

LEGISLATURE OF NEBRASKA

ONE HUNDRED FIRST LEGISLATURE

FIRST SESSION

LEGISLATIVE BILL 185

Introduced by Louden, 49.

Read first time January 12, 2009

Committee: Judiciary

A BILL

1 FOR AN ACT relating to criminal procedure; to amend section
2 29-2261, Reissue Revised Statutes of Nebraska; to change
3 provisions relating to presentence investigations; and to
4 repeal the original section.

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

1 Section 1. Section 29-2261, Reissue Revised Statutes of
2 Nebraska, is amended to read:

3 29-2261 (1) Unless it is impractical to do so, when
4 an offender has been convicted of a felony other than murder in
5 the first degree in which the death penalty is sought, the court
6 shall not impose sentence without first ordering a presentence
7 investigation of the offender and according due consideration to
8 a written report of such investigation. When an offender has
9 been convicted of murder in the first degree in which the death
10 penalty is sought and (a) a jury renders a verdict finding the
11 existence of one or more aggravating circumstances as provided
12 in section 29-2520 or (b) (i) the information contains a notice
13 of aggravation as provided in section 29-1603 and (ii) the
14 offender waives his or her right to a jury determination of
15 the alleged aggravating circumstances, the court shall not commence
16 the sentencing determination proceeding as provided in section
17 29-2521 without first ordering a presentence investigation of the
18 offender and according due consideration to a written report of
19 such investigation.

20 (2) A court may order a presentence investigation in any
21 case, except in cases in which an offender has been convicted
22 of a Class IIIA misdemeanor, a Class IV misdemeanor, a Class V
23 misdemeanor, a traffic infraction, or any corresponding city or
24 village ordinance.

25 (3) The presentence investigation and report shall

1 include, when available, (a) an analysis of the circumstances
2 attending the commission of the crime, (b) the offender's history
3 of delinquency or criminality, (c) the offender's physical
4 and mental condition, (d) the offender's family situation and
5 background, including (i) whether the offender is a single parent
6 with custody of a minor child, (ii) what the living situation of
7 a minor child would be if his or her single parent or guardian
8 is incarcerated, and (iii) the criminal history, if any, of any
9 adult who may be responsible for a minor child if the minor child's
10 single parent or guardian is incarcerated, (e) the offender's
11 economic status, (f) the offender's education, (g) the offender's
12 occupation, and (h) the offender's personal habits, and (i) any
13 other matters that the probation officer deems relevant or the
14 court directs to be included regarding the offender and any
15 minor children for whom the offender is the single parent or
16 guardian. All local and state police agencies and Department of
17 Correctional Services adult correctional facilities shall furnish
18 to the probation officer copies of such criminal records, in any
19 such case referred to the probation officer by the court of proper
20 jurisdiction, as the probation officer shall require without cost
21 to the court or the probation officer. Such investigation shall
22 also include: ~~(a) Any~~ any written statements submitted to the county
23 attorney by a ~~victim,~~ and ~~(b) Any~~ written statements submitted to
24 ~~the~~ or probation officer by a victim.

25 (4) If there are no written statements submitted to the

1 probation officer, he or she shall certify to the court that:

2 (a) He or she has attempted to contact the victim; and

3 (b) If he or she has contacted the victim, such officer
4 offered to accept the written statements of the victim or to reduce
5 such victim's oral statements to writing.

6 For purposes of subsections (3) and (4) of this section,
7 the term victim shall be as defined in section 29-119.

8 (5) Before imposing sentence, the court may order the
9 offender to submit to psychiatric observation and examination for
10 a period of not exceeding sixty days or such longer period as the
11 court determines to be necessary for that purpose. The offender
12 may be remanded for this purpose to any available clinic or mental
13 hospital, or the court may appoint a qualified psychiatrist to make
14 the examination. The report of the examination shall be submitted
15 to the court.

16 (6) Any presentence report or psychiatric examination
17 shall be privileged and shall not be disclosed directly or
18 indirectly to anyone other than a judge, probation officers to whom
19 an offender's file is duly transferred, the probation administrator
20 or his or her designee, or others entitled by law to receive such
21 information, including personnel and mental health professionals
22 for the Nebraska State Patrol specifically assigned to sex offender
23 registration and community notification for the sole purpose of
24 using such report or examination for assessing risk and for
25 community notification of registered sex offenders. For purposes of

1 this subsection, mental health professional means (a) a practicing
2 physician licensed to practice medicine in this state under the
3 Medicine and Surgery Practice Act, (b) a practicing psychologist
4 licensed to engage in the practice of psychology in this state
5 as provided in section 38-3111, or (c) a practicing mental health
6 professional licensed or certified in this state as provided in
7 the Mental Health Practice Act. The court may permit inspection of
8 the report or examination of parts thereof by the offender or his
9 or her attorney, or other person having a proper interest therein,
10 whenever the court finds it is in the best interest of a particular
11 offender. The court may allow fair opportunity for an offender to
12 provide additional information for the court's consideration.

13 (7) If an offender is sentenced to imprisonment, a copy
14 of the report of any presentence investigation or psychiatric
15 examination shall be transmitted immediately to the Department of
16 Correctional Services. Upon request, the Board of Parole or the
17 Office of Parole Administration may receive a copy of the report
18 from the department.

19 (8) Notwithstanding subsection (6) of this section, the
20 Nebraska Commission on Law Enforcement and Criminal Justice under
21 the direction and supervision of the Chief Justice of the Supreme
22 Court shall have access to presentence investigations and reports
23 for the sole purpose of carrying out the study required under
24 subdivision (7) of section 81-1425. The commission shall treat such
25 information as confidential, and nothing identifying any individual

1 shall be released by the commission.

2 (9) Notwithstanding subsection (6) of this section, the
3 Supreme Court or an agent of the Supreme Court acting under the
4 direction and supervision of the Chief Justice shall have access to
5 psychiatric examinations and presentence investigations and reports
6 for research purposes. The Supreme Court and its agent shall
7 treat such information as confidential and nothing identifying any
8 individual shall be released.

9 Sec. 2. Original section 29-2261, Reissue Revised
10 Statutes of Nebraska, is repealed.