

LEGISLATIVE BILL 646

Approved by the Governor June 1, 1995

Introduced by Kristensen, 37; Vrtiska, 1

AN ACT relating to indigent defense; to adopt the County Revenue Assistance Act.

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

Section 1. This act shall be known and may be cited as the County Revenue Assistance Act.

Sec. 2. The Legislature finds that:

(1) County property owners should be given some relief from the obligation of providing mandated indigent defense services which in most instances are required because of state laws establishing crimes and penalties;

(2) Property tax relief can be accomplished if the state begins to assist the counties with the obligation of providing indigent defense services required by state laws establishing crimes and penalties;

(3) Property tax relief in the form of state assistance to the counties of Nebraska in providing for indigent defense services will also increase accountability because the state, which is the governmental entity responsible for passing criminal statutes, will likewise be responsible for paying some of the costs;

(4) Property tax relief in the form of state assistance to the counties of Nebraska in providing for indigent defense services will also improve inconsistent and inadequate funding of indigent defense services by the counties;

(5) Property tax relief in the form of state assistance to the counties of Nebraska in providing for indigent defense services will also lessen the impact on county property taxpayers of the cost of a high profile death penalty case which can significantly affect the finances of the counties; and

(6) To accomplish property tax relief in the form of the state assisting the counties of Nebraska in providing for indigent defense services, the County Revenue Assistance Fund should be established to fund the operation of the Commission on Public Advocacy.

Sec. 3. The County Revenue Assistance Fund is created. The fund shall be used for the operations of the commission. The fund shall consist of money appropriated from the General Fund and amounts remitted pursuant to section 13 of this act. Any money in the fund available for investment shall be invested by the state investment officer pursuant to the Nebraska Capital Expansion Act and the Nebraska State Funds Investment Act.

Sec. 4. For purposes of the County Revenue Assistance Act:

(1) Chief counsel means an attorney appointed to be the primary administrative officer of the commission pursuant to section 10 of this act;

(2) Commission means the Commission on Public Advocacy;

(3) Contracting attorney means an attorney contracting to act as a public defender pursuant to sections 23-3404 to 23-3408;

(4) Court-appointed attorney means an attorney other than a contracting attorney or a public defender appointed by the court to represent an indigent person;

(5) Indigent defense services means legal services provided to indigent persons by an indigent defense system;

(6) Indigent defense system means a system of providing services, including any services necessary for litigating a case, by a contracting attorney, court-appointed attorney, or public defender;

(7) Indigent person means a person who is indigent and unable to obtain legal counsel as determined pursuant to rules of the Supreme Court; and

(8) Public defender means an attorney appointed or elected pursuant to sections 23-3401 to 23-3403.

Sec. 5. The Commission on Public Advocacy is created. The commission shall provide legal services and resources to assist counties in fulfilling their obligation to provide for effective assistance of counsel for indigent persons.

Sec. 6. The commission shall consist of nine members appointed by the Governor from a list of attorneys submitted by the executive council of the Nebraska State Bar Association after consultation with the board of directors of the Nebraska Criminal Defense Attorneys Association. A member shall be appointed from each of the six Supreme Court judicial districts, and

three members shall be appointed at large. The executive council of the Nebraska State Bar Association shall ensure that the selection process promotes appointees who are independent from partisan political influence. To be eligible for appointment, a person shall be a member of the Nebraska State Bar Association who has substantial experience in criminal defense work and, at the time of selection or at any time during the term of office, shall not be a prosecutor, law enforcement official, or judge. All members shall be committed to the principle of providing indigent defense services free from unwarranted judicial or political influence. Each member shall serve for a term of six years, except that three of the initial appointees shall serve terms of two years and three shall serve terms of four years as designated by the Governor. Members may be removed from the commission by the Governor for cause.

Sec. 7. The Governor shall designate one of the members of the commission as the chairperson. The members of the commission shall be reimbursed for their actual and necessary expenses incurred in the performance of their duties as provided in sections 81-1174 to 81-1177.

Sec. 8. Five members of the commission constitute a quorum for the transaction of business. The commission may act by a majority of the members present at any meeting at which a quorum is in attendance.

Sec. 9. The commission shall:

(1) Adopt and promulgate rules and regulations for its organization and internal management and rules and regulations governing the exercise of its powers and the fulfillment of its purpose;

(2) Appoint and abolish such advisory committees as may be necessary for the performance of its functions and delegate appropriate powers and duties to them;

(3) Accept and administer loans, grants, and donations from the United States and its agencies, the State of Nebraska and its agencies, and other sources, public and private, for carrying out the functions of the commission;

(4) Enter into contracts, leases, and agreements necessary, convenient, or desirable for carrying out its purposes and the powers granted under this section with agencies of state or local government, corporations, or persons;

(5) Acquire, hold, and dispose of personal property in the exercise of its powers; and

(6) Provide legal services to indigent persons through the divisions in section 12 of this act.

Sec. 10. The commission shall appoint a chief counsel. The responsibilities and duties of the chief counsel shall be defined by the commission and shall include the overall supervision of the workings of the various divisions of the commission. The chief counsel shall be qualified for his or her position, shall have been licensed to practice law in the State of Nebraska for at least five years prior to the effective date of the appointment, and shall be experienced in the practice of criminal defense, including the defense of capital cases. The chief counsel shall serve at the pleasure of the commission. The salary of the chief counsel shall be set by the commission.

Sec. 11. The primary duties of the chief counsel shall be to provide direct legal services to indigent defendants, and the chief counsel shall:

(1) Supervise the operations of the appellate division, the capital litigation division, and the major case resource center;

(2) Prepare a budget and disburse funds for the operations of the commission;

(3) Present to the commission an annual report on the operations of the commission, including an accounting of all funds received and disbursed, an evaluation of the cost-effectiveness of the commission, and recommendations for improvement;

(4) Convene or contract for conferences and training seminars related to criminal defense;

(5) Perform other duties as directed by the commission;

(6) Establish and administer projects and programs for the operation of the commission;

(7) Appoint and remove employees of the commission and delegate appropriate powers and duties to them;

(8) Adopt and promulgate rules and regulations for the management and administration of policies of the commission and the conduct of employees of the commission;

(9) Transmit monthly to the commission a report of the operations of the commission for the preceding calendar month;

(10) Execute and carry out all contracts, leases, and agreements authorized by the commission with agencies of federal, state, or local government, corporations, or persons; and

(11) Exercise all powers and perform all duties necessary and proper in carrying out his or her responsibilities.

Sec. 12. The following divisions are established within the commission:

(1) The capital litigation division shall be available to assist in the defense of capital cases in Nebraska, subject to caseload standards of the commission;

(2) The appellate division shall be available to prosecute appeals to the Court of Appeals and the Supreme Court, subject to caseload standards of the commission; and

(3) The major case resource center shall be available to assist public defenders, contracting attorneys, or court-appointed attorneys with the defense of a felony offense, subject to caseload standards of the commission.

Sec. 13. When the commission staff completes its representation of a client, the chief counsel shall make a showing to the district court for the county in which the prosecution arose regarding the commission's actual cost of defense. The showing shall be based upon (1) the actual time spent by commission staff attorneys and their hourly rates of pay, including benefits, (2) a reasonable amount for administrative and support staff time, (3) the actual expenditures for litigation support, such as expert witnesses and depositions, and (4) a reasonable amount for office overhead, including rent, telephone, utilities, and photocopying. After a hearing, the district court shall order the county to pay one-third of the commission's actual cost of defense. The county shall remit the amount to the State Treasurer for credit to the County Revenue Assistance Fund.