

LEGISLATURE OF NEBRASKA  
NINETY-SEVENTH LEGISLATURE  
THIRD SPECIAL SESSION

**LEGISLATIVE BILL 1**

Introduced by Speaker Bromm, 23; at the request of the Governor

Read first time November 7, 2002

Committee: Judiciary

A BILL

1 FOR AN ACT relating to crimes and offenses; to amend sections  
2 29-1602, 29-2520, 29-2521, 29-2522, and 29-2524, Reissue  
3 Revised Statutes of Nebraska; to change procedures  
4 relating to information and sentencing for capital  
5 crimes; to provide intent; to harmonize provisions; to  
6 repeal the original sections; and to declare an  
7 emergency.

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

1           Section 1. Section 29-1602, Reissue Revised Statutes of  
2 Nebraska, is amended to read:

3           29-1602. (1) All informations shall be filed in the  
4 court having jurisdiction of the offense specified therein, by the  
5 prosecuting attorney of the proper county as informant. ~~He~~ The  
6 prosecuting attorney shall subscribe his or her name thereto and  
7 endorse thereon the names of the witnesses known to him or her at  
8 the time of filing the same; and at such time thereafter, as the  
9 court or a judge thereof in vacation, in its or his or her  
10 discretion, may prescribe, ~~he~~ the prosecuting attorney shall  
11 endorse thereon the names of such other witnesses as shall then be  
12 known to ~~him~~ the prosecuting attorney.

13           (2) Any information charging a violation of section  
14 28-303 shall also contain a notice of aggravation setting forth the  
15 aggravating circumstance or aggravating circumstances, if any,  
16 which the state intends to assert in the section 29-2521 sentence  
17 determination process.

18           (3) It shall be sufficient that a notice of aggravation  
19 define the aggravating circumstance or aggravating circumstances  
20 alleged in the language of section 29-2523.

21           (4) The state shall be permitted to add or amend a notice  
22 of aggravation and to endorse additional witnesses at any time up  
23 to and including thirty days prior to trial. Thereafter, the state  
24 may be permitted to add or amend a notice of aggravation and to  
25 endorse additional witnesses for good cause shown.

26           (5) The aggravating circumstance or aggravating  
27 circumstances alleged in a notice of aggravation are not elements  
28 of the crime defined by section 28-303, but are factual issues to

1 be addressed in the section 29-2521 sentence determination process.  
2 The fact that the information alleges an aggravating circumstance  
3 or aggravating circumstances shall not in any manner be disclosed  
4 to the jury prior to the initiation of the section 29-2521 sentence  
5 determination process.

6           Sec. 2.     (1) The Legislature hereby finds that, in  
7 response to the United States Supreme Court's Ring v. Arizona  
8 (2002) opinion, procedural changes should be made to statutes  
9 governing the imposition of the sentence of death in Nebraska.

10           (2) It is the intent of the Legislature that the  
11 modifications to the murder in the first degree sentence  
12 determination process created by this legislative bill are  
13 procedural only. It is also the intent of the Legislature that the  
14 murder in the first degree sentence determination process, as  
15 amended by this legislative bill, shall be applicable to any murder  
16 in the first degree sentence determination process commencing on or  
17 after the effective date of this act, regardless of the date on  
18 which the crime was committed.

19           (3) The Legislature also intends that the modifications  
20 to the murder in the first degree sentence determination process  
21 created by this legislative bill are not intended to alter, in any  
22 respect, the substantive provisions of sections 28-303, 29-2522,  
23 and 29-2523.

24           Sec. 3.     Section 29-2520, Reissue Revised Statutes of  
25 Nebraska, is amended to read:

26           29-2520. Whenever any person is found guilty of a  
27 violation of section 28-303, the district court shall ~~within seven~~  
28 ~~days fix a date for~~ begin the hearing on determination of the

1 sentence to be imposed pursuant to section 29-2521. Such  
2 determination shall be made by: (1) The judge who presided at the  
3 trial or who accepted the plea of guilty; (2) a panel of three  
4 judges including the judge who presided or accepted the plea, the  
5 two additional judges having been designated by the Chief Justice  
6 of the Supreme Court after receiving a request therefor from the  
7 presiding judge; or (3) a panel of three district judges named by  
8 the Chief Justice of the Supreme Court when such Chief Justice has  
9 determined that the presiding judge is disabled or disqualified  
10 after receiving a suggestion of such disability or disqualification  
11 from the clerk of the court in which the finding of guilty was  
12 entered.

13 Sec. 4. Section 29-2521, Reissue Revised Statutes of  
14 Nebraska, is amended to read:

15 29-2521. In the proceeding for determination of  
16 sentence, evidence may be presented as to any matter that the court  
17 deems relevant to sentence, and shall include matters relating to  
18 any of the aggravating or mitigating circumstances set forth in  
19 section 29-2523. Any such evidence which the court deems to have  
20 probative value may be received. The state and the defendant or  
21 his counsel shall be permitted to present argument for or against  
22 sentence of death. The court shall set forth the general order of  
23 procedure at the outset of the sentence determination proceeding.

24 (1) The determination of sentence for a person found guilty of a  
25 violation of section 28-303 shall be conducted in two phases: (a)  
26 An aggravation phase and (b) a penalty phase.

