the Alaska Court System, among its other duties. With the infrastructure already in place, it is anticipated the department will handle the increased caseload proposed by this bill.

During FY97, approximately 7,200 new cost of appointed counsel judgments against convicted

|  |                                   |
|--|-----------------------------------|
| Prepared by <u>Joan M. Kasson</u> <i>Joan M. Kasson</i>                      | Phone <u>465-5370</u>             |
| Division <u>Attorney General's Office</u>                                    | Date/Time <u>3/15/99, 9:16 AM</u> |
| Approved by Commissioner <u>Richard M. Brielbo</u> <i>Richard M. Brielbo</i> | Date <u>3/15/99</u>               |
| Agency <u>Department of Law</u>  |                                   |

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ANALYSIS CONTINUATION

defendants were transferred to the Department of Law for collection. This bill would add an estimated 2,300 to 2,400 new cases each year, assuming the current ratio of number of judgments for repayment to number of convictions remains the same (59 percent).

In the past few years, the Collections Unit caseload has grown from 3,300 criminal and civil collection cases to over 100,000 active criminal, civil, and other cases. The unit could not handle the increase proposed by this bill without additional staff. A part-time Administrative Clerk II would be necessary for the organization, data entry, tracking, and filing of these additional cases, at an annual cost of \$19,700. One-time new equipment costs of \$6,500 are included in FY00 only. The position costs would be paid for with general fund program receipts from revenues generated by this bill.

Under current law, CR39 collections are approximately \$680,000 per year. Using a straight line approach, revenues from an additional 2,300 cases could be as much as \$224,400 annually (2,300 new cases are 33 percent of 7,200; 33 percent of \$680,000 is \$224,400). However, a more conservative estimate is likely, due to the nature of these particular cases. This bill would impact individuals whose cases were dismissed, or who were found not guilty. It is likely that a higher ratio of these cases would be waived from having to make payment, and more of these individuals would challenge their judgment and refuse to pay. The department believes annual revenues are more likely to be in the range of \$100,000 per year.

# FISCAL NOTE

**STATE OF ALASKA**  
**1999 LEGISLATIVE SESSION**

**BILL NO. SB 100**

|               |  |                      |                            |
|---------------|--|----------------------|----------------------------|
| Revision Date |  | Dept. Affected       | <u>Alaska Court System</u> |
| Title         | <u>Repayment of Public Defender Expenses</u> | BRU                  | <u>Alaska Court System</u> |
|               |  | Component            | <u>Trial Courts</u>        |
| Sponsor       | <u>Senate Judiciary by Request</u>           |                      |                            |
| Requester     | <u>Senate Judiciary</u>                      | Component Serial No. | <u>769</u>                 |

**Expenditures/Revenues**

(Thousands of Dollars)

| OPERATING EXPENDITURES | FY 2000    | FY 2001    | FY 2002    | FY 2003    | FY 2004    | FY 2005    |
|------------------------|------------|------------|------------|------------|------------|------------|
| Personal Services      |            |            |            |            |            |            |
| Travel                 |            |            |            |            |            |            |
| Contractual            |            |            |            |            |            |            |
| Supplies               |            |            |            |            |            |            |
| Equipment              |            |            |            |            |            |            |
| Land & Structures      |            |            |            |            |            |            |
| Grants & Claims        |            |            |            |            |            |            |
| Miscellaneous          |            |            |            |            |            |            |
| <b>TOTAL OPERATING</b> | <b>0.0</b> | <b>0.0</b> | <b>0.0</b> | <b>0.0</b> | <b>0.0</b> | <b>0.0</b> |

|                             |  |  |  |  |  |  |
|-----------------------------|--|--|--|--|--|--|
| <b>CAPITAL EXPENDITURES</b> |  |  |  |  |  |  |
|-----------------------------|--|--|--|--|--|--|

|                               |  |  |  |  |  |  |
|-------------------------------|--|--|--|--|--|--|
| <b>CHANGE IN REVENUES ( )</b> |  |  |  |  |  |  |
|-------------------------------|--|--|--|--|--|--|

**FUND SOURCE**

(Thousands of Dollars)

| FUND SOURCE              | FY 2000    | FY 2001    | FY 2002    | FY 2003    | FY 2004    | FY 2005    |
|--------------------------|------------|------------|------------|------------|------------|------------|
| 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 (Specify Type)     |            |            |            |            |            |            |
| <b>TOTAL</b>             | <b>0.0</b> | <b>0.0</b> | <b>0.0</b> | <b>0.0</b> | <b>0.0</b> | <b>0.0</b> |

Estimate of any current year (FY99) cost: None

**POSITIONS**

|           |  |  |  |  |  |  |
|-----------|--|--|--|--|--|--|
| Full-time |  |  |  |  |  |  |
| Part-time |  |  |  |  |  |  |
| Temporary |  |  |  |  |  |  |

**ANALYSIS:** (Attach a separate page if necessary)

No fiscal impact anticipated.

|              |   |            |                        |
|--------------|---|------------|------------------------|
| Prepared by: | <u>Doug Woolver, Administrative Attorney</u>      | Phone:     | <u>264-8265</u>        |
| Agency:      | <u>Alaska Court System</u>                        | Date/Time: | <u>3/12/99 1:52 PM</u> |
| Approved by: | <u>Stephanie J. Cole, Administrative Director</u> | Date:      | <u>3/12/99</u>         |
| Agency:      | <u>Alaska Court System</u>                        |            |                        |

**SENATE COMMITTEE REPORT**  
**First Committee of Referral**

DATE: 3/11/99

FURTHER:

Date of 5-Day Notice: 3-11-99  
 (in accordance with Uniform Rule 23)

DATE TURNED  
 IN TO OFFICE: \_\_\_\_\_

Judiciary Committee considered

SENATE BILL NO. 100

"An Act relating to the payment by indigent persons for legal services and related costs."

and recommends:

