

LEGISLATIVE BILL 241

Approved by the Governor April 30, 1979

Introduced by Judiciary Committee, Nichol, 48, Chmn.; Chambers, 11; Pirsch, 10; Stoney, 4; Venditte, 7; Wagner, 41; Haberman, 44; Reutzel, 15

AN ACT to amend sections 29-1804.04, 29-1804.07, 29-1804.08, 29-1804.12, and 29-1804.13, Reissue Revised Statutes of Nebraska, 1943, relating to criminal procedure; to define terms; to provide for the appointment of counsel for indigent defendants in criminal matters as prescribed; to provide for the payment of counsel; to repeal the original sections, and also section 29-1804.06, Reissue Revised Statutes of Nebraska, 1943.

Be it enacted by the people of the State of Nebraska,

Section 1. As used in sections 29-1804.03 to 29-1804.13, Reissue Revised Statutes of Nebraska, 1943, unless the context otherwise requires:

(1) Court shall mean a district court, a county court, or a municipal court; and

(2) Judge shall mean a judge of the district court, a county judge, an associate county judge, or a municipal court judge.

Sec. 2. That section 29-1804.04, Reissue Revised Statutes of Nebraska, 1943, be amended to read as follows:

29-1804.04. Indigent as used in sections 29-1804.03 to ~~29-1804.12~~ 29-1804.13 shall mean the inability to retain legal counsel without prejudicing one's financial ability to provide economic necessities for one's self or one's family. Before a felony defendant's initial court appearance, the determination of his or her indigency shall be made by the public defender, but thereafter it shall be made by the court.

Sec. 3. 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 ~~district~~ judge without retained counsel, the ~~district~~ judge shall advise him or her of his or her right to court-appointed counsel if he such person is indigent. If he or she asserts his or her

indigency, the court shall make a reasonable inquiry to determine his such person's financial condition, and shall require him or her to execute an affidavit of his indigency for filing with the clerk of the district court. If the court determines him 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 him 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 district judge may nevertheless assert his or her indigency at any subsequent stage of felony proceedings, at which time the district judge shall consider appointing counsel as otherwise provided in this section. The district judge shall make a notation of such appointment and all appearances of appointed counsel upon his 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 district 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. 4. That section 29-1804.08, Reissue Revised Statutes of Nebraska, 1943, be amended to read as follows:

29-1804.08. Nothing provided in sections 29-1804.03, 29-1804.05, 29-~~1804~~-06, and 29-1804.07 shall prevent any judge from appointing counsel other than the public defender or other substitute counsel when the public defender or counsel initially appointed might otherwise be required to represent conflicting interests, or for other good cause shown, from not appointing any counsel for any indigent felony defendant who expressly waives his or her right to such counsel at any stage of felony proceedings, or from appointing the public defender or other counsel as may be required or permitted by other applicable law.

Sec. 5. That section 29-1804.12, Reissue Revised Statutes of Nebraska, 1943, be amended to read as follows:

29-1804.12. Appointed counsel for an indigent felony defendant other than the public defender shall apply to the district court which appointed him or her for all expenses reasonably necessary to permit him or her to effectively and competently represent his or her client and for fees for services performed pursuant to his such appointment except if the defendant was not bound over for trial in the district court, the application shall be made in the appointing court. The court, upon hearing the application, shall fix reasonable expenses and fees, and the county board shall allow payment to counsel in the full amount determined by the court.

Sec. 6. That section 29-1804.13, Reissue Revised Statutes of Nebraska, 1943, be amended to read as follows:

29-1804.13. In counties not having public defenders, the ~~county~~ court may appoint an attorney licensed to practice law in this state to represent any indigent person, as defined in section 29-1804.04, who is charged with a misdemeanor offense punishable by imprisonment. When such a defendant asserts his or her indigency, the court shall make a reasonable inquiry to determine his the defendant's financial condition and may require him or her to execute an affidavit of his indigency. Attorneys appointed pursuant to this section shall be compensated in the manner provided by section 29-1804.12, with application being made to the appointing ~~county~~ court.

Sec. 7. That original sections 29-1804.04, 29-1804.07, 29-1804.08, 29-1804.12, and 29-1804.13, Reissue Revised Statutes of Nebraska, 1943, and also section 29-1804.06, Reissue Revised Statutes of Nebraska, 1943, are repealed.