

LEGISLATIVE BILL 1246

Approved by the Governor April 14, 1990

Introduced by LR 232 Special Investigative Committee,
Schmit, 23; Baack, 47; Lynch, 13;
Labeledz, 5; and Wesely, 26; Chizek, 31

AN ACT relating to crimes and punishments; to amend sections 23-1212, 23-1216, 23-1217, 23-1218, 23-1219, 23-1220, 23-1222, 28-712, 29-110, 29-1420, 29-2011.02, 29-2011.03, 29-2915, 29-2918, 50-407, and 84-205, Reissue Revised Statutes of Nebraska, 1943; to define and redefine terms; to change requirements and duties of the Nebraska Commission on Law Enforcement and Criminal Justice relating to continuing education for county attorneys as prescribed; to create a fund; to change duties of law enforcement agencies as prescribed; to change the statute of limitations relating to certain offenses against a child; to permit transfer of certain grand jury evidence; to provide for a court order requiring testimony or information from witnesses before a special committee of the Legislature; to change provisions relating to treatment of mentally disordered sex offenders as prescribed; to create a Child Protective Division in the office of the Attorney General; to provide duties for the Attorney General; to harmonize provisions; to provide severability; to repeal the original sections; and to declare an emergency.

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

Section 1. That section 23-1212, Reissue Revised Statutes of Nebraska, 1943, be amended to read as follows:

23-1212. As used in For purposes of sections 23-1212 to 23-1222, unless the context otherwise requires:

(1) County attorney shall mean the county attorney of a county in this state whether such position is elective or appointive and regardless of whether such position is full time or part time;

(2) Deputy county attorney shall mean an attorney employed by a county in this state for the

purpose of assisting the county attorney in carrying out his or her responsibilities regardless of whether such position is full time or part time;

(3) Council shall mean the Nebraska County Attorney Standards Advisory Council;

(4) Attorney General shall mean the Nebraska Attorney General;

(5) Commission shall mean the Nebraska Commission on Law Enforcement and Criminal Justice; and

(6) Continuing legal education, including to include instruction which will provide providing a working knowledge of electronic speed measurement principles and instruction on the investigation and prosecution of crimes against children, shall mean that type of legal education, including to include instruction which will provide providing a working knowledge of electronic speed measurement principles and instruction on the investigation and prosecution of crimes against children, which has application to and seeks to maintain and improve the skills of the county attorney and deputy county attorney in carrying out the responsibilities of his or her office or position.

Sec. 2. That section 23-1216, Reissue Revised Statutes of Nebraska, 1943, be amended to read as follows:

23-1216. The council shall be responsible for establishing the annual number of hours of continuing legal education, including to include instruction which will provide providing a working knowledge of electronic speed measurement principles required by section 23-1217 and instruction on the investigation and prosecution of crimes against children. The council shall periodically review the required number of hours of continuing legal education, including to include instruction which will provide providing a working knowledge of electronic speed measurement principles it establishes and instruction on the investigation and prosecution of crimes against children. The council shall develop educational criteria, formats, and program objectives to be used in the delivery of continuing legal education, including to include instruction providing which will provide a working knowledge of electronic speed measurement principles and instruction on the investigation and prosecution of crimes against children, for county attorneys and deputy county attorneys, except; PROVIDED; that the annual number of hours spent in continuing legal education, including to include instruction which will provide providing a working knowledge of electronic speed measurement

principles and instruction on the investigation and prosecution of crimes against children, shall not exceed thirty-six contact hours.

Sec. 3. That section 23-1217, Reissue Revised Statutes of Nebraska, 1943, be amended to read as follows:

23-1217. ~~Commencing with 1981 and each year thereafter, every~~ Every county attorney and deputy county attorney in this state shall annually undertake and complete the required hours of continuing legal education, ~~including to include~~ including to include instruction providing which will provide a working knowledge of electronic speed measurement principles and instruction on the investigation and prosecution of crimes against children, as prescribed by the council under section 23-1216. Failure on the part of any county attorney or deputy county attorney to complete the required number of hours of continuing legal education, ~~including to include~~ including to include instruction which will provide providing a working knowledge of electronic speed measurement principles and instruction on the investigation and prosecution of crimes against children, may subject such county attorney or deputy county attorney to removal from office under section 23-1220.

