



**THE 2010/2011 ANNUAL REPORT OF
THE NEBRASKA COMMISSION
ON PUBLIC ADVOCACY**

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About The Commission

This is the annual report on the status of the commission for fiscal year 2009/2010, as required by law and prepared by the chief counsel. On January 1, 1996, the Nebraska Commission on Public Advocacy became operational pursuant to Neb.Rev.Stat. § 29-3919 et.seq. The commission was created in 1995, pursuant to LB 646, to provide property tax relief to counties by having the state pay the majority of the legal costs for indigent defendants, including juveniles, who are charged with first-degree murder, violent felonies and drug offenses, at trial, on direct appeal, and in post conviction actions. The commission is court-appointed in counties that have no public defender, that have a conflict in their public defender office, or in counties needing assistance in representation. The commission continues to be entirely cash funded with no reliance upon any state general funds to operate. Counties pay nothing for legal services and related expenses when the commission is appointed which in turn, results in property tax relief to such counties. The commission consists of six attorneys, including the Chief Counsel, an investigator, and two administrative staff.

The commission also accepts appointments through the DNA Testing Act, and is directed by statute to provide resource assistance to public defenders and court-appointed counsel.

The commission handles the operation of the Legal Aid and Services Fund, providing awards to civil indigent legal service providers. The Legal Education for Public Service Loan Repayment Fund was created by statute to allow for some reimbursement of school loans incurred by attorneys working for non-profit, public legal service entities, and will continue the administration of the fund, when donations are received. Operation of the Civil Legal Services Fund was turned over to the commission from the Nebraska Supreme Court in 2009, with the fund granting awards to civil indigent legal service providers who receive funding from the Legal Services Corporation.

Fiscal Year 2010/2011 In Review

Commission

The commission began its fourteenth year of operation in 2010. The commission effectively represented indigent citizens of this state charged with very serious crimes, while saving counties thousands of taxpayer dollars. The work of the commission is handled by its violent crime and drug defense division, capital litigation division, appellate division, DNA testing division, and major case resource center. Commission case definitions and guidelines follow:

CASE DEFINITIONS AND GUIDELINES

The following are cases the commission can accept appointment to, however, all case appointments are subject to the caseload standards set by the Chief Counsel pursuant to law:

I. Trial:

A. All violent offenses that allege any one or more of the following crimes: Murder in the first degree, murder in the second degree, manslaughter, assault in the first degree, kidnaping, sexual assault in the first degree, sexual assault of a child (subsequent offense alleged), robbery, child abuse that results in serious bodily injury or death of a child, any violent felony where the habitual criminal allegation has been alleged, or any class III felony that has an element of use, attempted use, or threatened use of physical force against a person.

1. If a violent crime against a person is charged and that crime is not as defined above in section I.A., but use of a weapon is also charged, that case would qualify.

B. All drug offense crimes where one of the drug crimes charged is punishable as a Class III felony or higher.

II. Appeals:

A. The commission will handle all direct appeals in which it represented the defendant whether or not there was a plea or trial.

B. In cases where the commission was not representing the defendant at trial, it will accept appointment to direct appeals if the defendant went to trial and was convicted of any of the crimes listed above. It will not accept appointment to cases where there was a plea and the only issue is an excessive sentence.

III. Post Conviction:

A. The commission will accept appointment on post convictions cases where the defendant was convicted of 1st or 2nd degree murder.

B. The chief counsel may use his discretion in accepting appointment on a post conviction case that does not meet the criteria set forth above, taking into consideration the seriousness of the conviction, sentence imposed, and issues presented.

IV. Civil Rights

A. The commission will accept appointments to represent inmates on death row who are challenging the procedure used to execute them through the filing of a state Civil Rights petition.

V. Juvenile Court/Probation Revocation

A. The commission will accept appointment to represent a juvenile charged with a crime as described in section I, if the juvenile is originally charged in adult court. It will not accept appointment for any crime or abuse/neglect cases initially filed in juvenile court.

B. The commission will not accept appointment to any motion to revoke probation filed against a previous client, or a new client.

VI. Companion Complaints:

A. If the commission has been appointed to represent a defendant and a subsequent case is filed alleging crimes that the commission would not ordinarily accept appointment to, it will accept appointment, which would be in the best interest of the defendant, regardless of what the crimes charged are alleged to be.

VII. Counties with Public Defender Offices:

A. If a public defender needs assistance in defending any of the more serious qualified cases, the commission will accept appointment to be co-counsel with the local public defender. If the commission is appointed, then all expenses associated with the defense of the case will be paid by the commission so that the costs will not adversely impact the budget of the local public defender.

B. The commission will accept appointment on all qualified cases if the local public defender has a conflict, or the caseload for that office is at maximum capacity.