- be replaced with \_\_\_\_\_ CS SB 100 (H) (JUD)
- 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 |
|---------------------------|----|-----------------------|----|-----|----|
| <i>[Signature]</i>        | ✓  |                       |    |     |    |
| <i>[Signature]</i>        | ✓  |                       |    |     |    |
|                           |    |                       |    |     |    |
|                           |    |                       |    |     |    |
|                           |    |                       |    |     |    |
| CHAIR: <i>[Signature]</i> | ✓  | CHAIR:                |    |     |    |

**NEW FISCAL NOTE(S):**

Department                      Date      Zero      Fiscal

|                 |      |   |   |
|-----------------|------|---|---|
| AK Court System | 3/12 | X |   |
| Law             | 3/15 |   | ✓ |
|                 |      |   |   |
|                 |      |   |   |
|                 |      |   |   |

**PREVIOUS FISCAL NOTE(S):\***

Department                      Date      Zero      Fiscal

|  |  |  |  |
|--|--|--|--|
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|  |  |  |  |
|  |  |  |  |
|  |  |  |  |

APPROPRIATION -- no fiscal note

\*include fiscal notes accompanying Governor's bill

# Alaska Civil Liberties Union

An Affiliate of the American Civil Liberties Union

P. O. Box 201844, Anchorage, AK 99520-1844

Phone: (907) 258-0044 Fax: (907) 258-0288 Email: akclu@alaska.net

## POSITION PAPER

To: All Members of the Alaska Senate  
From: Jennifer Rudinger, Executive Director  
Date: Monday, April 5, 1999  
Re: CSSB 100 (An Act relating to the payment by indigent persons for legal services and related costs.)

The Alaska Civil Liberties Union is a non-profit, non-partisan organization dedicated to preserving and defending the principles of individual liberty guaranteed in the U.S. Bill of Rights and in the Alaska Constitution. On behalf of almost 900 card-carrying members of the ACLU in Alaska, we urge you not to pass SB 100 out of the Senate, because it infringes the right to counsel guaranteed by the Sixth Amendment and Article 1, Section 11 of the Alaska Constitution.

Senate Bill 100 actually requires the court to order a person for whom counsel is appointed to repay court costs and legal service fees regardless of whether the person is convicted of a crime! Only after this judgment has been entered does any opportunity to demonstrate financial hardship arise, but SB 100 does not guarantee such a hearing. SB 100 does not explicitly provide the defendant with notice and opportunity to be heard on the issue of financial hardship, nor does it provide any standards for the court to apply in making that determination. Perhaps the most offensive element of SB 100 is its application to people who are wrongly haled into court in the first place, are found not guilty, or for whom the charges are ultimately dropped by the State. SB 100 will have the effect of coercing indigent people into plea bargaining or waiving their right to counsel, even if they are innocent, for fear of going bankrupt and putting their families out on the street if they try to defend themselves.

The landmark Supreme Court ruling which established the fundamental right of indigent people accused of crimes to have court-appointed counsel provided for their defense is *Gideon v. Wainwright*, 372 US 335 (1963). The Court based its ruling on the Sixth Amendment's guarantee of counsel and observed that reason, logic and fundamental fairness require that any person haled into court by the government must be afforded the opportunity to be represented by counsel. Senate Bill 100 flies in the face of the spirit of *Gideon v. Wainwright* by treating court-appointed counsel as a luxury which must be bought rather than as a necessity or a fundamental right.

It is true that eleven years later, the Supreme Court upheld a recoupment formula which conditioned probation on repayment to the state of the costs of a free legal defense, where the defendant had in fact gained a subsequent ability to pay. *Fuller v. Oregon*, 417 US 40 (1974). However, it was critical in that case that the defendant had at least been convicted of a crime! In *Fuller*, the defendant tried to make the reverse argument of what we are making to you today. Mr. Fuller argued that it was an Equal Protection violation

to require him to repay his legal fees as a condition of probation when defendants who were acquitted were not required to reimburse the state for the costs of their defense. Not only did the Supreme Court reject Mr. Fuller's argument that this constituted invidious discrimination, but the Court actually lauded the decision of the Oregon legislature to exempt innocent people from the repayment obligation as an "effort to achieve elemental fairness" in the judicial system. *Fuller*, 417 US at 50.

In defense of the Oregon legislature's limitation of the repayment obligation to only those people who have ultimately been found guilty of a crime, the Court wrote, "A defendant whose trial ends without conviction or whose conviction is overturned on appeal has been seriously imposed upon by society without any conclusive demonstration that he is criminally culpable. His life has been interrupted and subjected to great stress, and he may have incurred financial hardship through loss of job or potential working hours. His reputation may have been greatly damaged." *Fuller*, 417 US at 50. Thus, while the state may demand repayment from convicted people who can later afford to pay (under a theory of retribution), the state has no justification for demanding payment from people who are wrongfully haled into court in the first place or who ultimately are found not guilty of the crime with which they are charged. SB 100, however, would add insult to injury by forcing the court to enter a judgment against people whose only "crime" is not being able to afford an attorney.

The defendant in *Fuller* was in fact convicted of a crime, as we have pointed out. The Supreme Court has not been faced with a case in which an indigent person who was acquitted challenged such a recoupment statute. Likewise, to our knowledge, no Court of Appeals has been faced with such a case. However, the dicta in *Fuller* cited above clearly indicate that the state's interest is much weaker and the liberty interest of the individual is much stronger where the defendant is acquitted of all charges.

