

LEGISLATURE OF NEBRASKA
ONE HUNDRED SECOND LEGISLATURE
FIRST SESSION
LEGISLATIVE BILL 133

Introduced by Ashford, 20.

Read first time January 06, 2011

Committee: Judiciary

A BILL

1 FOR AN ACT relating to criminal procedure; to amend section 29-2261,
2 Reissue Revised Statutes of Nebraska, and section
3 29-2269, Revised Statutes Cumulative Supplement, 2010; to
4 require inclusion of sentencing costs in presentence
5 investigation reports; to provide for rules and
6 regulations; to harmonize provisions; and to repeal the
7 original sections.
8 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 an
4 offender has been convicted of a felony other than murder in the
5 first degree, the court shall not impose sentence without first
6 ordering a presentence investigation of the offender and according
7 due consideration to a written report of such investigation. When an
8 offender has been convicted of murder in the first degree and (a) a
9 jury renders a verdict finding the existence of one or more
10 aggravating circumstances as provided in section 29-2520 or (b)(i)
11 the information contains a notice of aggravation as provided in
12 section 29-1603 and (ii) the offender waives his or her right to a
13 jury determination of the alleged aggravating circumstances, the
14 court shall not commence the sentencing determination proceeding as
15 provided in section 29-2521 without first ordering a presentence
16 investigation of the offender and according due consideration to a
17 written report of such investigation.

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

23 (3) The presentence investigation and report shall
24 include, when available, an analysis of the circumstances attending
25 the commission of the crime, the offender's history of delinquency or

1 criminality, physical and mental condition, family situation and
2 background, economic status, education, occupation, and personal
3 habits, the costs to the state of the imposition of a statutory
4 maximum sentence, a statutory minimum sentence, or probation if
5 probation is an option, and any other matters that the probation
6 officer deems relevant or the court directs to be included. All local
7 and state police agencies and Department of Correctional Services
8 adult correctional facilities shall furnish to the probation officer
9 copies of such criminal records, in any such case referred to the
10 probation officer by the court of proper jurisdiction, as the
11 probation officer shall require without cost to the court or the
12 probation officer.

13 Such investigation shall also include:

14 (a) Any written statements submitted to the county
15 attorney by a victim; and

16 (b) Any written statements submitted to the probation
17 officer by a victim.

18 (4) If there are no written statements submitted to the
19 probation officer, he or she shall certify to the court that:

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

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

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

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

9 (6) Any presentence report or psychiatric examination
10 shall be privileged and shall not be disclosed directly or indirectly
11 to anyone other than a judge, probation officers to whom an
12 offender's file is duly transferred, the probation administrator or
13 his or her designee, or others entitled by law to receive such
14 information, including personnel and mental health professionals for
15 the Nebraska State Patrol specifically assigned to sex offender
16 registration and community notification for the sole purpose of using
17 such report or examination for assessing risk and for community
18 notification of registered sex offenders. For purposes of this
19 subsection, mental health professional means (a) a practicing
20 physician licensed to practice medicine in this state under the
21 Medicine and Surgery Practice Act, (b) a practicing psychologist
22 licensed to engage in the practice of psychology in this state as
23 provided in section 38-3111, or (c) a practicing mental health
24 professional licensed or certified in this state as provided in the
25 Mental Health Practice Act. The court may permit inspection of the

1 report or examination of parts thereof by the offender or his or her
2 attorney, or other person having a proper interest therein, whenever
3 the court finds it is in the best interest of a particular offender.
4 The court may allow fair opportunity for an offender to provide
5 additional information for the court's consideration.

6 (7) If an offender is sentenced to imprisonment, a copy
7 of the report of any presentence investigation or psychiatric
8 examination shall be transmitted immediately to the Department of
9 Correctional Services. Upon request, the Board of Parole or the
10 Office of Parole Administration may receive a copy of the report from
11 the department.

12 (8) Notwithstanding subsection (6) of this section, the
13 Nebraska Commission on Law Enforcement and Criminal Justice under the
14 direction and supervision of the Chief Justice of the Supreme Court
15 shall have access to presentence investigations and reports for the
16 sole purpose of carrying out the study required under subdivision (7)
17 of section 81-1425. The commission shall treat such information as
18 confidential, and nothing identifying any individual shall be
19 released by the commission.

20 (9) Notwithstanding subsection (6) of this section, the
21 Supreme Court or an agent of the Supreme Court acting under the
22 direction and supervision of the Chief Justice shall have access to
23 psychiatric examinations and presentence investigations and reports
24 for research purposes. The Supreme Court and its agent shall treat
25 such information as confidential and nothing identifying any

1 individual shall be released.

2 Sec. 2. The administrator shall adopt and promulgate
3 rules and regulations for purposes of determining the cost to the
4 state of sentencing options for inclusion in presentence
5 investigation reports pursuant to section 29-2261.

6 Sec. 3. Section 29-2269, Revised Statutes Cumulative
7 Supplement, 2010, is amended to read:

8 29-2269 Sections 29-2246 to 29-2269 and section 2 of this
9 act shall be known and may be cited as the Nebraska Probation
10 Administration Act.

11 Sec. 4. Original section 29-2261, Reissue Revised
12 Statutes of Nebraska, and section 29-2269, Revised Statutes
13 Cumulative Supplement, 2010, are repealed.