

## LEGISLATIVE BILL 822

Approved by the Governor February 7, 1990

Introduced by Labeledz, 5, Chairperson, Executive Board

AN ACT relating to courts; to amend sections 5-105, 5-109, 24-501, 24-502, 24-503, 24-511, 24-514, 24-810, 24-1002, 25-21,205, 29-1804, 29-1804.03 to 29-1804.05, 29-1804.07 to 29-1804.13, 29-1805.01 to 29-1805.10, 29-1824 to 29-1828, 32-513, 65-101, and 83-1017, Reissue Revised Statutes of Nebraska, 1943; to transfer provisions relating to judicial districts, public defenders, appointed counsels, and administration of oaths; to change references to transferred and repealed statutes; to change coverage of a statement of claims to reflect annual legislative sessions; to eliminate provisions providing when a 1963 salary change was effective, ratifying the exercise of jurisdiction after January 1, 1973, until September 2, 1977, providing for the transfer of causes pending in and records of certain courts in 1973 and 1985, defining terms, and providing when certain sections were operative; to harmonize provisions; and to repeal the original sections, and also sections 24-301.06, 24-517.02, 24-591, 29-1804.14, and 29-1805.11, Reissue Revised Statutes of Nebraska, 1943.

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

Section 1. That section 29-1804, Reissue Revised Statutes of Nebraska, 1943, be amended to read as follows:

~~29-1804-~~ There is hereby created in counties that ~~now~~ have or that ~~shall hereafter~~ attain a population in excess of one hundred thousand inhabitants and in other counties upon approval by the county board the office of public defender who, in counties having a population in excess of one hundred thousand inhabitants which have not elected a public defender prior to July 10, 1984, shall be elected at the next general election following July 10, 1984, or the year in which the county attains a population of one hundred thousand inhabitants and who, in other counties, shall be elected at the first general election of county officers following

approval by the county board and every four years thereafter.

The public defender shall be a lawyer licensed to practice law in this state. He or she shall take office after election and qualification at the same time that other county officers take office, except that upon the creation of such office in any county, a qualified person may be appointed by the county board to serve as public defender until such office can be filled by an election in accordance with this section.

In counties having a population of more than one hundred thousand inhabitants, the public defender shall devote his or her full time to the legal work of the office of the public defender and shall not engage in the private practice of law. All assistant public defenders in such counties shall devote their full time to the legal work of such office of the public defender and shall not engage in the private practice of law so long as each assistant public defender shall receive receives the same annual salary as each deputy county attorney of comparable ability and experience shall receive receives in such counties.

No public defender or assistant public defender shall solicit or accept any fee for representing a criminal defendant in a prosecution in which the public defender or assistant is already acting as the defendant's court-appointed counsel.

A public defender elected after November 1986 need not be a resident of the county when he or she files for election as public defender, but a public defender shall reside in the county in which he or she holds office, except that in counties with a population of one hundred thousand or less inhabitants, the public defender shall not be required to reside in the county in which he or she holds office.

Sec. 2. That section 29-1804.03, Reissue Revised Statutes of Nebraska, 1943, be amended to read as follows:

29-1804-03- (1) 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 Department of Correctional Services adult correctional facility, referred to in sections 29-1804.03 to 29-1804-12 as indigent felony defendants within the county he or she serves. 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 or her, the public defender may take any direct, collateral, or postconviction appeals to state or federal courts which he or she 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 or she deems to be wholly frivolous.

(2) It shall ~~also~~ be the duty of the public defender to represent all indigent persons against whom ~~inforamations 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 a petition has been filed with a mental health board as provided in sections 83-1049 to 83-1051.~~

(3) 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.

(4) It shall be the duty of the public defender to represent all indigent persons against whom a petition has been filed pursuant to section 83-1125 as provided in section 83-1136.

(5) Appointment of a public defender shall be by the court in accordance with sections ~~29-1804-05 and 29-1804-07~~ 20 and 21 of this act. A public defender shall not represent an indigent person prior to appointment by the court, except that a public defender may represent a person under arrest for investigation or on suspicion ~~without appointment.~~ A public defender shall not inquire into a defendant's financial condition for purposes of indigency determination except to make an initial determination of indigency of a person under arrest for investigation or on suspicion. A public defender shall not make a determination of a defendant's indigency, except an initial determination of indigency of a person under arrest for investigation or on suspicion, nor recommend to a court that a defendant be determined or not determined as indigent.

(6) For purposes of this section, the definitions found in section 19 of this act shall be used.