With court costs from across the state being deposited into the commission's operating budget, the commission has no reliance upon any state general funds and, as previously stated, bills nothing for legal representation and all associated costs. Cases handled by commission attorneys continue to save counties hundreds of thousands of dollars, while providing effective assistance of counsel. With the changes in the sentencing procedure on death penalty cases, the number of these cases has increased. Not only has the number of death penalty cases increased but so have attorney time and expenses. The new procedure in death penalty cases has almost doubled from the costs of the old sentencing procedure. In effect, there are now two trials: the guilt/innocence phase and the sentencing phase, doubling the costs. In all

murder cases, two attorneys are always assigned to each case. This is what is recommended by statute as well as the ABA and NLADA guidelines. Generally, between 1000 to 1500 hours of attorney time is spent on a murder case where the death penalty is being sought so if the case goes to trial, up to 3000 hours are spent. If the death penalty is sought, an additional 2000 to 3000 hours are spent. Much of the time on the death penalty phase is spent on finding the necessary mitigation evidence which usually requires a great deal of travel throughout the U.S., but also we have spent time in Mexico interviewing family members and seeking out mitigation evidence. We now estimate that when the Commission is appointed on a death penalty case, it saves counties over \$700,000 in fees and expenses, and for non-death penalty cases, \$300,000. The costs for appeals are in addition to the foregoing. Since almost all murder cases are appealed an additional 500 to 1000 hours are spent doing the appeal. So there is an additional savings to the counties of \$65,000 to \$125,000. For fiscal year 10-11 just completed, 17 murder cases were open including some of those where the death penalty was being sought. Overall, we estimate that over the last year we saved over \$7,500,000 in local property tax dollars on just the murder cases. In addition, based on an average cost of \$6,000 per case, the 186 cases involving serious violent and/or drug related felonies handled saved taxpayers over \$1,100,000 in fees and expenses.

Major Case Resource Center

The Commission on Public Advocacy was created to provide legal services and resources to assist counties in fulfilling their obligation to provide effective assistance of counsel for indigent persons. Neb. Rev. Stat. § 29-3923 (Reissue 2008). The mission of the commission is to meet the objective that all indigent persons accused of a crime receive competent and effective legal representation. The major case resource center is directed at meeting that goal through direct assistance, education, and training.

Fulfilling this broad mandate involves more than commission attorneys representing clients on a case-by-case basis. Public defenders, contracting attorneys, court-appointed attorneys, and attorneys representing the indigent on a pro-bono basis, can contact any commission attorney for assistance. This communication occurs by telephone, e-mail, and personal conferences. Commission attorneys provide direct assistance by advising attorneys about what the law requires through statutory and decisional authorities; strategies for pretrial preparation, trial, sentencing, appeals, and postconviction phases of a criminal case. Suggested techniques that can be used to more effectively represent a client are given. Commission attorneys also provide sample motions briefs and letters, seminar materials, treatises, video tapes, legal research, contact information for experts, and a variety of other resources.

The major case resource center also assists in the education of defense attorneys in the indigent defense system. This education is provided through the direct

assistance as noted above, but also includes a number of other sources. Commission attorneys participate as presenters and faculty in continuing legal education programs and seminars and serve on committees that are created to aid in bettering indigent defense systems throughout the state. Commission attorneys author publications that assist providers of indigent defense. These publications include how-to manuals, seminar materials, and articles printed on a frequent basis in the newsletter of the Nebraska Criminal Defense Attorneys Association. Commission attorneys participate in an Internet group exchange where Nebraska criminal defense attorneys communicate among each other to address questions, issues and rulings that arise throughout the state. Commission attorneys also provide joint representation with local attorneys, whereby a two-way exchange of information and ideas occurs.

The commission's website provides another medium to serve its statutory objectives. As the number of Internet users continues to grow, so do the opportunities of the major case resource center to serve the needs of the indigent defense community. Technological advancements allow the center to provide more information in a more secure environment. Through its website, the commission provides a variety of manuals on substantive criminal law and procedure. These materials are presented in a user-friendly, well-indexed manner and come complete with sample motions and forms. Well-indexed collections of legal precepts are also available. These resources have consistently helped to focus the requests for direct assistance to the precise issues facing the counsel's client.

The website gives indigent defense attorneys a forum to converse with each other through a secure message board. A user identification and password system protect security. Additionally, if the information an attorney is looking for is not found on the website, there is an organized list of links and contact references to route that attorney to appropriate criminal defense resources.

LB 729 - Legal Aid and Services Fund

The Legal Aid and Services Fund, in accordance with LB 729 and which became law on January 1, 1998 (§§ 25-3001 to 25-3004), is funded by court costs and docket fees in juvenile, county, and district court cases, appeals to the Court of Appeals and Supreme Court, and actions to modify decrees of dissolution, annulment, child support, and custody and visitation cases. After the commission annually publishes notice of the availability of such funds, the commission receives and reviews applications for grant awards in accordance with adopted rules, regulations and guidelines. During this past fiscal year, the commission disbursed to grant award recipients the total sum of \$2,218,566.00. At its December 4, 2010 meeting, the commission met and awarded monthly disbursement of funds for a twelve-month period beginning in January 2011, for the following qualifying civil legal service entities serving the indigent, in these total amounts:

CATHOLIC CHARITIES.....	\$108,000.00
CENTRAL MEDIATION CENTER (KEARNEY).....	\$9,000.00
CONCORD CENTER (OMAHA).....	\$9,000.00
CREIGHTON LEGAL CLINIC.....	\$15,000.00
JUSTICE FOR OUR NEIGHBORS.....	\$40,000.00
LEGAL AID OF NEBRASKA.....	\$1,427,235.00
LUTHERAN FAMILY SERVICES.....	\$122,000.00
THE MEDIATION CENTER (LINCOLN).....	\$9,000.00
MEDIATION WEST (CTR FOR CON RES-SCOTTSBLUFF).....	\$9,000.00
NEBRASKA ADVOCACY SERVICES.....	\$9,000.00
NE APPLESEED CTR/CHILD WELFARE SYSTEM.....	\$65,000.00
NE APPLESEED CTR/WELFARE DUE PROCESS PROJECT.....	\$100,000.00
NEBRASKA JUSTICE CENTER (FREMONT).....	\$9,000.00
NSBA'S VOLUNTEER LAWYERS PROJECT.....	\$217,000.00
THE RESOLUTION CENTER (BEATRICE).....	\$9,000.00
UNITED METHODIST MINISTRIES.....	\$56,000.00
UNL CIVIL CLINICAL LAW PROGRAM.....	\$15,000.00
TOTAL.....	\$2,228,235.00

The commission receives quarterly activity reports and annual audits from grant award recipients to assure compliance with criteria and law in the receipt and expenditure of such funds. As in previous years, services provided by these entities would not be available to the indigent if the Legal Aid and Services Fund did not exist.