Sec. 4. That section 23-1218, Reissue Revised Statutes of Nebraska, 1943, be amended to read as follows:

23-1218. The Nebraska Commission on Law Enforcement and Criminal Justice, after consultation with the council, shall:

(1) Establish curricula for the implementation of a mandatory continuing legal education program, ~~including to include~~ including to include instruction which will provide providing a working knowledge of electronic speed measurement principles and instruction on the investigation and prosecution of crimes against children, for county attorneys and deputy county attorneys;

(2) Administer all programs of continuing legal education, ~~including to include~~ including to include instruction which will provide providing a working knowledge of electronic speed measurement principles and instruction on the investigation and prosecution of crimes against children, for county attorneys and deputy county attorneys required under sections 23-1212 to 23-1222;

(3) Evaluate the effectiveness of programs of continuing legal education, ~~including to include~~ including to include instruction which will provide providing a working knowledge of electronic speed measurement principles and

instruction on the investigation and prosecution of crimes against children, required under sections 23-1212 to 23-1222;

(4) Certify the number of hours of continuing legal education, including to include instruction which will provide providing a working knowledge of electronic speed measurement principles and instruction on the investigation and prosecution of crimes against children, completed by a county attorney and deputy county attorney as required under sections 23-1212 to 23-1222 and maintain all records relating thereto;

(5) Report to the Attorney General the names of all county attorneys and deputy county attorneys who have failed to complete the number of hours of continuing legal education, including to include instruction providing which will provide providing a working knowledge of electronic speed measurement principles and instruction on the investigation and prosecution of crimes against children, as required under section 23-1217;

(6) Establish tuition and fees for all programs of continuing legal education, including to include instruction which will provide providing a working knowledge of electronic speed measurement principles and instruction on the investigation and prosecution of crimes against children, as required under sections 23-1212 to 23-1222;

(7) Adopt and promulgate necessary rules and regulations for the effective delivery of all programs of continuing legal education, including to include instruction which will provide providing a working knowledge of electronic speed measurement principles and instruction on the investigation and prosecution of crimes against children, for county attorneys and deputy county attorneys as required under sections 23-1212 to 23-1222; and

(8) Do all things necessary to carry out the purpose of training county attorneys and deputy county attorneys as required by sections 23-1212 to 23-1222; and

(9) Receive and distribute appropriated funds to the Nebraska County Attorneys Association to develop, administer, and conduct continuing legal education seminars, prepare and publish trial manuals and other publications, and take any other measure that will enhance the investigation and prosecution of crime in this state.

Sec. 5. That section 23-1219, Reissue Revised Statutes of Nebraska, 1943, be amended to read as

follows:

23-1219. When it comes to the attention of the commission that a county attorney or deputy county attorney has not fulfilled the required number of hours of annual mandatory continuing legal education, including to include instruction providing which will provide a working knowledge of electronic speed measurement principles and instruction on the investigation and prosecution of crimes against children, required by section 23-1217, it shall investigate such failure to comply in order to determine whether or not such failure was willful or negligent. If the commission determines that the failure to comply was willful or negligent, it shall refer the matter to the Attorney General for action under section 23-1220. If the commission determines that the failure to comply was not willful or negligent, it shall permit the county attorney or deputy county attorney to make up all outstanding hours of continuing legal education, including to include instruction which will provide providing a working knowledge of electronic speed measurement principles and instruction on the investigation and prosecution of crimes against children. In doing so, the commission shall establish a deadline by which such hours must be undertaken and completed. In making up any outstanding hours of continuing legal education, including to include instruction which will provide providing a working knowledge of electronic speed measurement principles and instruction on the investigation and prosecution of crimes against children under this section, such hours shall be in addition to those hours which are annually required under section 23-1217.