Sec. 3. That section 29-1804.11, Reissue Revised Statutes of Nebraska, 1943, be amended to read as follows:

~~29-1804-11-~~ The public defender may appoint as many assistant public defenders, who shall be attorneys licensed to practice law in this state, secretaries, law clerks, investigators, and other employees as are reasonably necessary to permit him or her to effectively and competently represent the clients of ~~his the~~ office; subject to the approval and consent of the county board; which shall fix the compensation of all such persons; as well as the budget for office space, furniture, furnishings, fixtures, supplies, law books, court costs, and brief-printing, investigative, expert, travel, and other miscellaneous expenses reasonably necessary to enable the public defender to effectively and competently represent the clients of ~~his the~~ office.

Sec. 4. That section 29-1824, Reissue Revised Statutes of Nebraska, 1943, be amended to read as follows:

~~29-1824-~~ (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 ~~29-1825 to 29-1827~~ 5 to 8 of this act.

(2) Nothing in sections ~~29-1804 to 29-1804-14~~ 1 to 3 or 19 to 26 of this act shall be construed to apply to ~~sections 29-1824 to 29-1828~~ this section and sections 5 to 8 of this act.

Sec. 5. That section 29-1825, Reissue Revised Statutes of Nebraska, 1943, be amended to read as follows:

~~29-1825-~~ (1) Prior to making the appointment and negotiating the contract provided for in section ~~29-1824~~ 4 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 layperson. 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 sections ~~29-1824 to 29-1828~~ 4 to 8 of 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 such sections, 29-1824 to 29-1828; and (e) monitor compliance with such sections, 29-1824 to 29-1828, including any continuing legal education requirements.

Sec. 6. That section 29-1826, Reissue Revised Statutes of Nebraska, 1943, be amended to read as follows:

~~29-1826-~~ (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~~ with no reduction in 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. 7. That section 29-1827, Reissue Revised Statutes of Nebraska, 1943, be amended to read as follows:

~~29-1827-~~ (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. 8. That section 29-1828, Reissue Revised Statutes of Nebraska, 1943, be amended to read as follows:

~~29-1828-~~ 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.

Sec. 9. That section 5-109, Reissue Revised Statutes of Nebraska, 1943, be amended to read as follows:

~~5-109-~~ The State of Nebraska is hereby divided into the following ~~described~~ described Supreme Court judicial districts described in this section, each of which shall be entitled to one Supreme Court Judge. -

District No. 1. The counties of Lancaster, Gage, Otoe, Johnson, Nemaha, Pawnee, and Richardson.

District No. 2. The counties of Burt and Washington, and in Douglas County, that area not included in Supreme Court judicial district 4.

District No. 3. The counties of Knox, Cedar, Dixon, Dakota, Pierce, Wayne, Thurston, Madison, Stanton, Cuming, Colfax, Dodge, Butler, Saunders, Antelope, Boone, Platte, Nance, and Merrick.

District No. 4. The counties of Sarpy and Cass, and in Douglas County, beginning at the intersection of the Sarpy-Douglas County line and 180th Street, north on 180th Street to West Center Road, east on West Center Road to 168th Street, north on 168th Street to Pacific Street, east on Pacific Street to 20th Street, south on 20th Street to Pierce Street, east on Pierce Street to 16th Street, north on 16th Street to Pacific Street, east on Pacific Street to 11th Street, north on 11th Street to Marcy Street, east on Marcy Street to 7th Street and the Union Pacific railroad tracks, east on the Union Pacific railroad tracks to the Iowa-Nebraska state line, south along the Iowa-Nebraska state line to the Sarpy-Douglas County line, west on the Sarpy-Douglas County line to 180th Street, the point of

beginning.

District No. 5. The counties of Dundy, Hayes, Hitchcock, Frontier, Red Willow, Dawson, Gosper, Furnas, Phelps, Harlan, Kearney, Franklin, Hall, Adams, Webster, Nuckolls, Thayer, Clay, Hamilton, Polk, York, Seward, Fillmore, Saline, Jefferson, and Chase.

District No. 6. The counties of Sioux, Dawes, Box Butte, Sheridan, Cherry, Keya Paha, Brown, Rock, Boyd, Holt, Wheeler, Garfield, Loup, Blaine, Thomas, Hooker, Grant, Garden, Morrill, Scotts Bluff, Banner, Kimball, Cheyenne, Deuel, Arthur, Keith, Perkins, McPherson, Lincoln, Logan, Custer, Valley, Greeley, Sherman, Howard, and Buffalo.

