

## LEGISLATIVE BILL 885

Approved by the Governor April 17, 1986

Introduced by Haberman, 44

AN ACT relating to counties; to provide for the appointment of public defenders in certain counties as prescribed; to provide for a policy board; and to provide for certain contract provisions, support staff, and the payment of fees.

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

Section 1. (1) In a county having a population of less than thirty-five thousand inhabitants which does not have an elected public defender, the county board of such county may appoint a qualified attorney to serve as public defender for such county. In making the appointment and negotiating the contract, the county board shall comply with sections 2 to 4 of this act.

(2) Nothing in sections 29-1804 to 29-1804.14 shall be construed to apply to this act.

Sec. 2. (1) Prior to making the appointment and negotiating the contract provided for in section 1 of this act, the county board of such county shall appoint a policy board which shall ensure the independence of the contracting attorney and provide the county board with expertise and support in such matters as criminal defense functions, determination of salary levels, determination of reasonable caseload standards, response to community and client concerns, and implementation of the contract. The policy board shall consist of three members. Two of the members shall be practicing attorneys, and one member shall be a lay person. The policy board shall not include judges, prosecutors, or law enforcement officials.

(2) The policy board shall: (a) Receive applications from all attorneys who wish to be a public defender; (b) screen the applications to insure compliance with this act; (c) forward the names of any qualified applicants to the county board which shall make the appointments from the list of qualified candidates; (d) recommend to the county board the level of compensation that the public defender should receive and further recommend any contract provisions consistent with this act; and (e) monitor compliance with this act,

including any continuing legal education requirements.

Sec. 3. (1) The contract negotiated between the county board and the contracting attorney shall specify the categories of cases in which the contracting attorney is to provide services.

(2) The contract negotiated between the county board and the contracting attorney shall be awarded for at least a two-year term. Removal of the contracting attorney short of the agreed term may be for good cause only.

(3) The contract between the county board and the contracting attorney may specify a maximum allowable caseload for each full-time or part-time attorney who handles cases under the contract. Caseloads shall allow each lawyer to give every client the time and effort necessary to provide effective representation.

(4) The contract between the county board and the contracting attorney shall provide that the contracting attorney be compensated at a minimum rate which reflects the following factors:

(a) The customary compensation in the community for similar services rendered by a privately retained counsel to a paying client or by government or other publicly paid attorneys to a public client;

(b) The time and labor required to be spent by the attorney; and

(c) The degree of professional ability, skill, and experience called for and exercised in the performance of the services.

(5) The contract between the county board and the contracting attorney shall provide that the contracting attorney may decline to represent clients at no reduced compensation if the contracting attorney is assigned more cases which require an extraordinary amount of time and preparation than the contracting attorney can competently handle.

(6) The contract between the contracting attorney and the county board shall provide that the contracting attorney shall receive at least ten hours of continuing legal education annually in the area of criminal law. The contract between the county board and the contracting attorney shall provide funds for the continuing legal education of the contracting attorney in the area of criminal law.

(7) The contract between the county board and the contracting attorney shall require that the contracting attorney provide legal counsel to all clients in a professional, skilled manner consistent with minimum standards set forth by the American Bar

Association and the Canons of Ethics for Attorneys in the State of Nebraska. The contract between the county board and the contracting attorney shall provide that the contracting attorney shall be available to eligible defendants upon their request, or the request of someone acting on their behalf, at any time the Constitution of the United States or the Constitution of the State of Nebraska requires the appointment of counsel.

(8) The contract between the county board and the contracting attorney shall provide for reasonable compensation over and above the normal contract price for cases which require an extraordinary amount of time and preparation, including capital cases.

Sec. 4. (1) The contracting attorney shall have been a practicing attorney for at least two years prior to entering into the contract with the county board, shall be a member in good standing of the Nebraska State Bar Association at the time the contract is executed, and shall have past training or experience in criminal law.

(2) The contracting attorney shall apply to the court which is hearing the case for fees to employ social workers, mental health professionals, forensic experts, investigators, and other support staff to perform tasks for which such support staff and experts possess special skills and which do not require legal credentials or experience. The court which is hearing the case shall allow reasonable fees for such experts and support staff, and the fees shall be paid by the county board. The contract between the county board and the contracting attorney shall not specify any sums of money for such experts or support staff.

Sec. 5. In the event that the contracting attorney is appointed to represent an individual charged with a Class I or Class IA felony, the contracting attorney shall immediately apply to the district court for appointment of a second attorney to assist in the case. Upon application from the contracting attorney, the district court shall appoint another attorney with substantial felony trial experience to assist the contracting attorney in the case. Application for fees for the attorney appointed by the district court shall be made to the district court judge who shall allow reasonable fees. Once approved by the court, such fees shall be paid by the county board.