Sec. 6. That section 23-1220, Reissue Revised Statutes of Nebraska, 1943, be amended to read as follows:

23-1220. Upon being advised by the commission of a failure on the part of a county attorney or deputy county attorney to complete the number of hours of continuing legal education, including to include instruction which will provide providing a working knowledge of electronic speed measurement principles and instruction on the investigation and prosecution of crimes against children, required by section 23-1217, the Attorney General shall commence a civil action in the district court of the county in which the county attorney holds office, or in the case of a deputy county attorney in the district court of the county in which he or she is employed, seeking his or her removal from

office or employment. Such action shall be brought in the name of the county. Such action shall be tried in the same manner as other civil actions under Chapter 25, except that such action shall be tried exclusively to the court without a jury.

Sec. 7. That section 23-1222, Reissue Revised Statutes of Nebraska, 1943, be amended to read as follows:

23-1222. Tuition, fees, and other expenses incurred by a county attorney or deputy county attorney in fulfilling the requirements of section 23-1217 shall be paid by the county. Tuition, fees, and other expenses incurred by all other persons who may attend such programs of continuing legal education, including to include instruction which will provide providing a working knowledge of electronic speed measurement principles and instruction on the investigation and prosecution of crimes against children, shall be the responsibility of the person attending.

Sec. 8. There is hereby created the Crimes Against Children Fund. The fund shall be appropriated by the Legislature and administered by the Nebraska Commission on Law Enforcement and Criminal Justice for the purpose of reducing the expenses incurred by county attorneys in consulting with and retaining expert witnesses and other costs in the investigation and prosecution of crimes against children. Any money in the fund available for investment shall be invested by the state investment officer pursuant to sections 72-1237 to 72-1276.

Sec. 9. That section 28-712, Reissue Revised Statutes of Nebraska, 1943, be amended to read as follows:

28-712. Upon the receipt of a report concerning abuse or neglect as required by section 28-711, it shall be the duty of the law enforcement agency to make a determination as to whether or not an investigation should be made and, if an investigation is deemed warranted because of alleged violations of section 28-707, to cause an investigation of the alleged abuse or neglect to be made, to take immediate steps to protect the abused or neglected child, and to institute legal proceedings if appropriate. The law enforcement agency shall notify the department ~~if whether or not~~ an investigation is undertaken by the law enforcement agency. Such notification shall be made on the next business day following receipt of the report.

Sec. 10. That section 29-110, Reissue Revised Statutes of Nebraska, 1943, be amended to read as

follows:

29-110. (1) Except as provided in subsection (2) of this section, no person or persons shall be prosecuted for any felony, excepting only treason, murder, arson, and forgery, unless the indictment for the same shall be found by a grand jury within three years next after the offense shall have been done or committed or unless a complaint for the same shall be filed before the magistrate within three years next after the offense shall have been done or committed and a warrant for the arrest of the defendant shall have been issued; nor shall any person be prosecuted, tried, or punished for any misdemeanor or other indictable offense below the grade of felony or for any fine or forfeiture under any penal statute unless the indictment, information, or action for the same shall be found or instituted within one year and six months from the time of committing the offense or incurring the fine or forfeiture or within one year for any offense the punishment of which is restricted by a fine not exceeding one hundred dollars and to imprisonment not exceeding three months. This section shall not extend to any person fleeing from justice. When any suit, information, or indictment for any crime or misdemeanor is limited by any statute to be brought or exhibited within any other time than is limited by this section, then the same shall be brought or exhibited within the time limited by such statute. If any indictment, information, or suit is quashed or the proceedings in the same set aside or reversed on writ of error, the time during the pendency of such indictment, information, or suit so quashed, set aside, or reversed shall not be reckoned within this statute so as to bar any new indictment, information, or suit for the same offense.