27 (2) The aggravation phase shall consist of the following  
28 procedures:

1           (a) The aggravation phase shall be tried to the jury  
2 which found the defendant guilty, unless a jury has been  
3 specifically waived by the defendant for the aggravation phase;

4           (b) Alternate jurors shall be retained and sequestered  
5 during the deliberation of the defendant's guilt and shall sit  
6 during the aggravation phase of the sentence determination process;

7           (c) If the defendant has been found guilty by the  
8 district court, without a jury, a jury shall be summoned by the  
9 district court to hear the aggravation phase unless an aggravation  
10 phase jury has been specifically waived by the defendant;

11           (d) If it becomes necessary for the district court to  
12 conduct a new determination of the defendant's sentence after the  
13 original jury has been discharged, a new jury shall be summoned for  
14 the aggravation phase of the sentence determination process;

15           (e) Evidence relevant to the existence of the aggravating  
16 circumstance or aggravating circumstances alleged in the  
17 information shall be heard by the jury or the district court if a  
18 jury has been waived;

19           (f) If the aggravation phase jury is the same jury that  
20 heard evidence and found the defendant guilty of murder in the  
21 first degree, the jury's aggravation phase verdict shall be based  
22 upon evidence offered at the trial and the aggravation phase;

23           (g) After the receipt of evidence and argument, the  
24 district court shall instruct the jury on the definition of the  
25 aggravating circumstance or aggravating circumstances alleged in  
26 the information and the state's burden to prove beyond a reasonable  
27 doubt the existence of each aggravating circumstance alleged in the  
28 information;

1           (h) The jury shall return a verdict specifically  
2 identifying each aggravating circumstance alleged and finding  
3 which, if any, of the aggravating circumstances alleged in the  
4 information have been proven to exist beyond a reasonable doubt;

5           (i) The verdict of the jury as to the existence of each  
6 aggravating circumstance alleged shall be unanimous;

7           (j) If the jury cannot reach a unanimous verdict with  
8 respect to an aggravating circumstance, that aggravating  
9 circumstance shall not be weighed in the penalty phase;

10           (k) Upon rendering the aggravation phase verdict, the  
11 jury shall be discharged;

12           (l) If a jury has been waived for the aggravation phase,  
13 the district court shall, after receipt of the aggravation phase  
14 evidence and argument, make written findings of fact based upon the  
15 trial and the aggravation phase proceeding, identifying which, if  
16 any, of the aggravating circumstances alleged in the information  
17 have been proven to exist beyond a reasonable doubt; and

18           (m) The aggravation phase verdict does not represent an  
19 appealable order or judgment of the district court. No appeal may  
20 be taken directly from the verdict rendered in the aggravation  
21 phase.

22           (3) The penalty phase shall consist of the following  
23 procedures:

24           (a) The penalty phase shall be tried before the judge of  
25 the district court or a district judge named by the Chief Justice  
26 of the Supreme Court when the Chief Justice has determined that the  
27 presiding judge is disabled or disqualified after receiving a  
28 suggestion of such disability or disqualification from the clerk of

1 the court in which the finding of guilty was entered;

2 (b) If no aggravating circumstance is found to exist in  
3 the aggravation phase, the district court shall sentence the  
4 defendant to the punishment for a Class IA felony;

5 (c) If one or more of the aggravating circumstances  
6 alleged in the information are found to exist in the aggravation  
7 phase, the district court shall then proceed to hear evidence of  
8 mitigation;

9 (d) Evidence may be presented to the district court as to  
10 any matter that the court deems relevant to mitigation, including,  
11 but not limited to, the mitigating circumstances set forth in  
12 section 29-2523; and

13 (e) After the receipt of evidence in mitigation and  
14 argument, the district court shall determine an appropriate  
15 sentence pursuant to section 29-2522.

16 Sec. 5. Section 29-2522, Reissue Revised Statutes of  
17 Nebraska, is amended to read:

18 29-2522. (1) After the hearing all of the evidence and  
19 arguments in the sentencing proceeding, the judge or judges for  
20 determination of sentence pursuant to section 29-2521, the district  
21 court shall fix the sentence at either death or life imprisonment,  
22 but such determination shall be based upon the following  
23 considerations:

24 (1) (a) Whether ~~sufficient~~ the aggravating circumstance  
25 or aggravating circumstances found to exist ~~to~~ justify imposition  
26 of a sentence of death;

27 (2) (b) Whether sufficient mitigating circumstances exist  
28 which approach or exceed the weight given to the aggravating

1 circumstances; or

2           ~~(3)~~ (c) Whether the sentence of death is excessive or  
3 disproportionate to the penalty imposed in similar cases,  
4 considering both the crime and the defendant.

5           (2) In each case, ~~in which the court imposes the death~~  
6 ~~sentence,~~ the determination of the court shall be in writing and  
7 shall be ~~supported by written findings of fact based upon the~~  
8 ~~records of the trial and the sentencing proceeding,~~ and referring  
9 refer to the aggravating and mitigating circumstances ~~involved~~  
10 weighed in its determination.

11           (3) If an order is entered sentencing the defendant to  
12 death, a date for execution shall not be fixed until after the  
13 conclusion of the appeal provided for by section 29-2525.

14           Sec. 6. Section 29-2524, Reissue Revised Statutes of  
15 Nebraska, is amended to read:

16           29-2524. Nothing in sections 25-1140.09, 28-303, 28-313,  
17 and 29-2519 to 29-2546 and section 2 of this act shall be in any  
18 way deemed to repeal or limit existing procedures for automatic  
19 review of capital cases, nor shall they in any way limit the right  
20 of the Supreme Court to reduce a sentence of death to a sentence of  
21 life imprisonment in accordance with the provisions of section  
22 29-2308, nor shall they limit the right of the Board of Pardons to  
23 commute any sentence of death to a sentence of life imprisonment.

24           Sec. 7. Original sections 29-1602, 29-2520, 29-2521,  
25 29-2522, and 29-2524, Reissue Revised Statutes of Nebraska, are  
26 repealed.

27           Sec. 8. Since an emergency exists, this act takes effect  
28 when passed and approved according to law.