In fact, a group of acquitted indigent defendants successfully challenged the statute passed by the Oregon legislature after *Fuller*, and the statute was struck down on the grounds that the statute impermissibly chilled indigent defendants' exercise of their Sixth Amendment right to counsel and that it violated the due process clause. *Fitch v. Belshaw*, 581 F.Supp. 273 (1984). Although District Judge Panter did not issue a broad ruling in *Fitch* that a recoupment statute is per se unconstitutional when applied to acquitted defendants, the particular defects in the Oregon statute which were found to violate the Sixth Amendment are also present in the scheme proposed by SB 100. In striking down the statute, Judge Panter pointed out that "[d]espite the constitutional success of Oregon's recoupment formula for convicted defendants, the Oregon Legislature enacted [the statute in question] in 1979 with none of the safeguards approved in *Fuller*..." *Fitch*, 581 F.Supp. at 276. The missing *Fuller* safeguards Judge Panter was referring to which are also lacking in SB 100 are: (1.) restriction of repayment requirements to only convicted defendants, (2.) specific standards for courts to apply in determining whether a defendant is able to pay, and (3.) assurance that a defendant unable to make payments may demonstrate that the default was not attributable to an intentional refusal to obey the order of the court or due to bad faith on his part. *Id.* This last point is supported by Section 5-6.2 of the A.B.A. Standards for Criminal Justice,

which recommends that payment be sought only where defendants have made fraudulent representations concerning indigency in order to obtain free counsel. The commentary to the Standard states that reimbursement requirements "may serve to discourage defendants from exercising their right to counsel." American Criminal Procedure: Cases and Commentary (4<sup>th</sup> Ed.), Ed. By Stephen A. Saltzburg and Daniel J. Capra, (St. Paul, West Publishing Co., 1992), P. 636.

The Alaska Constitution generally has been interpreted to provide greater protections for civil liberties than the U.S. Constitution. The Alaska Supreme Court has held that the due process clause of the Alaska Constitution guarantees the right to counsel not only in criminal cases but in some civil cases as well, such as: child custody cases [*Flores v. Flores*, 598 P.2d 893 (Alaska 1979)]; civil contempt proceedings [*Flores*, 598 P.2d at 895, citing *Otton v. Zaborac*, 525 P.2d 587 (Alaska 1974)]; and paternity suits [*Flores*, 598 P.2d at 895, citing *Reynolds v. Kimmons*, 569 P.2d 799 (Alaska 1977)]. It is true that the Alaska Supreme Court has upheld Rule 39 recoupment in the case of convicted indigent defendants. *State v. Albert*, 899 P.2d 103 (Alaska 1995). However, there appears to be no case exactly on point in Alaska with respect to recoupment from acquitted defendants, and SB 100 does not provide the safeguards approved in *Fuller* which the *Fitch* court deemed to be essential. The AkCLU believes that in the case of acquitted defendants, Article 1, Section 11 would be interpreted to provide at least the same level of protection for the right to counsel as the Sixth Amendment under which the Oregon recoupment statute was struck down in *Fitch*. The Alaska Supreme Court has stated, "[W]e are under a duty to develop additional constitutional rights and privileges under our Alaska Constitution if we find such fundamental rights and privileges to be within the intention and spirit of our local constitutional language and to be necessary for the kind of civilized life and ordered liberty which is at the core of our constitutional heritage." *Baker v. City of Fairbanks*, 471 P.2d 386, 401-402 (Alaska 1970) (extending the constitutional right to a jury trial).

We therefore urge the Senate to kill SB 100. Please feel free to call me at (907) 258-0044 if you wish to discuss this matter further. Thank you for your careful consideration.

**CS FOR SENATE BILL NO. 100(JUD)**

**IN THE LEGISLATURE OF THE STATE OF ALASKA**

**TWENTY-FIRST LEGISLATURE - FIRST SESSION**

**BY THE SENATE JUDICIARY COMMITTEE**

Offered:  
Referred:

Sponsor(s): **SENATE JUDICIARY COMMITTEE BY REQUEST**

**A BILL**

**FOR AN ACT ENTITLED**

1 "An Act relating to the payment by indigent persons for legal services and  
2 related costs."

3 **BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF ALASKA:**

4 \* **Section 1.** AS 18.85.100(a) is amended to read:

5 (a) An indigent person who is under formal charge of having committed a  
6 serious crime and the crime has been the subject of an initial appearance or subsequent  
7 proceeding, or is being detained under a conviction of a serious crime, or is on  
8 probation or parole, or is entitled to representation under the Supreme Court  
9 Delinquency or Child in Need of Aid Rules, or is detained under an order issued under  
10 AS 18.15.120 - 18.15.149, or against whom commitment proceedings for mental illness  
11 have been initiated, is entitled (1) to be represented, in connection with the crime or  
12 proceeding, at the level and to the extent required under the United States  
13 Constitution and the Constitution of the State of Alaska [BY AN ATTORNEY TO  
14 THE SAME EXTENT AS A PERSON RETAINING AN ATTORNEY IS

1 ENTITLED;] and (2) to be provided with the necessary services and facilities of this  
2 representation, including investigation and other preparation, at the level and to the  
3 extent required under the United States Constitution and the Constitution of the  
4 State of Alaska.

5 \* Sec. 2. AS 18.85.120(c) is amended to read:

6 (c) The [UPON THE PERSON'S CONVICTION, THE] court shall [MAY]  
7 enter a judgment that a person for whom counsel is appointed pay for services of  
8 representation and court costs. [ENFORCEMENT OF A JUDGMENT UNDER THIS  
9 SUBSECTION MAY BE STAYED BY THE TRIAL COURT OR THE APPELLATE  
10 COURT DURING THE PENDENCY OF AN APPEAL OF THE PERSON'S  
11 CONVICTION.] Upon a showing of financial hardship, the court (1) may [SHALL]  
12 allow a person subject to a judgment entered under this subsection to make payments  
13 under a payment schedule; and (2) may [SHALL] allow a person subject to a  
14 judgment entered under this subsection to petition the court at any time for remission,  
15 reduction, or deferral of only the unpaid portion of the judgment [; AND (3) MAY  
16 REMIT OR REDUCE THE BALANCE OWING ON THE JUDGMENT OR  
17 CHANGE THE METHOD OF PAYMENT IF THE PAYMENT WOULD IMPOSE  
18 MANIFEST HARDSHIP ON THE PERSON OR THE PERSON'S IMMEDIATE  
19 FAMILY]. Payments made under this subsection shall be paid into the state general  
20 fund.