LB 655 - DNA Testing Act

The purpose of the DNA Testing Act, which took effect in 2001, is to provide offenders who have been convicted of a crime with DNA testing which was not available at the time of conviction, which testing may have resulted in their acquittal. If the forensic sample still exists, offenders can request such samples to be tested under current DNA testing techniques to try and show their innocence. The Act requires the commission to represent indigent prisoners and to pay for DNA testing when appointed. During this past fiscal year, the commission has handled 4 DNA Testing Act cases.

An example of the importance of the DNA Testing Act came to light in 2008 where the Commission worked on a DNA case that resulted in the exoneration of six people, including 3 who were still in prison, who had been convicted by plea or trial for the murder of a Beatrice woman dating back to 1985. The DNA Testing Act allowed two of the individuals still serving prison sentences for the crime to file motions to ask for DNA testing. The Commission obtained all of the forensic samples taken originally from the crime scene and sent them to the DNA testing labs at UNMC. The resulting tests not only clearly proved that the six convicted defendants were not guilty, the testing was able to identify the real killer who had already died in 1992. All of the testing costs associated with the case were paid for by the Commission.

LB 1014 - Legal Education for Public Service Loan Repayment Fund

The Legal Education for Public Services Loan Repayment Fund was created through LB 1014 and became law In June 2008. The purpose of the fund is to provide educational loan forgiveness to lawyers employed in the area of non-profit public legal service. Commission duties include the continued operation of the fund, and is ready to disburse funds, should donations be received.

LB 746, LB 35 - Civil Legal Services Fund

The Civil Legal Services Fund, in accordance with LB 746 creating it in 2006, was turned over to the commission for operation under LB 35 in September, 2009. The sole purpose of the fund is to provide monetary assistance to civil legal service providers for the indigent who receive funds from the federal Services Corporation. Funded by certain filing fees and court costs, the commission publishes notice of the availability of such funds and then receives and reviews applications for grant awards in accordance with adopted rules, regulations and guidelines. During this past fiscal year, the commission disbursed to Legal Aid of Nebraska in the total sum of \$325,000.00. At its December 4, 2010 meeting, the commission met and awarded monthly disbursement of funds for a twelve-month period beginning in January 2011, to Legal Aid of Nebraska in the total amount of \$360,000.00. The commission receives quarterly activity reports and annual audits from Legal Aid of Nebraska to assure compliance with criteria and law in the receipt and expenditure of such funds.

Recommendations for Improvement

This agency does its best to reduce unnecessary expenses, while at the same time continue to provide exceptional defense services for our clients in this state. Staff meetings are held on an ongoing basis to address fiscal problems so that commission employees are aware of our need to reduce. The commission also continues to promote its purpose with the state's county and district judges so that those who have appointed this agency in the past will continue to do so in the future, and those who have not yet used this office will do so in the future.

Commission Members

The commission consists 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 is appointed from each of the six state Supreme Court districts, and three members are appointed at large. Members must belong to the Nebraska State Bar Association and have substantial experience in criminal defense work. They may not be prosecutors, law enforcement officials or judges during their terms of office. Members serve six-year terms, except that three of the initial members are serving two-year terms and three are serving four-year terms. The governor designates the chairperson of the commission. Members are reimbursed for expenses incurred in the performance of their duties.

Member	Represents	Term Expires
Stephanie R. Hupp, Lincoln	District 1	November 3, 2011
Edward G. Warin, Omaha	District 2	November 3, 2013
Douglas J. Stratton, Norfolk	District 3	November 3, 2015
Thomas P. Strigenz, Papillion	District 4	November 3, 2015
Joseph H. Murray, Hebron	District 5	November 3, 2013
Nancy S. Freburg, Kearney	District 6	November 3, 2011
Russel L. Jones, North Platte	At Large	November 3, 2013
Robert P. Lindemeier, North Platte, Chair	At Large	November 3, 2015
Dana C. "Woody" Bradford, Omaha	At Large	November 3, 2011

Staff/Credentials

Chief Counsel

James R. Mowbray

Graduate of University of Nebraska College of Law, 1981
Appointed as Chief Counsel, February, 1996 to present

Staff Attorneys

Jeffery A. Pickens

Graduate of University of Nebraska College of Law, 1991
May 1996 to present

Jerry L. Soucie, Agency Legal Counsel

Graduate of University of Nebraska College of Law, 1980
August 1996 to present

Robert W. Kortus

Graduate of University of Nebraska College of Law, 1989
July 1996 to present

Kelly S. Breen

Graduate of Creighton School of Law, 1984
August 1996 to present

Todd W. Lancaster

Graduate of University of Nebraska College of Law, 1998
May 2007 to present

Investigator

J. Stevan Worster

Graduate of California State University, 1974
November 1997 to present

Support Staff

Paralegal

Shara M. Aden, December 2002 to present

Administrative Assistant/Fiscal Officer

Rita J. Wesely, July 1996 to present
Graduate of Bellevue University, 2001

James R. Mowbray

APPENDIX A

CONSTITUTIONAL & STATUTORY BACKGROUND FOR THE NEBRASKA COMMISSION ON PUBLIC ADVOCACY

Commission on Public Advocacy

In all criminal prosecutions, the accused shall enjoy the right . . . to have the assistance of counsel for his defense.

