

State of South Dakota

SEVENTY-FOURTH SESSION
LEGISLATIVE ASSEMBLY, 1999

664C0804

HOUSE BILL NO. 1239

Introduced by: Representative Wilson

1 FOR AN ACT ENTITLED, An Act to provide for a statewide public defender program for
2 indigents charged with certain high-grade felonies.

3 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF SOUTH DAKOTA:

4 Section 1. There is hereby established the South Dakota Public Defender Commission to
5 provide, supervise, and coordinate legal representation at public expense for indigent persons
6 who are charged with a crime which is punishable as a Class A, Class B, or Class 1 felony,
7 including appeals from convictions for such felonies, and who is not entitled to legal defense by
8 a county public defender. The commission shall consist of five members, one of whom shall be
9 the chair. The chair and one other member shall be appointed by the Governor, two members
10 shall be appointed by the Supreme Court, and one member shall be appointed by the president
11 of the State Bar of South Dakota. The chair, the member appointed by the president of the State
12 Bar of South Dakota, and at least one member appointed by the Supreme Court shall be
13 attorneys admitted to the practice of law in this state. Members' terms shall be five years, but the
14 terms of the initial members shall be determined by lot so that the term of one member expires
15 each year.

16 Section 2. The South Dakota Public Defender Commission shall appoint the state public
17 defender, who shall serve at the pleasure of the commission, and who shall be experienced in the

1 defense of criminal cases. The state public defender may employ, with the approval of the
2 commission, necessary assistant public defenders and other employees at salaries approved by
3 the commission, which assistant public defenders shall serve at the pleasure of the state public
4 defender. The state public defender shall serve full-time and may not engage in the private
5 practice of law. Assistant public defenders and other employees may serve full-time or part-time
6 as determined by the state public defender.

7 Section 3. The state public defender may employ law students authorized by the Supreme
8 Court to engage in a limited form of the practice of law and may enter into agreements with law
9 schools to provide clinical training for their students under the provisions of the Higher
10 Education Act of 1965 and other similar federal programs.

11 Section 4. Any person who is charged with a crime punishable as a Class A, Class B, or
12 Class 1 felony, or who is party to an appeal concerning such charge and who requests
13 appointment of counsel may be represented by the state public defender. Upon a request for the
14 appointment of counsel, the court shall proceed to make appropriate inquiry into the financial
15 circumstances of the applicant who shall submit, unless waived in whole or in part by the court,
16 a financial statement under oath or affirmation setting forth the applicant's assets and liabilities,
17 sources of income, and such other information as may be required by the court. A refusal to
18 execute a financial statement as provided in this section constitutes a waiver of the right to the
19 appointment of the state public defender.

20 Section 5. The court may appoint counsel other than the state public defender to represent
21 indigent defendants charged with a crime described in section 1 of this Act in situations in which
22 there are multiple defendants requiring separate representation or other exigent circumstances
23 which in the opinion of the court require appointment of other than the state public defender.

24 Section 6. One-half of the annual budget of the commission shall be paid by the fund
25 established pursuant to § 7-16B-13 in accordance with rules, consistent with the factors provided

1 for in subdivisions 7-16B-20(1) and (2), promulgated by the commission pursuant to chapter 1-
2 26 which shall provide for quarterly assessments to all counties which do not provide a public
3 defender to represent a person charged with a crime punishable as a Class A, Class B, or Class
4 1 felony.

5 Section 7. The effective date of this Act is July 1, 2000.