ALASKA COURT SYSTEM  
State of Alaska  
Office of the Administrative Director

Doug Wooliver  
Administrative Attorney

820 West 4th Avenue  
Anchorage, Alaska 99501-2005  
(907) 264-8265  
FAX (907) 264-8291

March 16, 1999

The Honorable Robin Taylor  
Chairman, Senate Judiciary Committee  
State Capitol  
Juneau, Alaska 99811

Dear Senator Taylor:

This letter is in response to questions that arose during the March 15, 1999 Senate Judiciary Committee hearing on SB 100.

- 1) Question: Are the Criminal Rule 39 fees for the repayment of public defender representation in addition to other costs such as travel?

Answer: No. If a court enters a civil judgment against a person to pay for defense costs, that judgment is the full extent of his or her liability for that representation. No additional fees are added for travel or other expenses.

- 2) Question: When were the Criminal Rule 39 fees last amended?

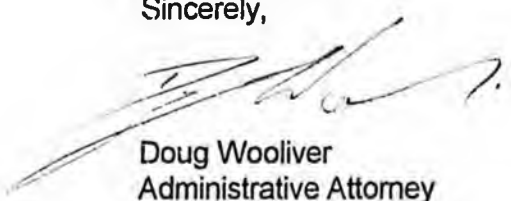
Answer: The fees were adopted in 1992 and have not been amended.

- 3) Question: What is the difference between the Criminal Rule 39 fees and the cost of private counsel?

Answer: I have attached a copy of Criminal Rule 39 and Appellate Rule 209, which contain the scheduled fees. I have also sent you a copy of the recently adopted Criminal Rule 39.1, which includes estimates of the cost of private representation for a variety of offenses.

Please let me know if you have any other questions.

Sincerely,



Doug Wooliver  
Administrative Attorney

## Citation/Title

RCRP Rule 39, RULE 39. APPOINTMENT OF COUNSEL

## Rules of Criminal Procedure, Rule 39

**WEST'S ALASKA COURT RULES  
RULES OF CRIMINAL PROCEDURE  
PART IX. GENERAL PROVISIONS**

*Current with amendments received through 7-1-98.*

**RULE 39. APPOINTMENT OF COUNSEL**

(a) **Informing Defendant of Right to Counsel.** The court shall advise a defendant who appears without counsel for arraignment, change of plea, or trial of the right to be represented by counsel, and ask if defendant desires the aid of counsel. The court shall not allow a defendant to proceed without an attorney unless 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 defendant desires the aid of counsel but claims a financial inability to employ counsel, the court or its designee shall determine whether defendant is an "indigent person," as defined by statute, by placing defendant under oath and asking about defendant's financial status, or by requiring defendant to complete a signed sworn financial statement. The court shall order defendant to execute a general waiver authorizing release of income information to the court. The court may require defendant to attempt to arrange private representation before the court makes a final determination on indigency.

(2) Before the court appoints counsel for an indigent defendant at public expense, the court shall advise defendant that defendant will be ordered to repay the prosecuting authority for the cost of appointed counsel, in accordance with paragraph (d) of this rule, if the defendant is convicted of an offense. The court may enter such orders as appear reasonably necessary to prevent defendant from dissipating assets to avoid payment of this cost.

(3) If the court or its designee determines that defendant is an "indigent person," the court shall appoint counsel pursuant to Administrative Rule 12 and notify counsel of the appointment.

(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 defendant understands the benefits of counsel and knowingly waives the right to counsel.

(5) If the trial court denies defendant's request for appointed counsel, 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 after the date of notice, as defined in Criminal Rule 32.3(c), of the denial. 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.

\*417 (c) **Costs of Appointed Counsel.**

(1) **Entry of Judgment.**

(A) Upon conviction of an offense, revocation of probation, denial of a motion to withdraw plea, and denial of a motion brought under Criminal Rule 35.1, the court shall prepare a notice of intent to enter judgment for the cost of appointed counsel in

## RCRP Rule 39, RULE 39. APPOINTMENT OF COUNSEL

accordance with paragraph (d) of this rule, provide a copy of the notice to defendant, and order defendant to apply for permanent fund dividends every year in which the defendant qualifies for a dividend until the judgment is paid in full.

(B) Defendant may oppose entry of judgment by filing a written opposition within 10 days after the date of notice, as defined in Criminal Rule 32.3(c), of the court's intent to enter judgment. The opposition shall specifically set out the grounds for opposing entry of judgment. The prosecuting authority may oppose the amount of the judgment by filing a written opposition within the same deadline.

(C) If no opposition is filed within the time specified in section 39(c)(1)(B), the clerk shall enter judgment against defendant for the amount shown in the notice. If a timely opposition is filed, the court may set the matter for a hearing and shall have authority to enter the judgment.

(D) The judgment must be in writing. A copy of the judgment shall be mailed to defendant's address of record. The judgment shall bear interest at the rate specified in AS 09.30.070(a) from the date judgment is entered.

(2) Collection.

(A) 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.

(B) All proceedings to enforce the judgment shall be in accordance with the statutes and court rules applicable to civil judgments. The judgment is not enforceable by contempt. Payment of the judgment may not be made a condition of a defendant's probation. Default or failure to pay the judgment may not affect or reduce the rendering of services on appeal or any other phase of defendant's case in any way. A defendant does not have a right to be represented by appointed counsel in connection with proceedings under subparagraph 39(c) or any proceedings to collect the judgment.

(C) Upon a showing of financial hardship, the court shall allow a defendant subject to a judgment under this rule to make payments under a repayment schedule. A defendant may petition the court at any time for remission, reduction or deferral of the unpaid portion of the judgment. The court may remit or reduce the balance owing on the judgment or change the method of payment if payment would impose manifest hardship on defendant or defendant's immediate family.

\*418 (D) Notwithstanding section 39(c)(2)(B), a defendant may be held in contempt for failing to comply with an order under this rule to apply for a permanent fund dividend.

