

A Bill for an Act to Provide Counsel and Other Services to Indigents in Criminal and Related Cases.

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

SECTION 1. PURPOSE. The purpose of this Act is to assure indigent defendants in criminal and related cases of competent legal counsel and investigative services in all judicial and relevant administrative proceedings.

SECTION 2. DEFINITIONS. In this Act,

(1) "indigent" refers to a person who is without financial means to secure competent legal advice and representation;

(2) "criminal case" means a case in which the defendant is charged with an offense which is punishable by imprisonment for more than sixty days;

(3) "related case" includes a proceeding under the Family Court Act, Section 571-11(1), (2) or (5), Hawaii Revised Statutes; a proceeding which may result in the placement of a person, against his will, in a psychiatric or other medical facility; and a proceeding in which probation or parole revocation is sought;

(4) "non-profit organization" means any private organization incorporating and existing under the provisions of Chapter 416, Hawaii Revised Statutes, having its principal place of business in the State of Hawaii.

SECTION 3. PUBLIC DEFENDER. (a) The Supreme Court, to implement the purposes of this Act, shall 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.

(b) Subject to orders of the Supreme Court, the non-profit organization shall employ lawyers who shall provide legal services to indigent defendants in criminal and related cases in all judicial and relevant administrative proceedings, provided there shall be at least one lawyer to provide such legal services in each of the counties.

(c) The non-profit organization shall provide necessary investigative services to indigent defendants.

(d) The court shall determine indigency according to standards of eligibility established by the Supreme Court which will assure that assistance is not extended to anyone who has sufficient funds or resources to secure competent private counsel.

SECTION 4. DEFENDER COUNCIL. (a) The by-laws of the non-profit organization shall provide for a governing committee of the office of the public defender, called the defender council which shall consist of eleven (11) members appointed as follows: Five (5) members shall be appointed by the board of directors of the non-profit organization, two (2) members shall be appointed by the Governor, two (2) members shall be appointed by the President of the Senate and two (2) members shall be appointed by the Speaker of the House of Representatives. The members of the council shall elect its chairman.

(b) The members shall be appointed for a term of two years except the first defender council shall have five (5) members elected for a one-year term as follows: The board of directors of the non-profit organization shall appoint two (2) members for a term of one (1) year. The Governor, the President of the Senate and the Speaker of the House of Representatives shall each appoint one (1) member for a term of one year.

(c) The defender council shall be subject to the charter and by-laws of the non-profit organization.

(d) The members of the defender council shall serve without pay, provided, however, that they shall be reimbursed for actual expenditures incurred

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in the performance of their duties.

SECTION 5. COURT APPOINTMENTS. (a) The court may appoint counsel for indigent defendants in criminal and related cases in any situation in which the court determines it advisable.

(b) The fee schedule for appointed counsel is as follows:

	Maximum	Minimum
(1) felony case in which the penalty may equal or exceed imprisonment for more than twenty years;	\$1,500	\$250
(2) appeals to the Supreme Court;	1,500	250
(3) any other felony case;	750	50
(4) any other case covered by this Act.	300	50

(c) The fee maximum provided in (b) of this section applies to all services provided in a case, provided the Supreme Court, for fee purposes, may treat the following as separate cases:

(1) a mistrial or trial de novo;

(2) a collateral attack on a judgment or a probation or parole revocation proceeding, when substantial uncompensated attorney time is required.

(d) No attorney may be paid a fee under this section who has received any other compensation for services in the case, nor shall any attorney so paid demand or receive any other compensation for his services.

SECTION 6. RECOVERY OF COSTS. The Supreme Court may adopt rules under which the person on whose behalf counsel was provided under this Act may be required to contribute towards or reimburse, at such times and upon such terms as may be appropriate, all or part of the counsel fees and expenses paid on his behalf.

SECTION 7. TRANSFER OF COSTS. Any contribution or reimbursement collected by the contracting organization pursuant to Section 6 shall be transferred annually to the State on or before June 30, provided the contracting organization may for good cause and with the approval of the Supreme Court expend such funds for the purposes of this Act.

SECTION 8. REPEALER. The first, second, fifth and sixth paragraphs of Section 705-5, Hawaii Revised Statutes, are repealed.

SECTION 9. APPROPRIATION. There is appropriated to the Supreme Court out of the general revenues of the State of Hawaii, the sum of \$308,000 or so much thereof as may be necessary, for the purposes of this Act, provided that funds from other sources which may be available to the non-profit organization shall be used first to the maximum extent possible, including any funds made available by the National Defender Project of the National Legal Aid and Defender Association, and provided, further, that funds authorized by this Act which are unencumbered and unexpended on June 30, 1970, shall lapse.

SECTION 10. EFFECTIVE DATE. This Act shall take effect on July 1, 1969.

(Approved July 14, 1969.)