Sec. 10. That section 5-105, Reissue Revised Statutes of Nebraska, 1943, be amended to read as follows:

~~5-105-~~ The State of Nebraska is hereby divided into twenty-one judicial districts as follows:

District No. 1 shall consist of the counties of Johnson, Pawnee, Nemaha, and Richardson;

District No. 2 shall consist of the counties of Sarpy, Cass, and Otoe;

District No. 3 shall consist of the county of Lancaster;

District No. 4 shall consist of the county of Douglas;

District No. 5 shall consist of the counties of Hamilton, Polk, York, Butler, Seward, and Saunders;

District No. 6 shall consist of the counties of Burt, Thurston, Dodge, and Washington;

District No. 7 shall consist of the counties of Fillmore, Saline, Thayer, and Nuckolls;

District No. 8 shall consist of the counties of Dakota, Dixon, and Cedar;

District No. 9 shall consist of the counties of Knox, Antelope, Cuming, Pierce, Madison, Stanton, and Wayne;

District No. 10 shall consist of the counties of Adams, Clay, Phelps, Kearney, Harlan, Franklin, and Webster;

District No. 11 shall consist of the counties of Hall and Howard;

District No. 12 shall consist of the counties of Sherman and Buffalo;

District No. 13 shall consist of the counties of McPherson, Logan, Lincoln, Dawson, Keith, Arthur, Hooker, and Thomas;

District No. 14 shall consist of the counties of Chase, Hayes, Frontier, Furnas, Red Willow,

Hitchcock, Perkins, Gosper, and Dundy;

District No. 15 shall consist of the counties of Brown, Keya Paha, Boyd, Rock, Holt, and Cherry;

District No. 16 shall consist of the counties of Sheridan, Grant, Dawes, Box Butte, Morrill, and Sioux;

District No. 17 shall consist of the county of Scotts Bluff;

District No. 18 shall consist of the counties of Jefferson and Gage;

District No. 19 shall consist of the counties of Banner, Kimball, Cheyenne, Garden, and Deuel;

District No. 20 shall consist of the counties of Blaine, Loup, Garfield, Greeley, Wheeler, Valley, and Custer; and

District No. 21 shall consist of the counties of Boone, Platte, Colfax, Nance, and Merrick.

There shall be forty-eight judges of the district court. Each district listed in this section shall be served by at least one judge of the district court. Judges in office on July 17, 1986, shall continue to serve in the districts they are serving on such date. On or after July 17, 1986, any vacancy shall be determined as prescribed in section 24-810.

Sec. 11. That section 24-501, Reissue Revised Statutes of Nebraska, 1943, be amended to read as follows:

24-501. ~~The purpose of sections 24-501 to 24-590 is~~ It is the intent of the Legislature to provide a unified system of county courts for the state by combining the functions of county courts, justice of the peace courts, and police magistrate courts- ~~It is the further intent and purpose of sections 24-501 to 24-590 and to provide jurisdiction and procedure for the county courts that will effectively, efficiently, and economically meet the needs of the people of the State of Nebraska and of all other persons who may have business before the county courts.~~

Sec. 12. That section 24-502, Reissue Revised Statutes of Nebraska, 1943, be amended to read as follows:

24-502. There shall be a county court in and for each county in this state. The county court shall be a court of record and shall be located at the county seat. Divisions of the court may be established in any other city or village within the county as provided in ~~sections 24-501 to 24-590~~ section 24-512.

Sec. 13. That section 24-503, Reissue Revised Statutes of Nebraska, 1943, be amended to read as

follows:

24-503. (1) For the purpose of serving the county courts in each county, twenty-one county judge districts are hereby created, which districts shall be the same as those established by section 5-105 10 of this act, except that:

(a) District 6 shall consist of the counties of Burt, Dodge, and Washington;

(b) District 8 shall consist of the counties of Dakota, Dixon, Cedar, and Thurston;

(c) District 16 shall consist of the counties of Sheridan, Grant, Dawes, Box Butte, and Sioux;

(d) District 17 shall consist of the counties of Scotts Bluff, Morrill, and Garden; and

(e) District 19 shall consist of the counties of Banner, Kimball, Cheyenne, and Deuel.

(2) There shall be fifty-seven judges of the county court. Each district listed in this section shall be served by at least one judge of the county court. Judges in office on July 17, 1986, shall continue to serve in the districts they are serving on such date. On or after July 17, 1986, any vacancy shall be determined as prescribed in section 24-810.

(3) Judge of the county court shall include any person appointed to the office of county judge or municipal judge prior to July 1, 1985, pursuant to Article V, section 21, of the Nebraska Constitution.

