

LEGISLATURE OF NEBRASKA  
ONE HUNDRED SIXTH LEGISLATURE  
SECOND SESSION

**LEGISLATIVE BILL 1180**

Introduced by Wayne, 13.

Read first time January 23, 2020

Committee: Judiciary

- 1 A BILL FOR AN ACT relating to criminal procedure; to amend sections
- 2 29-2004 and 29-2005, Revised Statutes Cumulative Supplement, 2018;
- 3 to change provisions relating to alternate jurors; to state intent
- 4 regarding construction; to harmonize provisions; and to repeal the
- 5 original sections.
- 6 Be it enacted by the people of the State of Nebraska,

1 Section 1. Section 29-2004, Revised Statutes Cumulative Supplement,  
2 2018, is amended to read:

3 29-2004 (1) All parties may stipulate that the jury may be selected  
4 up to thirty-one days prior to the date of trial. The stipulation must be  
5 unanimous among all parties and evidenced by a joint stipulation to the  
6 county court.

7 (2) In all cases, except as may be otherwise expressly provided, the  
8 accused shall be tried by a jury drawn, summoned, and impaneled according  
9 to provisions of the code of civil procedure, except that whenever in the  
10 opinion of the court the trial is likely to be a protracted one, the  
11 court may, immediately after the jury is impaneled and sworn, direct the  
12 calling of ~~one or two~~ additional jurors, to be known as alternate jurors.

13 (3)(a) The court may impanel up to six alternate jurors to replace  
14 any jurors who are unable to perform or who are disqualified from  
15 performing their duties.

16 (b) Alternate jurors must have the same qualifications and shall be  
17 selected and sworn in the same manner as any other juror.

18 (c) Alternate jurors shall replace jurors in the same sequence in  
19 which the alternates were selected. An alternate juror who replaces a  
20 juror has the same authority as the other jurors.

21 ~~(4) Such jurors shall be drawn from the same source and in the same~~  
22 ~~manner, and have the same qualifications as regular jurors, and be~~  
23 ~~subject to examination and challenge as such jurors, except that each~~  
24 ~~party shall be allowed one peremptory challenge to each alternate juror.~~  
25 The alternate jurors shall take the proper oath or affirmation and shall  
26 be seated near the regular jurors with equal facilities for seeing and  
27 hearing the proceedings in the cause, and shall attend at all times upon  
28 the trial of the cause in company with the regular jurors. They shall  
29 obey all orders and admonitions of the court, and if the regular jurors  
30 are ordered to be kept in the custody of an officer during the trial of  
31 the cause, the alternate jurors shall also be kept with the other jurors.

1        (5)(a) The court may retain alternate jurors after the jury retires  
2 to deliberate, except that if and, except as hereinafter provided, shall  
3 be discharged upon the final submission of the cause to the jury. If an  
4 information charging a violation of section 28-303 and in which the death  
5 penalty is sought contains a notice of aggravation, the alternate jurors  
6 shall be retained as provided in section 29-2520.

7        (b) The court must ensure that a retained alternate does not discuss  
8 the case with anyone until that alternate replaces a juror or is  
9 discharged. If an alternate replaces a juror after deliberations have  
10 begun, the court must instruct the jury to begin its deliberations anew.

11        (6)(a) Each party is entitled to the following number of additional  
12 peremptory challenges to prospective alternate jurors:

13        (i) One additional peremptory challenge is permitted when one or two  
14 alternates are impaneled;

15        (ii) Two additional peremptory challenges are permitted when three  
16 or four alternates are impaneled; and

17        (iii) Three additional peremptory challenges are permitted when five  
18 or six alternates are impaneled.

19        (b) The additional peremptory challenges provided in this subsection  
20 may only be used to remove alternate jurors.

21        (7) In construing and applying this section, courts shall consider  
22 Federal Rule of Criminal Procedure 24 and case law interpreting such  
23 rule. If, before the final submission of the cause a regular juror dies  
24 or is discharged, the court shall order the alternate juror, if there is  
25 but one, to take his or her place in the jury box. If there are two  
26 alternate jurors the court shall select one by lot, who shall then take  
27 his or her place in the jury box. After an alternate juror is in the jury  
28 box he or she shall be subject to the same rules as a regular juror.

29        Sec. 2. Section 29-2005, Revised Statutes Cumulative Supplement,  
30 2018, is amended to read:

31        29-2005    Except as otherwise provided in section 29-2004 for

1 peremptory challenges to alternate jurors:

2 (1) ~~Every~~ Every person arraigned for any crime punishable with  
3 death, or imprisonment for life, shall be admitted on his or her trial to  
4 a peremptory challenge of twelve jurors, and no more;

5 (2) ~~Every~~ every person arraigned for any offense that may be  
6 punishable by imprisonment for a term exceeding eighteen months and less  
7 than life, shall be admitted to a peremptory challenge of six jurors;

8 (3) ~~In and in~~ all other criminal trials, the defendant shall be  
9 allowed a peremptory challenge of three jurors; and -

10 (4) The attorney prosecuting on behalf of the state shall be  
11 admitted to a peremptory challenge of twelve jurors in all cases when the  
12 offense is punishable with death or imprisonment for life, six jurors  
13 when the offense is punishable by imprisonment for a term exceeding  
14 eighteen months and less than life, and three jurors in all other cases;  
15 ~~Provided, that in all cases where alternate jurors are called, as~~  
16 ~~provided in section 29-2004, then in that case both the defendant and the~~  
17 ~~attorney prosecuting for the state shall each be allowed one added~~  
18 ~~peremptory challenge to each alternate juror.~~

19 Sec. 3. Original sections 29-2004 and 29-2005, Revised Statutes  
20 Cumulative Supplement, 2018, are repealed.