Sixth Amendment
Constitution of the United States

In all criminal prosecutions the accused shall have the right to appear and defend in person or by counsel . . .

Article 1, Section 11
Constitution of the State of Nebraska

NEBRASKA REVISED STATUTES--ANNOTATED CHAPTER 29. CRIMINAL PROCEDURE

§ 29-3504. Administration of criminal justice, defined.

Administration of criminal justice shall mean performance of any of the following activities: Detection, apprehension, detention, pretrial release, pretrial diversion, posttrial release, prosecution, defense by a full-time public defender's office, defense by the Commission on Public Advocacy, adjudication, correctional supervision, or rehabilitation of accused persons or criminal offenders. The administration of criminal justice shall include criminal identification activities and the collection, storage, and dissemination of criminal history record information.

ARTICLE 39. PUBLIC DEFENDERS AND APPOINTED COUNSEL COUNTY REVENUE ASSISTANCE ACT

§ 29-3919. Act, how cited.

Sections 29-3919 to 29-3933 shall be known and may be cited as the County Revenue Assistance Act.

§ 29-3920. Legislative findings.

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 Commission on Public Advocacy Operations Cash Fund should be established to fund the operation of the Commission on Public Advocacy and to fund reimbursement requests as determined by section 29-3933.

§ 29-3921. Commission on Public Advocacy Operations Cash Fund; created; use; investment; transfers; use.

(1) The Commission on Public Advocacy Operations Cash Fund is created. The fund shall be used for the operations of the commission, except that transfers may be made from the fund to the General Fund at the direction of the Legislature through June 30, 2011. The Commission on Public Advocacy Operations Cash Fund shall consist of money remitted pursuant to section 33-156. It is the intent of the Legislature that the commission shall be funded solely from the fund. 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.

(2) On July 1, 2011, or as soon thereafter as administratively possible, the State Treasurer shall transfer one hundred thousand dollars from the Commission on Public Advocacy Operations Cash Fund to the Supreme Court Education Fund. The State Court Administrator shall use these funds to assist the juvenile justice system in

providing prefilling and diversion programming designed to reduce excessive absenteeism and unnecessary involvement with the juvenile justice system.

(3) The State Treasurer shall transfer the following amounts from the Commission on Public Advocacy Operations Cash Fund to the Court Appointed Special Advocate Fund:

(a) On July 1, 2011, or as soon thereafter as administratively possible, one hundred thousand dollars; and

(b) On July 1, 2012, or as soon thereafter as administratively possible, two hundred thousand dollars.

§ 29-3922. Terms, defined.

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 § 29-3928;

(2) Commission means the Commission on Public Advocacy;

(3) Commission staff means attorneys, investigators, and support staff who are performing work for the capital litigation division, appellate division, DNA testing division, and major case resource center;

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

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

(6) Indigent defense services means legal services provided to indigent persons by an indigent defense system in capital cases, felony cases, misdemeanor cases, juvenile cases, mental health commitment cases, child support enforcement cases, and paternity establishment cases;

(7) 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;

(8) Indigent person means a person who is indigent and unable to obtain legal counsel as determined pursuant to subdivision (3) of section 29-3901; and

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

§ 29-3923. Commission on Public Advocacy; created; duties.

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.

§ 29-3924. Commission; members; term.

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, for appointments made after September 13, 1997, substantial experience in civil legal matters that commonly affect low-income persons 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 to low-income persons 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.

§ 29-3925. Commission; chairperson; expenses.

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 §§ 81-1174 to 81-1177.

§ 29-3926. Commission; quorum.

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.

§ 29-3927. Commission; duties.

(1) With respect to its duties under section 29-3923, the commission shall:

(a) 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;

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

(c) 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;

(d) 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;

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

(f) Provide legal services to indigent persons through the divisions in § 29-3930. ...

(3) With respect to its duties related to the provision of civil legal services to eligible low-income persons, the commission shall have such powers and duties as described in sections 25-3001 to 25-3004.

(4) The commission may adopt and promulgate rules and regulations governing the Legal Education for Public Service Loan Repayment Act which are recommended by the Legal Education for Public Service Loan Repayment Board pursuant to the act. The commission shall have the powers and duties provided in the act.

§ 29-3928. Chief counsel; qualifications; salary.

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.

§ 29-3929. Chief counsel; duties.

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, the DNA testing 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.

§ 29-3930. Commission; divisions established.

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 violent crime and drug defense division shall be available to assist in the defense of certain violent and drug crimes as defined by the commission, subject to the caseload standards of the commission;

(4) The DNA testing division shall be available to assist in representing persons who are indigent who have filed a motion pursuant to the DNA Testing Act, subject to caseload standards; and

(5) 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.

§ 33-156. Additional court cost; indigent defense fee.

(1) In addition to all other court costs assessed according to law, an indigent defense fee of two dollars and seventy-five cents shall be taxed as costs for each case filed in each county court and district court, including appeals to such courts, and for each appeal and original action filed in the Court of Appeals and the Supreme Court. The fees shall be remitted to the State Treasurer on forms prescribed by the State Treasurer within ten days after the end of the month. The State Treasurer shall credit the fees to the Commission on Public Advocacy Operations Cash Fund.

