

LEGISLATURE OF NEBRASKA
ONE HUNDRED FOURTH LEGISLATURE
FIRST SESSION

LEGISLATIVE BILL 504

FINAL READING

Introduced by Krist, 10.

Read first time January 21, 2015

Committee: Judiciary

1 A BILL FOR AN ACT relating to criminal procedure; to amend section
2 29-2261, Revised Statutes Cumulative Supplement, 2014; to change
3 provisions relating to presentence reports and examinations; to
4 provide for access to substance abuse evaluations; and to repeal the
5 original section.

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

1 Section 1. Section 29-2261, Revised Statutes Cumulative Supplement,
2 2014, is amended to read:

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

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

21 (3) The presentence investigation and report shall include, when
22 available, an analysis of the circumstances attending the commission of
23 the crime, the offender's history of delinquency or criminality, physical
24 and mental condition, family situation and background, economic status,
25 education, occupation, and personal habits, and any other matters that
26 the probation officer deems relevant or the court directs to be included.
27 All local and state police agencies and Department of Correctional
28 Services adult correctional facilities shall furnish to the probation
29 officer copies of such criminal records, in any such case referred to the
30 probation officer by the court of proper jurisdiction, as the probation
31 officer shall require without cost to the court or the probation officer.

1 Such investigation shall also include:

2 (a) Any written statements submitted to the county attorney by a
3 victim; and

4 (b) Any written statements submitted to the probation officer by a
5 victim.

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

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

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

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

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

21 (6) Any presentence report, substance abuse evaluation, or
22 psychiatric examination shall be privileged and shall not be disclosed
23 directly or indirectly to anyone other than a judge, probation officers
24 to whom an offender's file is duly transferred, the probation
25 administrator or his or her designee, alcohol and drug counselors, mental
26 health practitioners, psychiatrists, and psychologists licensed or
27 certified under the Uniform Credentialing Act to conduct substance abuse
28 evaluations and treatment, or others entitled by law to receive such
29 information, including personnel and mental health professionals for the
30 Nebraska State Patrol specifically assigned to sex offender registration
31 and community notification for the sole purpose of using such report,

1 evaluation, or examination for assessing risk and for community
2 notification of registered sex offenders. For purposes of this
3 subsection, mental health professional means (a) a practicing physician
4 licensed to practice medicine in this state under the Medicine and
5 Surgery Practice Act, (b) a practicing psychologist licensed to engage in
6 the practice of psychology in this state as provided in section 38-3111,
7 or (c) a practicing mental health professional licensed or certified in
8 this state as provided in the Mental Health Practice Act.

9 (7) The court shall permit inspection of the presentence report,
10 substance abuse evaluation, or psychiatric examination or parts of the
11 report, evaluation, or examination, as determined by the court, by the
12 prosecuting attorney and defense counsel. Beginning July 1, 2016, such
13 inspection shall be by electronic access only unless the court determines
14 such access is not available to the prosecuting attorney or defense
15 counsel. The State Court Administrator shall determine and develop the
16 means of electronic access to such presentence reports, evaluations, and
17 examinations. Upon application by the prosecuting attorney or defense
18 counsel, the court may order that addresses, telephone numbers, and other
19 contact information for victims or witnesses named in the report,
20 evaluation, or examination be redacted upon a showing by a preponderance
21 of the evidence that such redaction is warranted in the interests of
22 public safety. The court may permit inspection of the presentence report,
23 substance abuse evaluation, or psychiatric examination or examination of
24 parts of the report, evaluation, or examination thereof by any the
25 ~~offender or his or her attorney,~~ or other person having a proper interest
26 therein, whenever the court finds it is in the best interest of a
27 particular offender. The court may allow fair opportunity for an offender
28 to provide additional information for the court's consideration.

29 (8 7) If an offender is sentenced to imprisonment, a copy of the
30 report of any presentence investigation, substance abuse evaluation, or
31 psychiatric examination shall be transmitted immediately to the

1 Department of Correctional Services. Upon request, the Board of Parole or
2 the Office of Parole Administration may receive a copy of the report from
3 the department.

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

11 Sec. 2. Original section 29-2261, Revised Statutes Cumulative
12 Supplement, 2014, is repealed.