(4) Any person serving as a municipal judge in district 3 or 4 immediately prior to July 1, 1985, shall be a judge of the county court and shall be empowered to hear only those cases as provided in section 24-517 which the presiding judge of the county court for such district, with the concurrence of the Supreme Court, shall direct. Any vacancy occurring after July 1, 1985, which results in a decrease in the number of municipal court judges authorized immediately prior to July 1, 1985, for a city of the primary or metropolitan class shall correspondingly increase the number of county court judges.

Sec. 14. That section 24-511, Reissue Revised Statutes of Nebraska, 1943, be amended to read as follows:

24-511. The clerk shall have the same power in the county court, unless otherwise specifically provided ~~in sections 24-501 to 24-590~~ by law, as the clerk of the district court. The clerk shall keep and be the custodian of the records of the court. The clerk shall receive and account for all fees and money

received by the court and shall deposit all money received in a bank approved pursuant to sections 77-2326.01 to 77-2326.09. Provisions for dockets and records of the county courts shall be established by rule of the Supreme Court.

Sec. 15. That section 24-514, Reissue Revised Statutes of Nebraska, 1943, be amended to read as follows:

24-514. Except as otherwise specifically provided in sections 24-501 to 24-509 by law, all salaries and expenses involved in operation of the county courts shall be paid by the State of Nebraska from funds appropriated therefor. Budget requests for each county court district shall be prepared and submitted to the Supreme Court, which shall prepare and submit the budget request for the county court system. The Supreme Court, through members of its staff, shall provide assistance to the county judges in preparing their budget requests.

Sec. 16. That section 24-810, Reissue Revised Statutes of Nebraska, 1943, be amended to read as follows:

24-810. (1) In the event of the death, retirement, resignation, or removal of any district or county judge, the failure of a district or county judge to be retained in office, or an increase in the number of district or county judgeships authorized by law and except in those judicial districts required to be served by at least one county judge pursuant to section 24-503 and one district court judge pursuant to section 5-105 10 of this act, the Supreme Court shall, after holding a public hearing, determine whether a judicial vacancy exists. The determination shall be based upon the Supreme Court's analysis of the caseload, travel time, and other factors necessary to assure efficiency and service. After a determination that a judicial vacancy exists, the declaration of the location of the vacancy shall be made by the Judicial Resources Commission. The Supreme Court shall adopt and promulgate rules and regulations on the procedures to be followed in making a determination of the existence of and declaration of the location of judicial vacancies.

(2) When the location of a district or county judicial vacancy is declared by the Judicial Resources Commission or in the event of a judicial vacancy in any other court, the Clerk of the Supreme Court shall contact the chairperson of the judicial nominating commission relating to such vacancy and shall ascertain from him or her a time and place for the first meeting

of such judicial nominating commission, at which time a public hearing will be held. He or she shall thereupon notify each commission member in writing of the time and place of the meeting and shall also cause appropriate notice to be published by various news media of the time and place of the public hearing of the judicial nominating commission and of the interest of the commission in receiving information relating to qualified candidates for the judicial vacancy. At least two days prior to the public hearing, the chairperson shall release to the public the names of lawyers who have signified in writing their willingness to serve as a judge if nominated and appointed to such judgeship, and immediately prior to the public hearing the chairperson shall release the names of any additional lawyers who have so signified. Any member of the public shall be entitled to attend the public hearing to express, either orally or in writing, his or her views concerning candidates for the judicial vacancy.

(3) After the public hearing the nominating commission shall hold such additional private or confidential meetings as it determines to be necessary. Additional information may be submitted in writing to the judicial nominating commission at any time prior to its selection of qualified candidates to fill the vacancy. The judicial nominating commission shall make such independent investigation and inquiry as it considers necessary or expedient to determine the qualifications of candidates for the judicial vacancy and shall take such action as it deems necessary or expedient to encourage qualified candidates to accept judicial office or nomination for judicial office.

(4) The commission may, before or after the hearing provided for in subsection (2) of this section, institute a search for additional candidates. If additional candidates are obtained, the commission shall hold further public hearings in the same manner as provided in subsection (2) of this section.

(5) The names of candidates shall be submitted to the Governor within sixty days after a declaration of the location of a district or county judicial vacancy by the Judicial Resources Commission or, in the event of a judicial vacancy in any other court, after a judicial vacancy occurred if one public hearing is held and within ninety days if more than one public hearing is held.

