

## LEGISLATIVE BILL 130

Approved by the Governor February 22, 1975

Introduced by Swigart, 8

AN ACT relating to criminal procedure; to provide for review of judgments in criminal cases as prescribed; and to declare an emergency.

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

Section 1. (1) A prosecuting attorney, including any county attorney, city attorney, or designated assistant, may take exception to any ruling or decision of the municipal or county court made during the prosecution of a cause by presenting to the court a notice of intent to take an appeal to the district court with reference to the rulings or decisions of which complaint is made.

(2) The notice shall contain a copy of the rulings or decisions complained of, the basis and reasons for objection thereto, and a statement by the prosecuting attorney as to the part of the record he proposes to present to the district court. The notice shall be presented to the court within twenty days after the final order is entered in the cause and, if the court finds it is in conformity with the truth, the judge shall sign it and shall indicate thereon whether, in his opinion, the part of the record which the prosecuting attorney proposes to present to the district court is adequate for a proper consideration of the matter.

(3) The prosecuting attorney shall then file the notice in the district court within one month from the date of final order and within one month from the date of filing the notice shall file a bill of exceptions covering the part of the record referred to in the notice. Such appeal shall be on the record.

Sec. 2. When a notice is filed, the trial court shall appoint a lawyer to argue the case against the prosecuting attorney, which lawyer shall receive for his services a fee not exceeding two hundred dollars to be fixed by the court and to be paid out of the treasury of the city if the appeal is from a municipal court, and out of the treasury of the county if the appeal is taken from a county court. The court may appoint the defendant's attorney, but if he is not appointed the defendant may be represented by an attorney of his choice.

Sec. 3. (1) The judgment of the court in any action taken under the provisions of sections 1 and 2 of this act shall not be reversed nor in any manner affected when the defendant in the trial court has been placed legally in jeopardy, but in such cases the decision of the district court shall determine the law to govern in any similar case which may be pending at the time the decision is rendered, or which may thereafter arise in the district.

(2) When the decision of the district court establishes that the final order of the trial court was erroneous and that the defendant had not been placed legally in jeopardy prior to the entry of such erroneous order, the trial court may upon application of the prosecuting attorney issue its warrant for the rearrest of the defendant and the cause against him shall thereupon proceed in accordance with the law as determined by the decision of the district court.

(3) When the district court affirms the final order of the trial court, the prosecuting attorney may take exception to the decision of the district court in the manner provided by sections 29-2315.01 to 29-2316, Reissue Revised Statutes of Nebraska, 1943.

Sec. 4. Since an emergency exists, this act shall be in full force and take effect, from and after its passage and approval, according to law.