

## LEGISLATIVE BILL 422

Approved by the Governor April 18, 1998

Introduced by Matzke, 47; Bromm, 23; Bruning, 3; Witek, 31; at the request of the Governor

AN ACT relating to sentencing; to amend section 29-2523, Reissue Revised Statutes of Nebraska; to change the definition of aggravating circumstances; and to repeal the original section.  
Be it enacted by the people of the State of Nebraska,

Section 1. Section 29-2523, Reissue Revised Statutes of Nebraska, is amended to read:

29-2523. The aggravating and mitigating circumstances referred to in sections 29-2521 and 29-2522 shall be as follows:

(1) Aggravating Circumstances:

(a) The offender was previously convicted of another murder or a crime involving the use or threat of violence to the person, or has a substantial prior history of serious assaultive or terrorizing criminal activity;

(b) The murder was committed in an apparent effort to conceal the commission of a crime, or to conceal the identity of the perpetrator of a such crime;

(c) The murder was committed for hire, or for pecuniary gain, or the defendant hired another to commit the murder for the defendant;

(d) The murder was especially heinous, atrocious, cruel, or manifested exceptional depravity by ordinary standards of morality and intelligence;

(e) At the time the murder was committed, the offender also committed another murder;

(f) The offender knowingly created a great risk of death to at least several persons;

(g) The victim was a law enforcement officer or a public servant having lawful custody of the offender or another, or in the lawful performance of his or her official duties and the offender knew or should have known that the victim was a public servant performing his or her official duties;

(h) The crime murder was committed knowingly to disrupt or hinder the lawful exercise of any governmental function or the enforcement of the laws; or

(i) The victim was a law enforcement officer engaged in the lawful performance of his or her official duties as a law enforcement officer and the offender knew or reasonably should have known that the victim was a law enforcement officer.

The facts upon which the applicability of an aggravating circumstance depends must be proved beyond a reasonable doubt.

(2) Mitigating Circumstances:

(a) The offender has no significant history of prior criminal activity;

(b) The offender acted under unusual pressures or influences or under the domination of another person;

(c) The crime was committed while the offender was under the influence of extreme mental or emotional disturbance;

(d) The age of the defendant at the time of the crime;

(e) The offender was an accomplice in the crime committed by another person and his or her participation was relatively minor;

(f) The victim was a participant in the defendant's conduct or consented to the act; or

(g) At the time of the crime, the capacity of the defendant to appreciate the wrongfulness of his or her conduct or to conform his or her conduct to the requirements of law was impaired as a result of mental illness, mental defect, or intoxication.

Sec. 2. Original section 29-2523, Reissue Revised Statutes of Nebraska, is repealed.