(6) The first public hearing provided for in this section shall be held within forty-five days after the location of a vacancy has been declared or the

vacancy occurs, as the case may be.

Sec. 17. That section 24-1002, Reissue Revised Statutes of Nebraska, 1943, be amended to read as follows:

24-1002. All courts have power to administer oaths connected with any matter pending before them, either by any judge, justice, or clerk thereof, or by any other person appointed for that purpose by them. Oaths and affirmations may be administered, in all cases whatsoever, by Judges of the Supreme Court, judges of the district court, the Clerk of the Supreme Court, and clerks of the district and county courts, within their respective jurisdictions, and by county judges and clerk magistrates within their respective counties.

Sec. 18. That section 25-21,205, Reissue Revised Statutes of Nebraska, 1943, be amended to read as follows:

25-21,205. On the first day of each regular session of the Legislature, the clerks of the several district courts shall transmit a full and complete statement of all claims adjudicated in ~~said~~ the courts during the ~~two years~~ previous year, certified by the clerk and signed by the judge of such court, showing the claimant, the amounts claimed, and the judgment rendered for or against the claimant.

Sec. 19. That section 29-1804.04, Reissue Revised Statutes of Nebraska, 1943, be amended to read as follows:

~~29-1804-04. Indigent as used in sections 29-1804-03 to 29-1804-13 For purposes of sections 19 to 26 of this act.~~

(1) Court shall mean a district court or a county court;

(2) Felony defendant shall mean a person who is charged by complaint, information, or indictment with or who is under arrest for investigation or on suspicion that he or she may have committed any criminal offense which may be punishable by imprisonment in the Department of Correctional Services adult correctional facility;

(3) Indigent shall mean the inability to retain legal counsel without prejudicing one's financial ability to provide economic necessities for one's self or one's family. Before a felony defendant's initial court appearance, the determination of his or her indigency shall be made by the public defender, but thereafter it shall be made by the court; and

(4) Judge shall mean a judge of the district court, a judge of the county court, or a clerk

magistrate.

Sec. 20. That section 29-1804.05, Reissue Revised Statutes of Nebraska, 1943, be amended to read as follows:

~~29-1804-05-~~ At a felony defendant's first appearance before a court, the court shall advise him or her of the right to court-appointed counsel if he or she is indigent.

If he or she asserts indigency, the court shall make a reasonable inquiry to determine his or her financial condition, and may require him or her to execute an affidavit of indigency. If the court determines him or her to be indigent, it shall formally appoint the public defender to represent him or her in all proceedings before the 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. 21. That section 29-1804.07, Reissue Revised Statutes of Nebraska, 1943, be amended to read as follows:

~~29-1804-07-~~ At a felony defendant's first appearance before a judge, the judge shall advise him or her of the right to court-appointed counsel if such person is indigent. If he or she asserts indigency, the court shall make a reasonable inquiry to determine such person's financial condition, and shall require him or her to execute an affidavit of indigency for filing with the clerk of the court.

If the court determines the defendant to be indigent, it shall formally appoint the public defender, or, in counties not having a public defender, an attorney or attorneys licensed to practice law in this state, not exceeding two, to represent the indigent felony defendant at all future critical stages of the criminal proceedings against such defendant, consistent with the provisions of section 29-1804-03 2 of this act, but appointed counsel other than the public defender must obtain leave of court before being authorized to proceed beyond an initial direct appeal to the Supreme Court of Nebraska, to any further direct, collateral, or postconviction appeals to state or federal courts.

A felony defendant who is not indigent at the time of his or her first appearance before a judge may nevertheless assert his or her indigency at any subsequent stage of felony proceedings, at which time the judge shall consider appointing counsel as otherwise provided in this section.

The judge shall make a notation of such appointment and all appearances of appointed counsel upon the court's docket. If at the time of appointment of counsel the indigent felony defendant and appointed counsel have not had a reasonable opportunity to consult concerning the prosecution, the judge shall continue the arraignment, trial, or other next stage of the felony proceedings for a reasonable period of time to allow for such consultation.

Sec. 22. That section 29-1804.08, Reissue Revised Statutes of Nebraska, 1943, be amended to read as follows:

~~29-1804-08-~~ Nothing provided in sections 29-1804-03, 29-1804-05, and 29-1804-07 in sections 2, 20, and 21 of this act shall prevent any judge from appointing counsel other than the public defender or other substitute counsel when the public defender or counsel initially appointed might otherwise be required to represent conflicting interests, or for other good cause shown, from not appointing any counsel for any indigent felony defendant who expressly waives his or her right to such counsel at any stage of felony proceedings, or from appointing the public defender or other counsel as may be required or permitted by other applicable law.

