

## LEGISLATIVE BILL 78

Approved by the Governor April 12, 1983

Introduced by Pirsch, 10

AN ACT relating to criminal procedure; to amend section 29-2261, Reissue Revised Statutes of Nebraska, 1943, and section 23-1201, Revised Statutes Supplement, 1982; to define terms; to change certain provisions relating to the duties of the prosecuting attorney; to change certain provisions relating to presence investigations; and to repeal the original sections.

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

Section 1. For purposes of this act, unless the context otherwise requires:

(1) A plea agreement shall mean that as a result of a discussion between the defense counsel and the prosecuting attorney:

(a) A charge is to be dismissed or reduced; or

(b) A defendant, if he or she pleads guilty to a charge, shall receive less than the maximum penalty permitted by law; and

(2) Victim shall mean a person who, as a result of a homicide, as defined in sections 28-302 to 28-306, a first degree sexual assault, as defined in section 28-319, a first degree assault, as defined in section 28-308, or a robbery, as defined in section 28-324, has had a personal confrontation with the offender and shall also include a person who has suffered serious bodily injury as defined in subdivision (20) of section 28-109 as a result of a motor vehicle accident when the driver was charged with a Class W misdemeanor as provided in section 39-669.07 or 39-669.08 or with violation of a city or village ordinance enacted in conformance with either of such sections. In the case of a homicide, victim shall mean at least one family representative.

Sec. 2. That Section 23-1201, Revised Statutes Supplement, 1982, be amended to read as follows:

23-1201. (1) Except as provided in section 29-3602, 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

misdeemeanor, to prepare, sign, verify, and file the proper complaint against such person and to appear in the several courts of the county and prosecute the appropriate criminal proceeding on behalf of the state and county. Prior to reaching a plea agreement with defense counsel, the county attorney shall consult with or make a good faith effort to consult with the victim regarding the content of and reasons for such plea agreement.

(2) 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 the salary as county attorney, as ~~(1)~~ (a) the court shall order in any action involving court appearance, or ~~(2)~~ (b) 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. 3. Prior to reaching a plea agreement with defense counsel, a prosecuting attorney, prosecuting a violation of a city or village ordinance enacted in conformance with either section 39-669.07 or 39-669.08, shall consult with or make a good faith effort to consult with the victim regarding the content of and reasons for such plea agreement.

Sec. 4. That section 29-2261, Reissue Revised Statutes of Nebraska, 1943, be amended to read as follows:

29-2261. (1) Unless it is impractical to do so, when an offender has been convicted of a felony, the court shall not impose sentence without first ordering a presentence investigation of the offender and according due consideration to a written report of such investigation.

(2) A court may order a presentence investigation in any case.

(3) The presentence investigation and report shall include, ~~where~~ when available, an analysis of the circumstances attending the commission of the crime, the offender's history of delinquency or criminality, physical and mental condition, family situation and background, economic status, education, occupation and personal habits, and any other matters that the probation officer deems relevant or the court directs to be included. All local and state police agencies, and adult and correctional institutions shall furnish to the probation officer copies of such criminal records, in any such case referred to the probation officer by the court of proper jurisdiction, as the probation officer shall require without cost to the court or the probation officer.

Such investigation shall also include:

(a) Any written statements submitted to the county attorney by a victim; and

(b) Any written statements submitted to the probation officer by a victim.

(4) If there are no written statements submitted to the probation officer, he or she shall certify to the court that:

(a) He or she has attempted to contact the victim; and

(b) If he or she has contacted the victim, such officer offered to accept the written statements of the victim or to reduce such victim's oral statements to writing.

For purposes of subsections (3) and (4) of this section, the term victim shall be as defined in section 1 of this act.

~~(4)~~ (5) Before imposing sentence, the court may order the offender to submit to psychiatric observation and examination for a period of not exceeding sixty days or such longer period as the court determines to be necessary for that purpose. The offender may be remanded for this

purpose to any available clinic or mental hospital, or the court may appoint a qualified psychiatrist to make the examination. The report of the examination shall be submitted to the court.

~~(5)~~ (6) Any presentence report or psychiatric examination shall be privileged and shall not be disclosed directly or indirectly to anyone other than a judge, probation officers to whom an offender's file is duly transferred, or others entitled by law to receive such information. The court may permit inspection of the report or examination of parts thereof by the offender or his or her attorney, or other person having a proper interest therein, whenever the court finds it is in the best interest of a particular offender. The court may allow fair opportunity for an offender to provide additional information for the court's consideration.

~~(6)~~ (7) If an offender is sentenced to imprisonment, a copy of the report of any presentence investigation or psychiatric examination shall be transmitted forthwith to the Department of Correctional Services or, when the defendant is committed to the custody of a specific institution, to such institution.

Sec. 5. That original section 29-2261, Reissue Revised Statutes of Nebraska, 1943, and section 23-1201, Revised Statutes Supplement, 1982, are repealed.