(3) Appeal.

(A) If defendant appeals the conviction, enforcement of the judgment may be stayed by the trial court or the appellate court upon such terms as the court deems proper.

(B) If defendant's conviction is reversed, the clerk shall vacate the judgment and order the prosecuting authority to repay all sums paid in satisfaction of the judgment, plus interest at the rate specified in AS 09.30.070(a).

(d) Schedule of Costs. The following schedules govern the assessment of costs of appointed counsel under paragraph 39(c). If a defendant is convicted of more than one offense in a single dispositive court proceeding, costs shall be based on the most serious offense of which the defendant is convicted. If a defendant is otherwise convicted of more than one offense, costs shall be separately assessed for each conviction. For good cause shown, the court may waive the schedule of costs and assess fees up to the actual cost of appointed counsel, including actual expenses.

Misdemeanors

## RCRP Rule 39, RULE 39. APPOINTMENT OF COUNSEL

|  |           |
|--|-----------|
| Trial  | \$ 500.00 |
| Change of plea   | 200.00    |
| Post-conviction relief or contested probation revocation proceedings<br>in the trial court | 250.00    |

## Felonies

|  | Class B & C | Class A and<br>Unclassified<br>(Except Murder) | Murder in the 1st<br>and 2nd Degrees |
|--|-------------|--|--------------------------------------|
| Trial  | \$1,500.00  | \$2,500.00                                     | \$5,000.00                           |
| Change of plea after<br>substantive motion<br>work and hearing and<br>before trial<br>commences  | 1,000.00    | 1,500.00                                       | 2,500.00                             |
| Change of plea<br>post-indictment but<br>*419 prior to substantive<br>motion work and<br>hearing | 500.00      | 1,000.00                                       | 2,000.00                             |
| Change of plea prior to<br>indictment  | 250.00      | 500.00   | 750.00                               |
| Post-conviction relief<br>or probation<br>revocation proceeding<br>in trial court                | 250.00      | 500.00   | 750.00                               |

## (e) Review of Defendant's Financial Condition.

(1) The court may review defendant's financial status at any time after appointment of counsel to determine (A) whether defendant continues to be an "indigent person," as defined by statute; or (B) whether defendant was an indigent person at the time counsel was appointed.

(2) If the court determines that defendant is no longer an indigent person, the court may

(A) terminate the appointment; or

(B) continue the appointment and, at the conclusion of the criminal proceedings against defendant in the trial court, enter judgment against defendant for the actual cost of appointed counsel, including actual expenses, from the date of the change in defendant's financial status through the conclusion of the trial court proceedings.

(3) If the court determines that defendant was not an indigent person at the time counsel was appointed, the court may

(A) terminate the appointment and enter judgment against defendant for the actual costs of appointed counsel, including actual expenses, from the date of appointment through the date of termination; or

(B) continue the appointment and, at the conclusion of the criminal proceedings against defendant in the trial court, enter judgment against defendant for the actual cost of appointed counsel from the date of the appointment through the conclusion of the trial court proceedings.

RCRP Rule 39, RULE 39. APPOINTMENT OF COUNSEL

(4) A defendant may request review of the court's decision to terminate the appointment according to the procedure set out in subparagraph 39(b)(5).

(5) Judgment may be entered against a defendant under this paragraph regardless of whether the defendant is convicted of an offense.

[Rescinded and repromulgated effective July 1, 1992; amended effective July 1, 1993; October 1, 1993.]

## Citation/Title

RAP Rule 209, RULE 209. APPEALS AT PUBLIC EXPENSE

## Rules of Appellate Procedure, Rule 209

**WEST'S ALASKA COURT RULES  
RULES OF APPELLATE PROCEDURE  
PART II. PROCEDURE ON APPEALS AS OF RIGHT**

*Current with amendments received through 7-1-98.*

**RULE 209. APPEALS AT PUBLIC EXPENSE**

(a) Civil Matters. [Pub. Note: See provisions following this version for text of Rule 209(a) adopted by Laws 1995, c. 79, § 19, effective July 1, 1995.]

(1) A party to a civil action may file in the supreme court a motion to appeal or to petition for review at public expense. The motion shall be accompanied by a sworn financial statement on a form provided by the clerk of the appellate courts.

(2) In considering the motion to appeal or petition for review at public expense, the court shall determine the indigence or nonindigence of the party.

(3) If the motion is granted:

[a] The court shall specify in the order granting the motion which of the following costs or partial costs are to be covered at public expense:

[1] Filing fees,

[2] Transcript fees,

[3] Costs of printing briefs,

[4] Other costs;

[b] Any costs and attorney fees awarded to the appellant or petitioner as a prevailing party in the supreme court shall accrue to the state to reimburse it for costs relating to the appeal or petition for review.

(4) Leave to file at public expense may be conditioned on repayment of costs to the state. The conditions may include the imposition of liens in favor of the state on costs, attorney fees and other recoveries awarded to the indigent appellant or petitioner.

(5) An appeal or petition for review at public expense will be allowed without additional motion in cases where the appellant is represented by court-appointed counsel.

(6) The provisions of this paragraph do not apply to the filing fees in a prisoner's appeal against the state or an officer, agent, employee, or former officer, agent, or employee of the state that is governed by the provisions of AS 09.19. A prisoner may request a filing fee reduction in an appeal governed by AS 09.19 by submitting an application which satisfies the requirements of AS 09.19.010 with the prisoner's notice of appeal and the items specified in Appellate Rule 204(b).

## RAP Rule 209, RULE 209. APPEALS AT PUBLIC EXPENSE

\*560 (a) Civil Matters. [Pub. Note: Laws 1995, c. 79, § 19, effective July 1, 1995, amended Rule 209(a) to read as follows. See preceding version for text as amended by the Alaska Supreme Court, effective July 15, 1996.]