(2) In cases under the DNA Testing Act, costs shall be paid as provided in such act.

§ 90-520. Fund Transfers.

The State Treasurer shall, on or before June 30 in each fiscal year on such dates as directed by the budget administrator of the budget division of the Department of Administrative Services, transfer the amounts shown in this section to the General Fund from the specified cash funds:...

Agency 94 - Commission on Public Advocacy Operations Cash Fund - \$258,374.00 in fiscal year 2009-2010; \$288,247.00 in fiscal year 2010-2011.

DNA Testing Act

CHAPTER 29. CRIMINAL PROCEDURE

ARTICLE 21. MOTIONS FOR NEW TRIAL AND ARREST OF JUDGMENT

§ 29-2101. New trial; grounds.

A new trial, after a verdict of conviction, may be granted, on the application of the defendant, for any of the following grounds...:(6) newly discovered exculpatory DNA or similar forensic testing evidence obtained under the DNA Testing Act;... .

CHAPTER 29. CRIMINAL PROCEDURE
ARTICLE 41. DNA TESTING
DNA TESTING ACT

§ 29-4116. Act, how cited.

Sections 29-4116 to 29-4125 shall be known and may be cited as the DNA Testing Act.

§ 29-4117. Legislative intent.

It is the intent of the Legislature that wrongfully convicted persons have an opportunity to establish their innocence through deoxyribonucleic acid, DNA, testing.

§ 29-4118. Legislative findings.

The Legislature finds and declares:

(1) Over the past decade, DNA testing has emerged as the most reliable forensic technique for identifying persons when biological material is found at a crime scene or transferred from the victim to the person responsible and transported from the crime scene;

(2) Because of its scientific precision and reliability, DNA testing can, in some cases, conclusively establish the guilt or innocence of a criminal defendant. In other cases, DNA may not conclusively establish guilt or innocence but may have significant probative value to a finder of fact;

(3) While DNA testing is increasingly commonplace in pretrial investigations currently, it was not widely available in cases prior to 1994. Moreover, new forensic DNA testing procedures, such as polymerase chain reaction amplification, DNA short tandem repeat analysis, and mitochondrial DNA analysis, make it possible to obtain results from minute samples that previously could not be tested and to obtain more informative and accurate results than earlier forms of forensic DNA testing could produce. As a result, in some cases, convicted inmates have been exonerated by new DNA tests after earlier tests had failed to produce definitive results;

(4) Because DNA testing is often feasible on relevant biological material that is decades old, it can in some circumstances prove that a conviction which

predated the development of DNA testing was based upon incorrect factual findings. DNA evidence produced even decades after a conviction can provide a more reliable basis for establishing a correct verdict than any evidence proffered at the original trial. DNA testing, therefore, can and has resulted in postconviction exoneration of innocent men and women;

(5) In the past decade, there have been multiple postconviction exonerations in the United States and Canada based upon DNA testing. In addition, a disturbing number of persons sentenced to death have been exonerated through postconviction DNA testing, some of these exonerations coming within days of their execution date;

(6) DNA testing responds to serious concerns regarding wrongful convictions, especially those arising out of mistaken eyewitness identification testimony; and

(7) There is a compelling need to ensure the preservation of biological material for postconviction DNA testing, for a limited period.

§ 29-4119. Exculpatory evidence, defined.

For purposes of the DNA Testing Act, exculpatory evidence means evidence which is favorable to the person in custody and material to the issue of the guilt of the person in custody.

§ 29-4120. DNA testing; procedure.

(1) Notwithstanding any other provision of law, a person in custody pursuant to the judgment of a court may, at any time after conviction, file a motion, with or without supporting affidavits, in the court that entered the judgment requesting forensic DNA testing of any biological material that:

(a) Is related to the investigation or prosecution that resulted in such judgment;

(b) Is in the actual or constructive possession or control of the state or is in the possession or control of others under circumstances likely to safeguard the integrity of the biological material's original physical composition; and

(c) Was not previously subjected to DNA testing or can be subjected to retesting with more current DNA techniques that provide a reasonable likelihood of more accurate and probative results.

(2) Notice of such motion shall be served by the person in custody upon the county attorney of the county in which the prosecution was held.

(3) Upon receiving notice of a motion filed pursuant to subsection (1) of this section, the county attorney shall take such steps as are necessary to ensure that any remaining biological material that was secured by the state or a political subdivision in connection with the case is preserved pending the completion of proceedings under the DNA Testing Act.

(4) The county attorney shall prepare an inventory of all evidence that was secured by the state or a political subdivision in connection with the case and shall submit a copy of the inventory to the person or the person's counsel and to the court. If evidence is intentionally destroyed after notice of a motion filed pursuant to this section, the court shall impose appropriate sanctions, including criminal contempt.

(5) Upon consideration of affidavits or after a hearing, the court shall order DNA testing pursuant to a motion filed under subsection (1) of this section upon a determination that such testing was effectively not available at the time of trial, that the biological material has been retained under circumstances likely to safeguard the integrity of its original physical composition, and that such testing may produce noncumulative, exculpatory evidence relevant to the claim that the person was wrongfully convicted or sentenced.

(6) All forensic DNA tests shall be performed by a laboratory which is accredited by the American Society of Crime Laboratory Directors-LAB-Laboratory Accreditation Board or the National Forensic Science Technology Center or by any other national accrediting body or public agency which has requirements that are substantially equivalent to or more comprehensive than those of the society or center.