Sec. 23. That section 29-1804.12, Reissue Revised Statutes of Nebraska, 1943, be amended to read as follows:

~~29-1804-12-~~ Appointed counsel for an indigent felony defendant other than the public defender shall apply to the district court which appointed him or her for all expenses reasonably necessary to permit him or her to effectively and competently represent his or her client and for fees for services performed pursuant to such appointment, except that if the defendant was not bound over for trial in the district court, the application shall be made in the appointing court. The court, upon hearing the application, shall fix reasonable expenses and fees, and the county board shall allow payment to counsel in the full amount determined by the court.

Sec. 24. That section 29-1804.13, Reissue Revised Statutes of Nebraska, 1943, be amended to read as follows:

~~29-1804-13-~~ In counties not having public defenders, the 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 or her~~ indigency, the court shall make a reasonable inquiry to determine the defendant's financial condition and may require him or her to execute an affidavit of indigency. Attorneys appointed pursuant to this section shall be compensated in the manner provided by section ~~29-1804-12~~, 23 of this act with application being made to the appointing court.

Sec. 25. That section 29-1804.09, Reissue Revised Statutes of Nebraska, 1943, be amended to read as follows:

~~29-1804-09-~~ Any public defender, ~~his assistants~~ assistant public defender, or other attorney representing an indigent felony defendant who is incarcerated by law enforcement officers or other government officials without bond or in lieu of bond shall have full access to and the right to consult privately with such defendant at all reasonable hours.

Sec. 26. That section 29-1804.10, Reissue Revised Statutes of Nebraska, 1943, be amended to read as follows:

~~29-1804-10-~~ Whenever any court finds subsequent to its appointment of the public defender or other counsel to represent a felony defendant that its initial determination of indigency was incorrect, or that during the course of representation by appointed counsel the felony defendant has become no longer indigent, the court may order such felony defendant to reimburse the county for all or part of the reasonable cost of providing such representation.

Sec. 27. That section 29-1805.01, Reissue Revised Statutes of Nebraska, 1943, be amended to read as follows:

~~29-1805-01-~~ There is hereby established the office of judicial district public defender subject to the provisions of sections ~~29-1805-01 to 29-1805-11~~ 28 to 36 of this act.

Sec. 28. That section 29-1805.02, Reissue Revised Statutes of Nebraska, 1943, be amended to read as follows:

~~29-1805-02-~~ Whenever the district judge or judges ~~shall~~ determine that a public defender should be named for his, her, or their judicial district, as provided in section ~~5-105 10 of this act~~, the fact of such determination shall be certified to the Governor. In making ~~such~~ the determination, the judge or judges shall consider (1) the number of indigent persons in the district for whom appointment of counsel was necessary in the preceding year, (2) the number and geographic distribution within the district of attorneys available

for appointment as counsel on an individual case basis, and (3) the relative expense of providing counsel for the indigent on an individual case basis as compared to the expense of providing a public defender.

At the time of making ~~such the~~ determination, ~~such the~~ judge or judges shall also fix the salary of the public defender, and make a determination whether the office shall be full time or part time. For succeeding terms the district judge or judges shall fix the salary of the public defender at least sixty days prior to the closing of filings for the primary election for such office. All salary determinations shall be filed with the clerk of the district court of each county in the district and shall be available for public inspection.

When ~~where~~ it is deemed desirable to have the same public defender for more than one judicial district, the same may be accomplished by having the district judges concerned jointly make the determinations provided for in sections ~~29-1805-01 to 29-1805-11~~ 28 to 36 of this act.

Sec. 29. That section 29-1805.03, Reissue Revised Statutes of Nebraska, 1943, be amended to read as follows:

~~29-1805-03-~~ Within thirty days following receipt of ~~such~~ a certification as provided in section 28 of this act, the Governor shall authorize ~~such the~~ judge or judges to appoint a public defender for the district. The salary and all expenses, including trial expense and expert witness fees, of the judicial district public defender shall be paid out of funds appropriated to the office of Governor for that purpose.