(1) A party to a civil action in the superior court may file in the superior court a motion to appeal or to petition for review at public expense. The motion shall be accompanied by:

[a] An affidavit of the party detailing the party's inability to pay fees and costs or to give security for fees and costs;

[b] An affidavit of the party stating that the party believes the party is entitled to redress on appeal or on petition for review;

[c] A concise statement of the points on which the party intends to rely in the party's appeal or petition for review.

(2) The motion shall be considered ex parte. In considering the motion to appeal or petition for review at public expense, the superior court shall determine:

[a] The indigence or nonindigence of the party;

[b] Whether any of the proposed points on appeal are frivolous and, if so, the reasons.

(3) If the motion is granted:

[a] The party may proceed without further application to the supreme court;

[b] The superior court shall specify in the order granting the motion which of the following costs or partial costs are to be covered at public expense:

[1] Filing fees,

[2] Transcript fees,

[3] Costs of printing briefs,

[4] Other costs;

[c] Any costs and attorney fees awarded to the appellant or petitioner as a prevailing party in the supreme court shall accrue to the state to reimburse it for costs relating to the appeal or petition for review.

(4) If the motion is denied in whole or in part:

[a] The superior court shall state in writing the reasons for denial;

[b] The party who made the original motion has ten days from the date shown in the clerk's certificate of distribution on the order denying the motion to file with the supreme court a motion to appeal or to petition for review at public expense. The motion shall be accompanied by copies of the affidavits and statements of points filed in superior court, and by a copy of the reasons given by the superior court for its action.

(5) Leave to file at public expense granted by the superior court or the supreme court may be conditioned on repayment of costs to the state. The conditions may include the imposition of liens in favor of the state on costs, attorney fees and other recoveries awarded

## RAP Rule 209, RULE 209. APPEALS AT PUBLIC EXPENSE

to the indigent appellant or petitioner.

\*561 (6) An appeal or petition for review at public expense will be allowed without additional motion in cases where the appellant is represented by court-appointed counsel.

(7) The provisions of this subsection do not apply to the filing fees in a prisoner's appeal against the state or an officer, agent, employee, or former officer, agent, or employee of the state that is governed by the provisions of AS 09.19.

(b) Criminal Matters.

(1) In criminal matters the appellate court shall authorize appeals and petitions for review at public expense on behalf of defendants who are "indigent," as defined by statute, in accordance with the rules and decisions of the appellate courts of Alaska, and where such proceedings are required to be provided by state courts by decisions of the Supreme Court of the United States. Where an appeal or petition for review at public expense is authorized by the court, the costs which shall be borne at public expense include those of providing counsel and of preparing a transcript and briefs.

(2) If a defendant is allowed to proceed at public expense, the clerk of the appellate courts shall send the defendant a written notice and order, to the address provided under Appellate Rule 204(b), that

(A) advises the defendant that, if the defendant's conviction is not reversed, the defendant will be ordered to repay the prosecuting authority for the cost of appointed appellate counsel, in accordance with the schedule of costs set out in subparagraph 209(b)(6); and

(B) orders the defendant to apply for permanent fund dividends every year in which the defendant qualifies for a dividend until the cost is paid in full.

(3) A defendant authorized to proceed at public expense in the trial court is presumed to be entitled to appeal or petition for review at public expense.

(4) Counsel appointed to represent a defendant in the trial court pursuant to Criminal Rule 39 shall remain as appointed counsel throughout an appeal or petition for review at public expense authorized under this paragraph and shall not be permitted to withdraw except upon the grounds authorized in Administrative Rule 12. 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 in the appellate proceeding. If an appeal is to be taken, trial counsel will not be permitted to withdraw until the notice of appeal and the documents required to be filed with the appeal by Rule 204 have been accepted for filing by the clerk of the appellate courts.

\*562 (5) At the conclusion of the appellate proceeding, the clerk of the appellate courts shall enter judgment against the defendant for the cost of appointed appellate counsel unless the defendant's conviction was reversed by the appellate court. The amount of the judgment shall be determined by reference to the schedule in subparagraph 209(b)(6). Before entering judgment, the clerk shall mail, to the defendant's address of record, a notice that sets out the amount of the proposed judgment. The defendant may oppose entry of the judgment by filing a written opposition within 45 days after the date shown in the clerk's certificate of distribution on the notice. The opposition shall specifically set out the grounds for opposing entry of judgment. The prosecuting authority may oppose the amount of the judgment by filing a written opposition within the same deadline. Criminal Rule 39(c)(1)(D) and (c)(2) shall apply to judgments entered under this subparagraph.

(6) The following schedule governs the cost of appointed appellate counsel:

Type of Appellate Proceeding

Misdemeanor    Felony

## RAP Rule 209, RULE 209. APPEALS AT PUBLIC EXPENSE

|  |        |        |
|--|--------|--------|
| Sentence Appeal or Petition for Sentence Review                              | \$ 250 | \$ 500 |
| Merit Appeal or Appeal from Post-Conviction Relief Proceedings               | 750    | 1,500  |
| Combined Merit Appeal and Sentence Appeal or Petition for Sentence Review    | 1,000  | 2,000  |
| Other Appellate Actions<br>(Petition for Review, Petition for Hearing, etc.) | 500    | 1,000  |

(c) Costs. Costs, attorney's fees, damages, and interest may be allowed as in other cases, but the state shall not be liable for any of them.

[Amended effective January 15, 1988; July 1, 1992; October 1, 1993; July 15, 1994; July 1, 1995, by Laws 1995, c. 79, § 19; July 15, 1995; January 22, 1996; July 15, 1996.]

### Note

Ch. 79 § 1 SLA 1995 amends AS 09 by adding a new chapter related to prisoner litigation against the state. AS 09.19.010 prohibits the court from accepting any filing in an action governed by AS 09.19 until the filing fee required by AS 09.19.010 has been paid.

Section 19 of chapter 79 amends Appellate Rule 209(a) to add subparagraph (a)(6) which states that the provisions of paragraph (a) do not apply in a prisoner's appeal that is governed by AS 09.19. Section 5 of [SCO 1238] is adopted for the sole reason that the legislature has mandated the amendment.