§ 29-4121. DNA testing; costs.

The cost of DNA testing ordered under subsection (5) of section 29-4120 shall be paid by the person filing the motion, unless the court determines such person to be indigent. If the person filing such motion is determined by the court to be indigent, the costs shall be paid by the state in the following manner:

(1) If the Commission on Public Advocacy has been appointed to represent the person filing the motion, as determined under section 29-4122, the costs of testing shall be paid by the commission from funds appropriated by the Legislature; and

(2) If the Commission on Public Advocacy has not been appointed to represent the person filing the motion, the court shall hold a hearing to determine the costs for DNA testing. The court shall order the commission to pay such costs. The order shall be forwarded by the clerk of the court to the commission, along with copies of all invoices for such DNA testing. Upon receipt, the commission shall pay such costs from funds appropriated by the Legislature.

§ 29-4122. Appointed counsel; when.

Upon a showing by the person that DNA testing may be relevant to the person's claim of wrongful conviction, the court shall appoint counsel for an indigent person as follows:

(1) The court shall first contact the chief counsel for the Commission on Public Advocacy to inquire if the commission is able to accept the appointment. If the chief counsel determines that the commission can accept the appointment, then the court shall appoint the commission pursuant to the County Revenue Assistance Act; and

(2) If the chief counsel declines the appointment because of a conflict of interest or the case would exceed the caseload standards set by the commission, then the court shall appoint an attorney licensed to practice law in this state with at least five years experience in felony litigation to represent the indigent person at all stages of the proceedings. Counsel appointed under this subdivision, other than the public defender, shall obtain leave of court before proceeding beyond an initial direct appeal to either the Court of Appeals or the Supreme Court to any further direct, collateral, or postconviction appeals to state or federal courts. Counsel appointed under this subdivision shall file an application for fees and expenses in the district court which appointed him or her for all fees and expenses reasonable necessary to permit him or her to effectively and competently represent the client. The court, upon hearing the application, shall fix reasonable attorney's fees and expenses. The court's order shall require that such fees and expenses be paid by the Commission on Public Advocacy from funds appropriated by the Legislature. Upon receipt of the order, the commission shall pay such fees and expenses in the full amount determined by the court.

§ 29-4123. DNA testing results; effect.

(1) The results of the final DNA or other forensic testing ordered under subsection (5) of section 29-4120 shall be disclosed to the county attorney, to the person filing the motion, and to the person's attorney.

(2) Upon receipt of the results of such testing, any party may request a hearing before the court when such results exonerate or exculpate the person. Following such hearing, the court may, on its own motion or upon the motion of any party, vacate and set aside the judgment and release the person from custody based upon final testing results exonerating or exculpating the person.

(3) If the court does not grant the relief contained in subsection (2) of this section, any party may file a motion for a new trial under sections 29-2101 to 29-2103.

§ 29-4124. Act; how construed.

Nothing in the DNA Testing Act shall be construed to limit the circumstances under which a person may obtain DNA testing or other postconviction relief under any other provision of law.

§ 29-4125. Biological material; secured; when.

(1) Notwithstanding any other provision of law and subject to subsection (2) ... of this section, state agencies and political subdivisions shall preserve any biological material secured in connection with a criminal case for such period of time as any person remains incarcerated in connection with that case.

(2) State agencies or political subdivisions that have secured biological material for use in criminal cases may dispose of biological material before expiration of the period of time specified in subsection (1) of this section if:

(a) The state agency or political subdivision which secured the biological material for use in a criminal case notifies any person who remains incarcerated in connection with the case, such person's counsel of record, or if there is no counsel of record, the public defender, if applicable, in the county in which the judgment of conviction of such person was entered. The notice shall include:

(i) The intention of the state agency or political subdivision to dispose of the material after ninety days after receipt of the notice; and

(ii) The provisions of the DNA Testing Act;

(b) The person, such person's counsel of record, or the public defender does not file a motion under section 29-4120 within ninety days after receipt of notice under this section; and

(c) No other provision of law or court order requires that such biological material be preserved.

(3) The person, such person's counsel of record, or the public defender who receives notice under subdivision (2)(a) of this section, may, in lieu of a motion under section 29-4120, request in writing to take possession of the biological material for the purpose of having the material available for any future discovery of scientific or forensic techniques. Copies of any such written request shall be provided to both the court and to the county attorney. The costs of acquisition, preservation, and storage of any such material shall be at the expense of the person. ...

§ 81-1316. State Personnel System; exemptions.

(1) All agencies and personnel of state government shall be covered by sections 81-1301 to 81-1319 and shall be considered subject to the State Personnel System, except the following:...

(r) All personnel of the Commission on Public Advocacy.

...

(2) ... The purpose of having such noncovered positions shall be to allow agency heads the opportunity to recruit, hire, and supervise critical, confidential, or policymaking personnel without restrictions from selection procedures, compensation rules, career protections, and grievance privileges. Persons holding the noncovered positions shall serve at the pleasure of the agency head and shall be paid salaries set by the agency head.

(3) No changes to this section or to the number of noncovered positions within an agency shall affect the status of personnel employed on the date the changes become operative without their prior written agreement. A state employee's career protections or coverage by personnel rules and regulations shall not be revoked by redesignation of the employee's position as a noncovered position without the prior written agreement of such employee.

Legal Education for Public Service Loan Repayment Fund

CHAPTER 7. ATTORNEYS AT LAW.