(2) No person or persons shall be prosecuted for sexual assault in the first degree, second degree, or third degree pursuant to section 28-319 or 28-320, sexual assault of a child pursuant to section 28-320.01, kidnapping pursuant to section 28-313, false imprisonment pursuant to section 28-314 or 28-315, child abuse pursuant to section 28-707, pandering pursuant to section 28-802, debauching a minor pursuant to section 28-805, or an offense pursuant to section 28-813, 28-813.01, or 28-1463.03 for sexual assault in the first degree, second degree, or third degree pursuant to section 28-319 or 28-320 when the victim is under sixteen years of age at the time of the offense or for sexual assault of a child pursuant to section 28-320-01

(a) unless the indictment for the same shall be found by a grand jury within five seven years next after the offense shall have has been done or committed or within seven years next after the victim's sixteenth birthday, whichever is later, or (b) unless a complaint for the same shall be filed before the magistrate within five seven years next after the offense shall have has been done or committed or within seven years next after the victim's sixteenth birthday, whichever is later, and a warrant for the arrest of the defendant shall have been issued. The limitations prescribed in this subsection shall include all inchoate offenses pursuant to the Nebraska Criminal Code and compounding a felony pursuant to section 28-301.

(3) The changes made to this section by this legislative bill shall apply to offenses which occurred prior to the effective date of this act or which occur on or after such date.

Sec. 11. That section 29-1420, Reissue Revised Statutes of Nebraska, 1943, be amended to read as follows:

29-1420. (1) The report of the grand jury shall not be made public except when the report is filed, including indictments, pursuant to sections 29-1407, or when required by statute or except that all of the report or a portion thereof may be released if the judge of the district court finds that such a release will exonerate a person or persons who have requested such a release.

(2) A district judge under whose direction a grand jury has been impaneled may, upon good cause shown, transfer to a court of competent jurisdiction in another county or jurisdiction any evidence gathered by the grand jury that offenses have been committed in such other county or jurisdiction.

Sec. 12. That section 29-2011.02, Reissue Revised Statutes of Nebraska, 1943, be amended to read as follows:

29-2011.02. Whenever a witness refuses, on the basis of the privilege against self-incrimination, to testify or to provide other information in a criminal proceeding or investigation before a court, or grand jury, or special committee of the Legislature authorized pursuant to section 50-404, the court, on motion of the county attorney, or other prosecuting attorney, or chairperson of a special committee of the Legislature, may order the witness to testify or to provide other information. The witness may not refuse to comply with such an order of the court on the basis of the privilege

against self-incrimination, but no testimony or other information compelled under the court's order; or any information directly or indirectly derived from such testimony or other information; may be used against the witness in any criminal case, except in a prosecution for perjury, giving a false statement, or failing to comply with the order of the court.

Sec. 13. That section 29-2011.03, Reissue Revised Statutes of Nebraska, 1943, be amended to read as follows:

29-2011.03. A county attorney, or other prosecuting attorney, or chairperson of a special committee of the Legislature authorized pursuant to section 50-404 upon an affirmative vote of a majority of the committee may request an order pursuant to section 29-2011.02; when in his or her judgment:

(1) The testimony or other information from such individual may be necessary to the public interest; and

(2) Such individual has refused or is likely to refuse to testify or provide other information on the basis of the privilege against self-incrimination.

Sec. 14. That section 29-2915, Reissue Revised Statutes of Nebraska, 1943, be amended to read as follows:

29-2915. If based on the information and conclusions in the presentence investigation the court determines that: (1) The defendant is a mentally disordered sex offender, based on the information and conclusions in the presentence investigation; (2) the disorder is treatable; and (3) such treatment for the disorder is available in the state, the court shall, after first sentencing sentence the defendant as provided by law for the offense for which he or she has been convicted; and shall commit the defendant for treatment to one of the regional centers or other secure public institution as provided in section 83-1,147. If there is not sufficient space or sufficient medical or therapeutic professionals qualified to treat the defendant in the regional centers or other secure public institution, the defendant shall be placed in a regional center or secure public institution as soon as practicable after space and staff become available. The Director of Public Institutions or his or her designee shall report to the court every six months about the progress being made to place the defendant in treatment. The defendant shall be committed for treatment until such time as the court determines based on the report filed by the Sentencing Review Committee

established under section 29-2916 that the defendant is no longer mentally disordered or until the defendant has received the maximum benefit of treatment or will not respond to treatment, except that no sentence to treatment shall exceed the maximum length of such offender's sentence. If the defendant is sentenced to a county jail as a misdemeanor, he or she shall be entitled to have his or her jail sentence reduced while in the county jail or regional center pursuant to section 47-502. If the defendant is discharged from the regional center prior to the maximum length of such offender's sentence, further disposition shall be consistent with sections 29-2919 and 29-2920.

The entire proceeding to determine whether the defendant is a mentally disordered sex offender and treatable shall be deemed a critical stage of a criminal prosecution at which the defendant shall be accorded all the rights a defendant has in sentencing proceedings. The court's decision that the defendant is a mentally disordered sex offender and the decision to commit the defendant for treatment may be appealed. On appeal the presentence investigation shall be made part of the record of the court.

Sec. 15. That section 29-2918, Reissue Revised Statutes of Nebraska, 1943, be amended to read as follows:

29-2918. (1) The Sentencing Review Committee shall annually or upon motion of the defendant review all records of mentally disordered sex offenders.

(2) Prior to any review the regional center shall prepare and provide a report shall be prepared and provided to the committee, which report shall include all data and all test results all data, including test results, which are relevant to the issues of whether the defendant still has a mental disorder or whether the defendant has received the maximum benefit of treatment. The committee, before making a final determination, may request from the appropriate regional center any additional information it deems necessary.

(3) The committee shall file a written report with the sentencing court on the results of its review. Such reports shall include reasons for the conclusions. The court shall, upon motion of either party, conduct a hearing on defendant's status upon receiving such written report from the Sentencing Review Committee. The court shall conduct such a hearing upon its own motion at least every four years.

Sec. 16. That section 50-407, Reissue Revised Statutes of Nebraska, 1943, be amended to read as

follows:

50-407. In case of disobedience on the part of any person to comply with any subpoena issued on behalf of the council, or any committee thereof, or of the refusal of any witness to testify on any matters regarding which he or she may be lawfully interrogated, ~~it shall be the duty of the district court for any county or of the judge thereof, on application of a member of the council, to shall~~ shall compel obedience by proceedings for contempt as in the case of disobedience of the requirements of a subpoena issued from such court or a refusal to testify therein.

If a witness refuses to testify before a special committee of the Legislature authorized pursuant to section 50-404 on the basis of the privilege against self-incrimination, the chairperson of the committee may request a court order pursuant to sections 29-2011.02 and 29-2011.03.

Sec. 17. That section 84-205, Reissue Revised Statutes of Nebraska, 1943, be amended to read as follows:

84-205. The duties of the Attorney General shall be:

(1) To appear and defend actions and claims against the state;

(2) To consult with and advise the county attorneys, when requested by them, in all criminal matters and in matters relating to the public revenue. He or she ; and he shall have authority to require their aid and assistance of the county attorney in all matters pertaining to his duties in their respective counties; the duties of the Attorney General in the county of such county attorney and may, in any case brought to the Supreme Court from their respective counties any county, demand and receive the assistance of the county attorney from whose county such case is brought;

(3) To give, when required, without fee, his or her opinion in writing upon all questions of law submitted to him or her by the Governor, the head of any executive department, the Secretary of State, State Treasurer, Auditor of Public Accounts, Board of Educational Lands and Funds, State Department of Education, the Public Service Commission, or the Legislature;