9-LS1072A ✓  
Luckhaupt  
4/14/95

*#6 amend*

**SENATE BILL NO.**

**IN THE LEGISLATURE OF THE STATE OF ALASKA**

**NINETEENTH LEGISLATURE - FIRST SESSION**

**BY SENATOR DONLEY**

Introduced:  
Referred:

**A BILL**

**FOR AN ACT ENTITLED**

1 **"An Act relating to the legal representation of indigents."**

2 **BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF ALASKA:**

3 **\* Section 1. AS 18.85.100(a) is amended to read:**

4 (a) An indigent person who is being detained by a law enforcement officer in  
5 connection with a serious crime, or is under formal charge of having committed, or is  
6 being detained under a conviction of a serious crime, or is on probation or parole, or  
7 is entitled to representation under the Supreme Court Delinquency or Child in Need  
8 of Aid Rules, or against whom commitment proceedings for mental illness have been  
9 initiated, is entitled (1) to be represented by an attorney [TO THE SAME EXTENT  
10 AS A PERSON RETAINING AN ATTORNEY IS ENTITLED;] and (2) to be  
11 provided with the necessary services and facilities of this representation, including  
12 investigation and other preparation, at the level and to the extent required under the  
13 United States Constitution and the Constitution of the State of Alaska.

SENATE BILL NO. 100

IN THE LEGISLATURE OF THE STATE OF ALASKA

TWENTY-FIRST LEGISLATURE - FIRST SESSION

BY THE SENATE JUDICIARY COMMITTEE BY REQUEST

Introduced: 3/11/99  
Referred: Judiciary

A BILL

FOR AN ACT ENTITLED

1 "An Act relating to the payment by indigent persons for legal services and  
2 related costs."

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

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

5 (c) The [UPON THE PERSON'S CONVICTION, THE] court <sup>(2) shall</sup> ~~may~~ enter a  
6 judgment that a person for whom counsel is appointed pay for services of  
7 representation and court costs. <sup>(1)</sup> ~~(Enforcement of a judgment under this subsection may~~  
8 ~~be stayed by the trial court or the appellate court during the pendency of an appeal of~~  
9 ~~the person's conviction.)~~ Upon a showing of financial hardship, the court (1) <sup>may</sup> ~~shall~~  
10 allow a person subject to a judgment entered under this subsection to make payments  
11 under a payment schedule; (2) shall <sup>and may</sup> allow a person subject to a judgment entered under  
12 this subsection to petition the court at any time for remission, reduction, or deferral of  
13 <sup>(4) Only</sup> the unpaid portion of the judgment <sup>(3)</sup> ~~and (3) may remit or reduce the balance owing on~~  
14 ~~the judgment or change the method of payment if the payment would impose manifest~~

1 ~~hardship on the person or the person's immediate family.~~ Payments made under this  
2 subsection shall be paid into the state general fund.

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# MEMORANDUM

**ALASKA PUBLIC DEFENDER AGENCY**

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TO: Senator Robin Taylor  
Chairman, Senate Judiciary Committee

FROM: Blair McCune, Deputy Public Defender 

RE: SB 1 and SB 100 -- Public Defender Representation in Parole cases

DATE: March 16, 1999

=====  
I said at the Senate Judiciary Committee hearing the day before yesterday that I would send some information on what the State and Federal constitutions require with regard to court-appointed attorneys in parole hearings. I'm sorry not to get this to you earlier, but I did some additional research I hope will be helpful.

The Federal Constitution does not have a blanket requirement for court-appointed counsel. But United States Supreme Court guidelines say that counsel should be appointed in contested revocation hearings and, when needed, in complex disposition hearings.

The Alaska courts have not addressed what is required by the Alaska Constitution. Most likely, this is because Alaska probation and parole statutes have always required counsel to be appointed. Because the statutes provide for appointment of counsel, the courts have not needed to decide what the Alaska Constitution requires.

In researching this matter, I found an Alaska Supreme Court case that probably explains why the legislature included the provision in the Public Defender statute (AS 18.85.100(a)(1)) that an indigent person is entitled "to be represented ... to the same extent as a person retaining an attorney is entitled ...". In Hoffman v. State, the court held that the Equal Protection clause guarantees the "same right to be represented" as a person able to hire an attorney would have.

I don't read Hoffman as saying that any particular level of defense is required. Effective assistance of counsel is, of course, required. I believe that when Hoffman holds that the Equal Protection clause guarantees the "same right" "to be represented" as a person hiring an attorney, it does not require anything more than representation,

i.e., that effective, competent counsel be made available.

#### Federal Constitutional Requirements

The main federal cases are Gagnon v. Scarpelli, 411 U.S. 778 (1973) and Morrissey v. Brewer, 408 U.S. 471, 489 (1972). (These cases address the right to counsel at both probation and parole revocation hearings.) As I said at the hearing, there is no blanket federal constitutional requirement for appointed counsel. The Supreme Court said that the Due Process clause of the Federal Constitution would allow state authorities to decide on a case-by-case basis whether counsel would be required. However, the Court did give the following guidelines as to when a parolee should be provided an attorney:

[C]ounsel should be provided in cases where, after being informed of his right to request counsel, the probationer or parolee makes such a request, based on a timely and colorable claim (1) that he has not committed the alleged violation of the conditions upon which he is at liberty; or (2) that, even if the violation is a matter of public record or is uncontested, there are substantial reasons which justified or mitigated the violation and make revocation inappropriate and that the reasons are complex or otherwise difficult to develop or present.

So, it appears that when the parolee asks for a revocation hearing to contest whether there was actually a violation of a condition of parole, a lawyer should be appointed. Also, even when a parolee admits a violation, if a lawyer is needed because there are mitigating factors that need to be brought to the attention of the board and the parolee needs a lawyer to develop or present them, a lawyer should be appointed under the Federal Constitution.

