

A Bill for an Act Relating to Counsel and Other Services for Indigent Criminal Defendants.

Be It Enacted by the Legislature of the State of Hawaii:

SECTION 1. The Hawaii Revised Statutes is amended by adding a new chapter to be appropriately designated and to read as follows:

**“CHAPTER
COUNSEL AND OTHER SERVICES FOR INDIGENT
CRIMINAL DEFENDANTS.**

Sec. -1. Right to representation by public defender. Any person charged with and/or found guilty of an offense punishable by imprisonment for more than sixty days; and who is financially unable to obtain counsel, shall be entitled to be represented by a public defender.

Sec. -2. Notification of right to representation. In every criminal case or proceeding in which a person entitled by law to representation by counsel appears without counsel, the judge shall advise him of his right to representation by counsel and also that if he is financially unable to obtain counsel, the court may appoint one at the cost to the state.

Sec. -3. Request for appointment of public defender. Any person so entitled may at reasonable time request the judge before whom the matter is pending, or the court in which he was convicted, to appoint counsel to represent him.

Sec. -4. Financial inquiry; statements. Upon a request for the appointment of counsel, the judge shall, according to standards of eligibility established by the Supreme Court, proceed to make appropriate inquiry into the financial circumstances of the applicant, who shall submit, unless waived by the court, a financial statement under oath or affirmation setting forth his assets and liabilities, source or sources of income. The court shall furnish appropriate forms for such financial statements. A person may waive his right to counsel by refusing to furnish such financial statements.

Sec. -5. Appointment of counsel. When it shall appear to a judge that a person requesting the appointment of counsel satisfies the requirements of this Act, the judge shall appoint counsel to represent him at all stages of the proceedings including appeal, if any. If conflicting interests exist, or if appointed counsel for any other reason is unable to act, or if the interests of justice require, the court may appoint other counsel.

Sec. -6. Subsequent ability to pay counsel. If at any time after counsel is appointed, the court having jurisdiction in the matter is satisfied that the defendant is financially able to obtain counsel or to make partial payment for the representation, the court may terminate the appointment of counsel, unless the person so represented is willing to pay therefor. If appointed counsel continues the representation, the court shall direct payment for such repre-

sentation as the interests of justice may dictate. Any payments directed by the court shall be general fund realizations.

If at any time after his appointment counsel should have reason to believe that a defendant is financially able to obtain counsel or to make partial payment for counsel, it shall be his duty to so advise the court so that appropriate action may be taken.

Sec. -7. Services other than counsel. Counsel, whether or not appointed by the court, for a defendant, who is financially unable to obtain investigatory, expert, or other services necessary for an adequate defense, may make a request for such services in an ex parte application. After appropriate inquiry in an ex parte proceeding, upon the findings of the judge that services are necessary and that the defendant is financially unable to obtain them, the judge shall authorize counsel to obtain the services on behalf of the defendant and the judge may establish a reasonable limitation for the sums of money to be expended. The judge shall determine reasonable compensation for the services so rendered, based on a claim for compensation supported by an affidavit specifying the time expended, services rendered, and expenses incurred on behalf of the defendant, and to prove the reasonableness of the charges a claimant may show the compensation received from others for similar services; provided, however, the compensation to be paid to any person or organization for such services shall not exceed \$300, exclusive of reimbursement for expenses reasonably incurred.

Sec. -8. Office of the state public defender. An office of state public defender is hereby created within the office of the governor.

Sec. -9. Defender council. The governor shall appoint a defender council consisting of five members, who shall serve at his pleasure. There shall be at least one member from each of the counties of the state. The chairman of the council shall be selected by its members. Each member shall serve without pay and shall be reimbursed for necessary expenses incurred while attending meetings and while in the discharge of his responsibilities. The council shall be the governing body of the office of the state public defender.

Sec. -10. Appointment of state public defender. To implement the purposes of this Act, the governor may contract with a non-profit organization which, for at least the past five years, has been providing administrative support to lawyers who are duly licensed by the Supreme Court of the State of Hawaii to provide legal services to indigents. The non-profit organization or division within the non-profit organization which provides the services herein provided for, shall be named the office of the public defender.

Sec. -11. Appointment of state public defender. The state public defender shall be appointed by the defender council without regard to Chapters 76 and 77. His appointment shall be for a term of four years except as otherwise provided herein, and until his successor is appointed and qualified. He shall be qualified to practice law before the Supreme Court of this State. The annual salary of the state public defender shall be \$25,000. The first state public defender appointed pursuant to this Section shall be appointed for a term commencing July 1, 1971, and expiring December 31, 1975. The state

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public defender shall devote full time to the performance of his duties and shall not engage in the general practice of law.

Sec. -12. Organization of office; assistance. Subject to the approval of the defender council, the state defender may employ assistant state public defenders and such other employees as may be necessary to discharge the function of the office. The assistant public defenders shall be qualified to practice before the Supreme Court of this State. They shall be appointed without regard to Chapters 76 and 77, and shall serve at the pleasure of the state public defender. An assistant state public defender may be employed on a part-time basis and when so employed, he may engage in the general practice of law, other than in the practice of criminal law.

SECTION 2. Except for Section 611-5, Chapter 611 of the Hawaii Revised Statutes is repealed.

SECTION 3. Any law or act to the contrary notwithstanding, any appropriations made in the General Appropriations Act of 1971 made to the Judiciary for legal services for indigents may be transferred to the office of the governor to carry out the purposes of this Act.

SECTION 4. This Act shall take effect on July 1, 1971.

(Approved June 7, 1971.)