(4) At the request of the Governor, the head of any executive department, the Secretary of State, State Treasurer, Auditor of Public Accounts, Board of Educational Lands and Funds, State Department of Education, or Public Service Commission, to prosecute

any official bond or any contract in which the state is interested; which is deposited with any of them; and to prosecute or defend for the state all civil or criminal actions and proceedings, civil or criminal, relating to any matter connected with any of such officers' their departments; PROVIDED, that, if, after investigation, he or she is convinced there is sufficient legal merit to justify the proceeding. Such 7 and none of the above-named officers shall not pay, or contract to pay, from the funds of the state any money for special attorneys or counselors-at-law, unless the employment of such special counsel shall be made upon the written authorization of the Governor or the Attorney General;

(5) To enforce the proper application of money appropriated by the Legislature to the various funds of the state; and prosecute breaches of trust in the administration of such funds;

(6) To prepare, whenever when requested by the Governor, Secretary of State, State Treasurer, Auditor of Public Accounts, or other executive department, proper drafts for contracts, forms, or other writings which may be wanted for the use of the state; and report to the Legislature, whenever requested, upon any business pertaining to the duties of his or her office;

(7) To pay all money received, belonging to the people of the state, immediately upon receipt thereof, into the state treasury;

(8) To keep a record in proper books provided for that purpose at the expense of the state, a register of all actions and demands prosecuted or defended by him or her in behalf of the state and all proceedings had in relation thereto, and deliver the same to his or her successor in office; and

(9) To appear for the state and prosecute and defend all civil or criminal actions and proceedings, civil or criminal, in the Supreme Court in which the state is interested or a party. When 7 and, when requested by the Governor or the Legislature, to the Attorney General shall appear for the state and prosecute or defend any action or conduct any investigation in which the state is interested or a party; before any court, officer, board, tribunal, or commission; and

(10) To create a Child Protection Division to be staffed by at least three assistant attorneys general who each have five or more years of experience in the prosecution or defense of felonies or misdemeanors, including two years in the prosecution or defense of crimes against children. Upon the written request of a

county attorney, the division shall provide consultation and advise and assist in the preparation of the trial of any case involving a crime against a child, including, but not limited to, the following offenses:

- (a) Murder as defined in sections 28-303 and 28-304;
 (b) Manslaughter as defined in section 28-305;
 (c) Kidnapping as defined in section 28-313;
 (d) False imprisonment as defined in sections 28-314 and 28-315;
 (e) Child abuse as defined in section 28-707;
 (f) Pandering as defined in section 28-802;
 (g) Debauching a minor as defined in section 28-805; and

- (h) Offenses listed in sections 28-813, 28-813.01, and 28-1463.03.

Any offense listed in subdivisions (a) through (h) of this subdivision shall include all inchoate offenses pursuant to the Nebraska Criminal Code and compounding a felony pursuant to section 28-301. Such crimes shall not include matters involving dependent and neglected children, infraction violations, custody or visitation matters, or child support. If the county attorney declines in writing to prosecute a case involving a crime against a child because of an ethical consideration, including the presence or appearance of a conflict of interest, or for any other reason, the division shall, upon the receipt of a written request of the county attorney, the Department of Social Services, the minor child, the parents of the minor child, or any other interested party, investigate the matter and either decline to prosecute the matter or initiate the appropriate criminal proceedings in a court of proper jurisdiction.

For purposes of this subdivision, child or children shall mean an individual or individuals sixteen years of age or younger.

Sec. 18. If any section in this act or any part of any section shall be declared invalid or unconstitutional, such declaration shall not affect the validity or constitutionality of the remaining portions thereof.

Sec. 19. That original sections 23-1212, 23-1216, 23-1217, 23-1218, 23-1219, 23-1220, 23-1222, 28-712, 29-110, 29-1420, 29-2011.02, 29-2011.03, 29-2915, 29-2918, 50-407, and 84-205, Reissue Revised Statutes of Nebraska, 1943, are repealed.

Sec. 20. Since an emergency exists, this act shall be in full force and take effect, from and after

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its passage and approval, according to law.