#### State Constitutional Requirements

At the hearing, I said I thought that an Alaska case, McCracken v. Corey, 812 P.2d 990 (Alaska 1980) held that the right to court-appointed counsel was a requirement under the Alaska Constitution. I was mistaken about McCracken. McCracken does set out additional requirements beyond what the Federal Constitution requires, but it does not go into the right to counsel.

However, I did some additional research and found an Alaska Supreme Court case, Hoffman v. State, 404 P.2d 644 (Alaska 1965). This case explains why court-appointed counsel is required in probation revocation hearings. The case also shows why the Public Defender statute includes the language I referred to above about a person being entitled "to be represented ... to the same extent as" a person hiring their own lawyer.

In Hoffman, the court held as follows:

We hold that petitioner has, by virtue of the provisions of AS 12.55.110, the same right to be represented by counsel at a probation revocation proceeding as does the probationer who has funds with which to hire counsel.

In short, we cannot ascribe to our legislature an intent to draw a distinction, along economic lines, as to which probationers were to be accorded this statutory right to counsel. To construe AS 12.55.110 as embodying an intended dichotomy between probationers unable to afford counsel and others would, in our opinion, render the statute repugnant to the Equal Protection Clauses of both the Federal and Alaska Constitutions. It is our duty to reasonably construe statutes to 'avoid a danger of unconstitutionality.' [...]

[...]

What we do today is to refuse to sanction any discriminatory application between indigent probationers and others in the administration of the right to counsel granted by AS 12.55.110.

Hoffman at 646 (citations and footnotes omitted).

The Hoffman case does not address whether counsel is required by the Alaska Constitution. This issue did not come up in Hoffman and has apparently never come up because the Alaska statutes have always required counsel. Since counsel is required by statute, there has been no need for the courts to interpret the constitution.

Hoffman holds that the constitution requires that an accused who is indigent has the same "right to be represented" as a person able to hire his or her own lawyer. However, it does not specify any particular level of service. I would read Hoffman as simply saying that, when a statute provides that a person has a right to be "represented" by a lawyer, if the person is unable to hire his or her own lawyer, an effective, competent lawyer must be appointed.

I hope this research is helpful to the committee.

# ALASKA STATE LEGISLATURE



Sen. Robin Taylor, Chair  
Sen. Rick Halford Vice - Chair  
Sen. Dave Donley  
Sen. John Torgerson  
Sen. Johnny Ellis

State Capitol  
Juneau, AK 99801-1182  
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## Senate Judiciary Committee

### SPONSOR STATEMENT

#### SB 100

**"An Act relating to the payment by indigent persons for legal services and related costs."**

Senate Bill 100 was introduced by request of the Alaska Court System. The bill amends AS 18.85.120(c) by requiring all criminal defendants who receive state-funded representation to repay the state for the cost of that representation. Under current law, only those who are convicted are subject to the repayment provisions.

Under both the United States and Alaska Constitutions, a criminal defendant has the right to an attorney. If he or she cannot afford an attorney, the state must appoint one. In Alaska, defense services for indigents are generally provided by the Public Defender Agency or the Office of Public Advocacy.

Until 1990, AS 18.85.120(c) authorized a court to order a defendant to pay for defense services, to the extent that the defendant could pay. For a variety of reasons, this statute was ineffective in obtaining repayment of defense costs. These reasons included the difficulty and expense of enforcing this type of repayment order, and the fact that the statute related to a defendant's current ability to pay, ignoring his or her future ability. This was very restrictive when compared to the system used in some states, which allows a court to order repayment from a defendant's future earnings.

In 1990, at the request of the Supreme Court, the Legislature amended AS 18.85.120(c) to allow civil judgments to be entered against defendants who are represented by the Public Defender Agency or Office of Public Advocacy without considering the defendant's current ability to pay. If a defendant became solvent at a future date, the judgment could be enforced; if not, the judgment could not be enforced. This change ensured that indigent defendants would continue to receive counsel but they would repay some of the costs of that representation if they were no longer indigent at some later date.

In 1993, again at the request of the Supreme Court, the Legislature amended AS 18.85.120(c) to eliminate the three-year moratorium on repayment that followed release from incarceration. That moratorium imposed a significant burden on the Department of Law and needlessly delayed repayment from those with adequate financial resources. The 1993 changes also codified language contained in Criminal Rule 39 of the Alaska Rules of Court. That language was intended to ensure that the repayment requirement was imposed in a fair manner. Because of that change, the statute now includes a provision that allows the court to stay enforcement of a repayment judgment during the pendency of a defendant's appeal; a provision that allows a person subject to a repayment judgment to petition the court at any time to remit, reduce, or defer the unpaid portion of the judgment upon a showing of financial hardship; and a provision that allows the court to remit or reduce the balance owing on the judgment or change the method of repayment if the payment would impose manifest hardship on the person or the person's immediate family.

After this repayment provision was adopted by the legislature in 1993, it was upheld by the Alaska Supreme Court in State v. Albert 899 P.2d 103 (Alaska 1995).

What the Supreme Court is requesting with the current proposal is to expand the existing repayment provisions so that a person appointed counsel at state expense would be required to contribute to the cost of that representation whether or not he or she was convicted. This is, of course, similar to what non-indigent persons must do (even those who are just barely above the indigency cut-off); that is, pay for the cost of defense counsel whether convicted or not. The difference between indigent and non-indigent defendants is that indigent defendants only repay a portion of the cost of defense (pursuant to the cost schedule found in Criminal Rule 39) and, if it would impose a hardship, the court can remit, reduce, defer, or schedule the repayment.

Like all judgment debtors, a person subject to a repayment order has a certain amount of property and income automatically protected from seizure by the Alaska Exemptions Act (AS 09.38). This act ensures that low-income debtors are protected from the unreasonable demands of creditors. A defendant's income, including the Permanent Fund Dividend, can also be protected under the "manifest hardship" procedure discussed above.