

LEGISLATIVE BILL 189

Approved by the Governor January 31, 1984

Introduced by V. Johnson, 8

AN ACT relating to public defenders; to amend sections 29-1804, 29-1804.03, 29-1804.05, and 29-1804.07, Reissue Revised Statutes of Nebraska, 1943; to change provisions relating to which counties have public defenders; to impose certain restrictions on public defenders as prescribed; and to repeal the original sections. Be it enacted by the people of the State of Nebraska,

Section 1. That section 29-1804, Reissue Revised Statutes of Nebraska, 1943, be amended to read as follows:
 29-1804. There is hereby created in counties that now have or that shall hereafter attain a population in excess of ~~two~~ one hundred thousand inhabitants, and in other counties upon approval by the county board, the office of public defender, who, in counties having a population in excess of ~~two~~ one hundred thousand inhabitants which have not elected a public defender prior to the effective date of this act, shall be elected at the next general election in the year 1944 following the effective date of this act or the year in which the county attains a population of one hundred thousand inhabitants, and who, in other counties, shall be elected at the first general election of county officers following approval by the county board, and every four years thereafter. The public defender shall be a lawyer licensed to practice law in this state. He or she shall take office after ~~his~~ election and qualification at the same time that other county officers take office, except ; Provided, that upon the creation of such office in any county, a qualified person may be appointed by the county board to serve as public defender until such office can be filled by an election in accordance with the provisions of this section.

Commencing January 1, 1973 on the effective date of this act, in counties having a population of more than ~~two~~ one hundred thousand inhabitants, the public defender shall devote his or her full time to the legal work of the office of the public defender and shall not engage in the private practice of law. All assistant public defenders in such counties shall devote their full time to the legal work of such office of the public defender and shall not engage in the private practice of law so long as each assistant public defender shall receive the same annual salary as each deputy county attorney of comparable

ability and experience shall receive in such counties.

No public defender or assistant public defender shall solicit or accept any fee for representing a criminal defendant in a prosecution in which the public defender or assistant is already acting as the defendant's court-appointed counsel.

Sec. 2. That section 29-1804.03, Reissue Revised Statutes of Nebraska, 1943, be amended to read as follows:

29-1804.03. (1) It shall be the duty of the public defender to represent all indigent persons who are charged by complaint, information, or indictment with, or under arrest for investigation or on suspicion that they may have committed, any criminal offense within the county having a public defender, which may be punishable by imprisonment in the Nebraska Penal and Correctional Complex, referred to in sections 29-1804.03 to 29-1804.12 as indigent felony defendants. The public defender shall represent indigent felony defendants at all critical stages of felony proceedings against them through the stage of sentencing. Sentencing shall include hearings on charges of violation of felony probation. Following the sentencing of any indigent defendant represented by him or her, the public defender may take any direct, collateral, or post-conviction appeals to state or federal courts which he or she considers to be meritorious and in the interest of justice, and shall file a notice of appeal and proceed with one direct appeal to the Supreme Court of Nebraska upon a timely request after sentencing from any such convicted felony defendant, subject to the public defender's right to apply to the court to withdraw from representation in any appeal which he or she deems to be wholly frivolous.

(2) It shall also be the duty of the public defender to represent all indigent persons against whom informations of mental illness have been filed with the county boards of mental health, to the extent required by sections 83-325.01 to 83-325.04.

(3) It shall also be the duty of the public defender to represent all indigent persons charged with misdemeanor offenses punishable by imprisonment, when appointed by the court.

(4) Appointment of a public defender shall be by the court in accordance with sections 29-1804.05 and 29-1804.07. A public defender shall not represent an indigent person prior to appointment by the court, except that a public defender may represent a person under arrest for investigation or on suspicion without appointment. A public defender shall not inquire into a defendant's financial condition for purposes of indigency determination except to make an initial determination of indigency of a person under arrest for investigation or on suspicion. A public defender shall not make a

determination of a defendant's indigency, except an initial determination of indigency of a person under arrest for investigation or on suspicion, nor recommend to a court that a defendant be determined or not determined as indigent.

Sec. 3. That section 29-1804.05, Reissue Revised Statutes of Nebraska, 1943, be amended to read as follows:

29-1804.05. At a felony defendant's first appearance before a court, ~~without retained counsel~~, the court shall advise him or her of his the right to court-appointed counsel if he or she is indigent.

If he or she asserts ~~his~~ indigency, the court shall make a reasonable inquiry to determine his or her financial condition, and may require him or her to execute an affidavit of ~~his~~ indigency. If the court determines him or her to be indigent, it shall formally appoint the public defender to represent him or her in all proceedings before the court, and shall make a notation of such appointment and appearances of the public defender upon the felony complaint. The same procedure shall be followed by the court in misdemeanor cases punishable by imprisonment.

Sec. 4. That section 29-1804.07, Reissue Revised Statutes of Nebraska, 1943, be amended to read as follows:

29-1804.07. At a felony defendant's first appearance before a judge, ~~without retained counsel~~, the judge shall advise him or her of ~~his or her~~ his or her the right to court-appointed counsel if such person is indigent. If he or she asserts ~~his or her~~ indigency, the court shall make a reasonable inquiry to determine such person's financial condition, and shall require him or her to execute an affidavit of indigency for filing with the clerk of the court. If the court determines the defendant to be indigent, it shall formally appoint the public defender, or in counties not having a public defender, an attorney or attorneys licensed to practice law in this state, not exceeding two, to represent the indigent felony defendant at all future critical stages of the criminal proceedings against such defendant, consistent with the provisions of section 29-1804.03, but appointed counsel other than the public defender must obtain leave of court before being authorized to proceed beyond an initial direct appeal to the Supreme Court of Nebraska, to any further direct, collateral, or post-conviction appeals to state or federal courts. A felony defendant who is not indigent at the time of his or her first appearance before a judge may nevertheless assert his or her indigency at any subsequent stage of felony proceedings, at which time the judge shall consider appointing counsel as otherwise provided in this section. The judge shall make a notation of such appointment and all appearances of appointed counsel upon the court's docket. If at the time of appointment of

counsel the indigent felony defendant and appointed counsel have not had a reasonable opportunity to consult concerning the prosecution, the judge shall continue the arraignment, trial, or other next stage of the felony proceedings for a reasonable period of time to allow for such consultation.

Sec. 5. That original sections 29-1804, 29-1804.03, 29-1804.05, and 29-1804.07, Reissue Revised Statutes of Nebraska, 1943, are repealed.