ARTICLE 2. LEGAL EDUCATION FOR PUBLIC SERVICE LOAN REPAYMENT ACT.

§ 7-201. Act, how cited.

Sections 7-201 to 7-209 shall be known and may be cited as the Legal Education for Public Service Loan Repayment Act.

§ 7-202 Legislative findings.

The Legislature finds that many attorneys graduate from law school with substantial educational debt that prohibits many from considering public legal service work. A need exists for public legal service entities to hire competent attorneys. The public is better served by competent and qualified attorneys working in the area of public legal service. Programs providing educational loan forgiveness will encourage law students and other attorneys to seek employment in the area of public legal service and will enable public legal service entities to attract and retain qualified attorneys.

§ 7-203 Terms, defined.

For purposes of the Legal Education for Public Service Loan Repayment Act:

(1) Board means the Legal Education for Public Service Loan Repayment Board;

(2) Educational loans means loans received as an educational benefit, scholarship, or stipend toward a juris doctorate degree and either (a) made, insured, or guaranteed by a governmental unit or (b) made under a program funded in whole or in part by a governmental unit or nonprofit institution; and

(3) Public legal service means providing legal service to indigent persons while employed by a tax-exempt charitable organization.

§ 7-204 Legal Education for Public Service Loan Repayment Board; created; members.

The Legal Education for Public Service Loan Repayment Board is created. The board shall consist of the director of Legal Aid of Nebraska, the deans of Creighton School of Law and the University of Nebraska College of Law, a student from each law school selected by the dean of the law school, a member of the Nebraska State Bar Association selected by the president of the association, and the chief counsel of the Commission on Public Advocacy.

§ 7-205 Board; chairperson; meetings; expenses.

The board shall select one of its members to be chairperson. The board shall meet as necessary to carry out its duties, but shall meet at least annually. The members shall serve without compensation but shall be reimbursed for their actual and necessary expenses as provided in sections 81-1174 to 81-1177.

§ 7-206 Legal education for public service loan repayment program; rules and regulations; contents.

The board shall develop and recommend to the Commission on Public Advocacy rules and regulations that will govern the legal education for public service loan repayment program. The rules and regulations shall include:

(1) Recipients shall be full-time, salaried attorneys working for a tax-exempt charitable organization and whose primary duties are public legal service;

(2) Loan applicants shall pay an application fee established by the rules and regulations at a level anticipated to cover all or most of the administrative costs of the program. All application fees shall be remitted to the State Treasurer for credit to the Legal Education for Public Service Loan Repayment Fund. Every effort shall be made to minimize administrative costs and the application fee;

(3) The maximum annual loan amount, which initially shall not exceed six thousand dollars per year per recipient, shall be an amount which is sufficient to fulfill the purposes of recruiting and retaining public legal service attorneys in occupations and areas with unmet needs, including attorneys to work in rural areas and attorneys with skills in languages other than English. The board may recommend adjustments of the loan amount annually to the commission to account for inflation and other relevant factors;

(4) Loans shall be made only to refinance existing educational loans;

(5) A general program structure of loan forgiveness shall be established that qualifies for the tax benefits provided in section 108(f) of the Internal Revenue Code, as defined in section 49-801.01; and

(6) Other criteria for loan eligibility, application, payment, and forgiveness necessary to carry out the purposes of the Legal Education for Public Service Loan Repayment Act.

§ 7-207 Commission on Public Advocacy; applications; board; recommendations; certification of recipients.

The Commission on Public Advocacy shall accept applications for loan forgiveness on an annual basis from qualified persons and shall present those applications to the board for its consideration. The board shall make recommendations for loans to the commission, and the commission shall certify the eligible recipients and the loan amount per recipient. The loans awarded to the recipients shall come from funds appropriated by the Legislature and any other funds that may be available from the Legal Education for Public Service Loan Repayment Fund.

§ 7-208 Commission on Public Advocacy; solicit and receive donations.

The Commission on Public Advocacy may solicit and receive donations from law schools, corporations, nonprofit organizations, bar associations, bar foundations, law firms, individuals, or other sources for purposes of the Legal Education for Public Service Loan Repayment Act. The donations shall be remitted to the State Treasurer for credit to the Legal Education for Public Service Loan Repayment Fund.

§ 7-209 Legal Education for Public Service Loan Repayment Fund; created; investment.

The Legal Education for Public Service Loan Repayment Fund is created. The fund shall consist of funds donated to the legal education for public service loan repayment program pursuant to section 7-208 and application fees collected under the Legal Education for Public Service Loan Repayment 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.

APPENDIX B

Legal Aid and Services Fund

CHAPTER 25. COURTS; CIVIL PROCEDURE ARTICLE 30. LEGAL AID AND SERVICES

§ 25-3001. Terms, defined.

For purposes of sections 25-3001 to 25-3004:

(1) Eligible low-income person means any person (a) whose income is less than one hundred twenty-five percent of the federal poverty level, (b) who is financially eligible under the service provider's eligibility guidelines, © who resides in one of the counties in the service provider's area, and (d) who has a civil legal problem that falls within the guidelines established by the Commission on Public Advocacy;

(2) Service area means the counties in Nebraska defined by the commission as the area to be served by a service provider; and

(3) Service provider means a nonprofit entity that is engaged in or desires to become engaged in the provision of free civil legal services to eligible low-income persons.

§ 25-3002. Legal Aid and Services Fund; created; use; investment.

