

## LEGISLATIVE BILL 573

Approved by the Governor May 17, 1979

Introduced by Judiciary Committee, Nichol, 48, Chan.;  
Stoney, 4; Reutzell, 15; Pirsch, 10; Chambers,  
11; Wagner, 41

AN ACT relating to pretrial diversion; to authorize the establishment of a pretrial diversion program as prescribed; to amend section 23-1201, Reissue Revised Statutes of Nebraska, 1943; and to repeal the original section.  
Be it enacted by the people of the State of Nebraska,

Section 1. That section 23-1201, Reissue Revised Statutes of Nebraska, 1943, be amended to read as follows:

23-1201. It Except as provided in section 3 of this act, it shall be the duty of the county attorney, when in possession of sufficient evidence to warrant the belief that a person is guilty and can be convicted of a felony or misdemeanor, to prepare, sign, verify, and file the proper complaint against such person and to appear in the several courts of his the county and prosecute the appropriate criminal proceeding on behalf of the state and county. It shall be the duty of the county attorney to prosecute or defend, on behalf of the state and county, all suits, applications, or motions, civil or criminal, arising under the laws of the state in which the state or the county is a party or interested; Provided, he or she may be directed by the Attorney General to represent the state in any action or matter in which the state is interested or a party. When such services require the performance of duties which are in addition to the ordinary duties of the county attorney, he or she shall receive such fee for his or her services, in addition to his the salary as county attorney, as (1) the court shall order in any action involving court appearance, or (2) the Attorney General shall authorize in other matters, with the amount of such additional fee to be paid by the state. It shall also be the duty of the county attorney to appear and prosecute or defend on behalf of the state and county all such suits, applications, or motions which may have been transferred by change of venue from his or her county to any other county in the state; Provided, any counsel who may have been assisting the county attorney in any such suits, applications, or motions in his or her county may be allowed to assist in any other county to which said cause has been removed. The county attorney shall file the annual inventory statement with the county board of

county personal property in his or her possession, as provided in sections 23-346 to 23-350. It shall be the further duty of the county attorney of each county, within three days from the calling to his or her attention of any violation of the requirements of the law concerning annual inventory statements from county officers, to institute proceedings against such offending officer and in addition thereto to prosecute the appropriate action to remove said county officer from office; Provided, that in all cases where it shall be the county attorney who is charged with failure to comply with the provisions of this section, the Attorney General of Nebraska may bring said action. It shall be the duty of the county attorney to make a report on the tenth day of each quarter to the county board which shall show final disposition of all criminal cases the previous quarter, criminal cases pending on the last day of the previous quarter, and criminal cases appealed during the past quarter; Provided, that the county board in counties having less than two hundred thousand population may waive this duty.

Sec. 2. The Legislature finds that pretrial diversion offers persons charged with criminal offenses an alternative to traditional criminal justice or juvenile justice proceedings in that: (1) It permits participation by the accused only on a voluntary basis; (2) the accused has access to counsel prior to a decision to participate; (3) it occurs prior to an adjudication but after arrest and a decision has been made by the prosecutor that the offense will support criminal charges; and (4) it results in dismissal of charges, or its equivalent, if the individual successfully completes the diversion process.

Sec. 3. The county attorney of any county may establish a pretrial diversion program with the concurrence of the county board. Such program shall be established pursuant to section 4 of this act.

Sec. 4. A pretrial diversion plan shall include, but not be limited to:

(1) Formal eligibility guidelines established following consultation with criminal justice officials and program representatives. The guidelines shall be written and made available and routinely disseminated to all interested parties;

(2) A maximum time limit for any defendant's participation in a diversion program, beyond which no defendant shall be required or permitted to participate. Such maximum term shall be long enough to effect

sufficient change in participants to deter them from criminal activity, but not so long as to prejudice the prosecution or defense of the case should the participant be returned to the ordinary course of prosecution;

(3) The opportunity for eligible defendants to review, with their counsel present, a copy of general diversion program requirements including average program duration and possible outcome, prior to making the decision to enter a diversion program;

(4) Dismissal of the diverted case upon completion of the program;

(5) A provision that participants shall be able to withdraw at any time before the program is completed and be remanded to the court process without prejudice to them during the ordinary course of prosecution;

(6) Enrollment shall not be conditioned on a plea of guilty; and

(7) Defendants who are denied enrollment in a diversion program shall be afforded an administrative review of the decision and written reasons for denial.

Sec. 5. That original section 23-1201, Reissue Revised Statutes of Nebraska, 1943, is repealed.