Sec. 30. That section 29-1805.04, Reissue Revised Statutes of Nebraska, 1943, be amended to read as follows:

~~29-1805-04-~~ If necessary office space is not available in a courthouse within the district, the judicial district public defender may rent or lease such space. He ~~or she~~ may also purchase, through the Purchasing Agent, necessary furniture, equipment, books, stationery, and other supplies necessary for the operation of ~~his the~~ office. ~~He~~ The public defender may employ, with the approval of the appropriate district judge or judges, necessary assistant public defenders and other employees, at salaries which are to be approved by the judge or judges. Such judge or judges shall also determine whether assistant public defenders and other employees are to be part time or full time. Public defenders may employ law students authorized by

the Supreme Court to engage in a limited form of the practice of law, and may enter into agreements with law schools to provide clinical training for their students under the provisions of the Higher Education Act of 1965 and other similar federal programs.

Sec. 31. That section 29-1805.05, Reissue Revised Statutes of Nebraska, 1943, be amended to read as follows:

~~29-1805-05-~~ The successor to the judicial district public defender initially appointed shall be elected at the next general election and shall take office at the same time as other elected state officers. The term of office of an elected judicial district public defender shall be for four years. With the exception of being nominated and elected within their respective districts, candidates for such office shall be nominated and elected as nearly as may be practicable in the same manner as candidates for the office of Governor. Candidates for such office shall file with the Secretary of State and pay the filing fee provided in section 32-513.

Sec. 32. That section 29-1805.06, Reissue Revised Statutes of Nebraska, 1943, be amended to read as follows:

~~29-1805-06-~~ Such A judicial district public defender shall be a lawyer duly admitted to and engaged in the practice of law in Nebraska.

Sec. 33. That section 29-1805.07, Reissue Revised Statutes of Nebraska, 1943, be amended to read as follows:

~~29-1805-07-~~ The following persons hereinafter described who are financially unable to obtain counsel shall be entitled to be represented by the a judicial district public defender: ~~described in sections 29-1805-01 to 29-1805-11-~~

(1) A person charged with a felony, including appeals from convictions for a felony;

(2) A person pursuing a postconviction proceeding under the provisions of Chapter 29, article 30, after conviction of a felony, where when the public defender after investigation concludes that there may be merit to such a proceeding; or where when the court in which such proceeding is pending directs the public defender to represent the ~~prisoner person~~;

(3) A minor brought before the juvenile court; where when neither the minor nor his or her parent or guardian is able to afford counsel; and

(4) A person who shall be complained against before the county board of mental health against whom a

petition has been filed with a mental health board as provided in sections 83-1049 to 83-1051; and

(5) A person against whom a petition has been filed pursuant to section 83-1125 as provided in section 83-1136.

Sec. 34. That section 29-1805.08, Reissue Revised Statutes of Nebraska, 1943, be amended to read as follows:

~~29-1805-08-~~ Any person described in section ~~29-1805-07~~ 33 of this act or any other person entitled by law to representation by counsel, may at any time request the court in which the matter is pending, or the court in which he the person was convicted, to appoint the public defender to ~~represent him~~ provide representation. Upon a request for the appointment of counsel, the court or magistrate shall proceed to make appropriate inquiry into the financial circumstances of the applicant, who shall submit, unless waived in whole or in part by the court, a financial statement under oath or affirmation setting forth his or her assets and liabilities, source or sources of income, and such other information as may be required by the court or magistrate. The information contained in such a statement shall be confidential and for the exclusive use of the court or magistrate, unless it ~~shall be~~ is made to appear to the satisfaction of the court or magistrate that ~~such~~ the statement may contain false, misleading, or incomplete information, in which event the person making the statement shall be punished as for contempt if it ~~be is~~ established after a hearing that ~~such the~~ statement was in whole or in part false, misleading, or incomplete. A refusal to execute a financial statement as provided herein in this section shall constitute a waiver of the right to the appointment of the public defender.

Sec. 35. That section 29-1805.09, Reissue Revised Statutes of Nebraska, 1943, be amended to read as follows:

~~29-1805-09-~~ Any county in a judicial district in which a determination is made that a public defender should be named in accordance with the provisions of section 29-1805-02 28 of this act shall no longer be subject to the provisions of section 29-1804 1 of this act, and the office created by section 1 of this act 29-1804, shall be abolished as of the date specified in such determination.

Sec. 36. That section 29-1805.10, Reissue Revised Statutes of Nebraska, 1943, be amended to read as follows:

~~29-1805-10-~~ Nothing in sections ~~29-1805-01 to~~ ~~29-1805-11~~ 28 to 36 of this act shall prevent a court from appointing counsel other than the public defender to represent indigent defendants or other persons by law entitled to legal representation, but appointments of counsel other than the public defender shall be limited to situations in which there are multiple defendants requiring separate representation or when other exigent circumstances are present which in the opinion of the court require appointment of other than the public defender. In all such cases of appointments of other than the public defender, the procedure shall be in accordance with the provisions of sections 43-272 and 43-273 and the cost of such appointments shall be paid by the county as provided in such sections.

