

LEGISLATIVE BILL 285

Approved by the Governor March 12, 1975

Introduced by Judiciary Committee, Luedtke, 28, Chmn.;
Barnett, 26; Chambers, 11; DeCamp, 40;
Anderson, 37; Nichol, 48

AN ACT to amend sections 29-1804.03 and 29-1804.05, Revised Statutes Supplement, 1974, relating to criminal procedure; to provide an additional duty for public defenders; to provide for counsel for indigent misdemeanor defendants as prescribed; and to repeal the original sections.

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

Section 1. That section 29-1804.03, Revised Statutes Supplement, 1974, be amended to read as follows:

29-1804.03. 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, the public defender may take any direct, collateral, or post-conviction appeals to state or federal courts which he 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 deems to be wholly frivolous.

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.

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.

Sec. 2. That section 29-1804.05, Revised Statutes Supplement, 1974, be amended to read as follows:

29-1804.05. At a felony defendant's first appearance before a magistrate court without retained counsel, the magistrate court shall advise him of his right to court-appointed counsel if he is indigent. If he asserts his indigency, the court shall make a reasonable inquiry to determine his financial condition, and may require him to execute an affidavit of his indigency. If the court determines him to be indigent, it shall formally appoint the public defender to represent him in all proceedings before the magistrate 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. 3. 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 indigency, the court shall make a reasonable inquiry to determine his financial condition and may require him 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. 4. That original sections 29-1804.03 and 29-1804.05, Revised Statutes Supplement, 1974, are repealed.