The Legal Aid and Services Fund is created. Money in the fund shall be used to provide civil legal services to eligible low-income persons. The Commission on Public Advocacy shall distribute all money in the fund periodically in the form of grants to service providers of civil legal services to eligible low-income persons as determined by the commission pursuant to section 25-3004. 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. Any money left in the Legal Aid and Services Fund on December 31 of any year shall be distributed in the following year.

§ 25-3003. Commission on Public Advocacy; duties.

(1) The Commission on Public Advocacy shall establish eligibility criteria and guidelines to determine on an annual basis (a) the service areas, (b) the legal services to be provided and the priorities for providing the services, and © the service provider or providers for each service area. The commission shall annually certify one or more

service providers for each service area. A single service provider may be certified for more than one service area. Such certification entitles the service provider to a distribution of funds as defined and determined by section 25-3004.

(2) The commission shall accept applications for certification on an annual basis from entities interested in providing free civil legal services to eligible low-income persons. In the application, each applicant shall certify to the commission that the applicant intends to provide free civil legal services to eligible low-income persons as determined by the commission.

§ 25-3004. Service provider; receipt of funds; powers and duties.

(1) Each service provider certified by the Commission on Public Advocacy shall be eligible to receive funds from the Legal Aid and Services Fund to provide free civil legal services to eligible low-income persons in the service area for which it is certified. The funds granted to each service provider from the Legal Aid and Services Fund shall be determined by the commission.

(2) Each service provider is authorized to use funds received from the Legal Aid and Services Fund to provide legal services in civil matters to any eligible low-income person.

(3) A service provider which has received funds from the Legal Aid and Services Fund shall be audited annually.

§ 33-107.01. Legal services fee; taxed as costs; when.

A legal services fee of five dollars and twenty-five cents shall be taxed as costs in each case filed in each separate juvenile court and district court, including appeals to such courts, and on each case filed in each county court except those filed in county court pursuant to its jurisdiction under section 25-2802. A legal services fee of five dollars and twenty-five cents shall be taxed as costs for each appeal and original action filed in the Court of Appeals and the Supreme Court. Such fees shall be remitted to the State Treasurer on forms prescribed by the State Treasurer within ten days after the close of each month for credit to the Legal Aid and Services Fund.

§ 33-107.02. Modification of certain marriage, child support, or child custody or parenting time orders; additional docket fee.

... Fifteen dollars shall be credited to the Legal Aid and Services Fund. ...

APPENDIX C

Civil Legal Services Fund

CHAPTER 25. COURTS; CIVIL PROCEDURE ARTICLE 30. CIVIL LEGAL SERVICES

§ 25-3005. Legislative intent.

It is the intent of the Legislature to expand the capacity to provide civil legal services to eligible low-income persons equally throughout the state.

§ 25-3006. Definitions.

For purposes of sections 25-3005 to 25-3010, the definitions found in section 25-3001 apply.

§ 25-3007. Civil Legal Services Program; created; use of appropriations; Commission on Public Advocacy; duties.

The Civil Legal Services Program is created. Appropriations to the program and money in the Civil Legal Services Fund shall be used to provide grants for civil legal services to eligible low-income persons. The Commission on Public Advocacy shall distribute grants pursuant to section 25-3008.

§ 25-3008. Grant recipients; requirements; application; audit.

(1) The Commission on Public Advocacy shall establish guidelines for submission of applications for grants to provide civil legal services to eligible low-income persons. To be eligible for a grant under this section, a civil legal services provider shall:

- (a) Be a nonprofit organization chartered in Nebraska;
- (b) Employ or contract with attorneys admitted to practice before the Nebraska Supreme Court and the United States District Courts;
- (c) Have offices located throughout the state;
- (d) Have as its principal purpose and mission the delivery of civil legal services to eligible low-income persons who are residents of Nebraska;
- (e) Distribute its resources equitably throughout the state;

(f) Be a recipient of financial assistance for the delivery of civil legal services from the Legal Services Corporation established by the federal Legal Services Corporation Act, 42 U.S.C. 2996 et seq.; and

(g) Certify that any grant funds received pursuant to this section will be used to supplement any existing funds used by the applicant and that such funds will not replace other funds appropriated or awarded by a state agency to provide civil legal services to any eligible low-income person.

(2) A civil legal services provider seeking a grant under this section shall file an application with the commission on forms provided by the commission. The application shall include a place for the provider to certify to the commission that it will provide free civil legal services to eligible low-income persons upon receipt of a grant under this section.

(3) The commission shall review the applications and determine which civil legal services providers shall receive grants under this section and the amount of the grants. Grant recipients shall use the grant funds to provide free civil legal services to eligible low-income persons.

(4) An independent certified public accountant shall annually audit the books and accounts of each grant recipient. The grant recipients shall provide the results of such audit to the commission.

§ 25-3009. Civil Legal Services Fund; created; investment.

The Civil Legal Services Fund is created. Any money remaining in the fund at the end of a calendar year shall be distributed in the following calendar year. 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.

§ 25-3010. Civil Legal Services Fund; how funded.

Beginning January 1, 2007, a fee of one dollar shall be taxed as costs in each criminal proceeding, including traffic infractions and misdemeanors, filed in all courts of this state for violations of state law or city or village ordinances. No such fee shall be collected in any juvenile court proceeding or when waived under section 29-2709. Such fee shall be remitted to the State Treasurer on forms prescribed by the State Treasurer within ten days after the close of each calendar quarter. The State Treasurer shall credit the money to the Civil Legal Services Fund.