Sec. 37. That section 32-513, Reissue Revised Statutes of Nebraska, 1943, be amended to read as follows:

32-513. A filing fee shall be paid by or on behalf of each candidate prior to the filing of any nomination papers. The filing fee shall be paid to the county treasurer or city treasurer in case of municipal officers for the use of the general fund of the county or city. The fee shall be paid to the proper treasurer of the candidate's residence, or if under the provisions of sections except that if pursuant to section 23-268, 23-1201.01, 23-1301, 23-1501, 23-1601.01, 23-1701, or 23-1901.01, 29-1804, and 32-513 or section 1 of this act the candidate does not reside at the time of filing in the county in which such candidate is seeking office, the filing fee shall be paid to the county treasurer in the county where the office is sought.

The filing fees shall be as follows: For the office of United States Senator, for state officers, including members of the Legislature, members of Congress, county officers, including county superintendent, of public instruction, district superintendent, of public instruction, and municipal officers, except those subject to subsection (3) of section 14-204, subsection (2) of section 15-301, or subsection (9) of section 16-302.01 regardless of whether the municipality has taken action under such subsections, a sum equal to one percent of the annual salary such candidate will receive if he or she is elected and qualifies for the office he or she files for as a candidate; for directors of public power and irrigation districts in those districts receiving annual gross revenue of forty million dollars or more, twenty-five dollars, and in those districts receiving

annual gross revenue of less than forty million dollars, ten dollars; and reclamation districts, ten dollars.

No nominating papers shall be filed until the proper treasurer's receipt, showing the payment of such filing fee, shall be is presented to the officer with whom the nominating paper is to be filed. No certificate of nomination or certificate of election shall be issued to any candidate who is nominated or elected by write-in votes until the filing fee required for such office is paid and the receipt is filed with the person issuing the certificate, which filing fee shall be paid within ten days after the canvass of the votes.

A filing fee of twenty-five dollars shall be required from candidates for Regents of the University of Nebraska and the State Board of Education. There shall be no filing fee for any candidate filing for an office in which a per diem is paid rather than a salary or for which there is a salary of less than five hundred dollars per year. No filing fee shall be required of any candidate completing an affidavit in support of request to file for public office in forma pauperis.

A pauper, for purposes of this section, is defined as one whose income and other resources for maintenance are found under assistance standards to be insufficient for meeting the cost of his or her requirements and whose reserve of cash or other available resources does not exceed the maximum available resources that an eligible individual may own. The term available resources includes every type of property or interest in property that an individual owns and may convert into cash, with the exception of:

- (1) Real property used as a home;
- (2) Household goods of a moderate value used in the home; and
- (3) Assets to a maximum value of three thousand dollars used by a recipient in a planned effort directed towards self-support.

Sec. 38. That section 65-101, Reissue Revised Statutes of Nebraska, 1943, be amended to read as follows:

65-101. Oaths and affirmations may be administered, in all cases whatsoever, by Judges of the Supreme Court, judges of the district court, Clerk of the Supreme Court, clerks of the district and county courts, within their respective jurisdictions, by county judges and clerk magistrates, within their respective counties, and by notaries public. County or deputy assessors shall be authorized and empowered to

administer oaths within their respective counties in matters pertaining to their official duties only.

Sec. 39. That section 83-1017, Reissue Revised Statutes of Nebraska, 1943, be amended to read as follows:

83-1017. There is hereby created one or more mental health boards for each judicial district established pursuant to section ~~5-105~~ 10 of this act, except that no judicial district shall have more than three mental health boards. The number of boards shall be determined by the district court judge or judges after considering the distribution of the population in that judicial district and the number of qualified persons available for board membership. The board shall have the power to issue subpoenas, to administer oaths, and to do any act necessary and proper for the board to carry out its duties.

Sec. 40. That original sections 5-105, 5-109, 24-501, 24-502, 24-503, 24-511, 24-514, 24-810, 24-1002, 25-21, 205, 29-1804, 29-1804.03 to 29-1804.05, 29-1804.07 to 29-1804.13, 29-1805.01 to 29-1805.10, 29-1824 to 29-1828, 32-513, 65-101, and 83-1017, Reissue Revised Statutes of Nebraska, 1943, and also sections 24-301.06, 24-517.02, 24-591, 29-1804.14, and 29-1805.11, Reissue Revised Statutes of Nebraska, 1943, are repealed.