

LEGISLATIVE BILL 1008
 Approved by the Governor April 11, 2000,
 with line-item vetoes. Figures have
 been changed to reflect vetoes not overridden.

Introduced by Chambers, 11; Brashear, 4

AN ACT relating to the criminal justice system; to amend sections 29-2261, 29-2521.02, and 81-1425, Reissue Revised Statutes of Nebraska, and Laws 1999, LB 76A, section 1; to provide duties for the Nebraska Commission on Law Enforcement and Criminal Justice; to appropriate and reappropriate funds; to authorize access to and judicial notice of certain reports; to repeal the original sections; and to declare an emergency.

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

Section 1. Section 29-2261, Reissue Revised Statutes of Nebraska, is amended to read:

29-2261. (1) Unless it is impractical to do so, when an offender has been convicted of a felony, the court shall not impose sentence without first ordering a presentence investigation of the offender and according due consideration to a written report of such investigation.

(2) A court may order a presentence investigation in any case.

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

Such investigation shall also include:

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

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

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

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

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

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

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

(6) Any presentence report or psychiatric examination shall be privileged and shall not be disclosed directly or indirectly to anyone other than a judge, probation officers to whom an offender's file is duly transferred, the probation administrator or his or her designee, or others entitled by law to receive such information. The court may permit inspection of the report or examination of parts thereof by the offender or his or her attorney, or other person having a proper interest therein, whenever the court finds it is in the best interest of a particular offender. The court may allow fair opportunity for an offender to provide additional information for the court's consideration.

(7) If an offender is sentenced to imprisonment, a copy of the report of any presentence investigation or psychiatric examination shall be transmitted forthwith to the Department of Correctional Services or, when the defendant is committed to the custody of a specific institution, to such institution.

(8) Notwithstanding subsection (6) of this section, the Nebraska Commission on Law Enforcement and Criminal Justice under the direction and

supervision of the Chief Justice of the Supreme Court shall have access to presentence investigations and reports for the sole purpose of carrying out the study required under subdivision (7) of section 81-1425. The commission shall treat such information as confidential, and nothing identifying any individual shall be released by the commission.

Sec. 2. Section 29-2521.02, Reissue Revised Statutes of Nebraska, is amended to read:

29-2521.02. (1) The Supreme Court shall within a reasonable time after July 22, 1978, review and analyze all cases involving criminal homicide committed on or after April 20, 1973. Such review and analysis shall examine ~~(1)~~ (a) the facts including mitigating and aggravating circumstances, ~~(2)~~ (b) the charges filed, ~~(3)~~ (c) the crime for which defendant was convicted, and ~~(4)~~ (d) the sentence imposed. Such review shall be updated as new criminal homicide cases occur.

(2) Following the transmittal of a report of the Nebraska Commission on Law Enforcement and Criminal Justice pursuant to subdivision (7) of section 81-1425 and subsequent reports updating such report, the Supreme Court may take judicial notice of such reports in undertaking the determinations required by sections 29-2521.01 to 29-2521.04.

Sec. 3. Section 81-1425, Reissue Revised Statutes of Nebraska, is amended to read:

81-1425. The executive director of the commission shall:

(1) Supervise and be responsible for the administration of the policies established by the commission;

(2) Establish a Jail Standards subdivision within the commission and establish, consolidate, or abolish any other administrative subdivision within the commission and appoint and remove for cause the heads thereof, and delegate appropriate powers and duties to them;

(3) Establish and administer projects and programs for the operation of the commission;

(4) Appoint and remove employees of the commission and delegate appropriate powers and duties to them;

(5) Make rules and regulations for the management and the administration of policies of the commission and the conduct of employees under his or her jurisdiction;

(6) Collect, develop, and maintain statistical information, records, and reports as the commission may determine relevant to its functions;

(7) Prior to August 1, 2001, review and analyze all cases involving criminal homicide committed on or after April 20, 1973. The review and analysis shall examine (a) the facts, including mitigating and aggravating circumstances, (b) to the extent such can be ascertained, the race, gender, religious preference, and economic status of the defendant and of the victim, (c) the charges filed, (d) the result of the judicial proceeding in each case, and (e) the sentence imposed. Upon the completion of such review, the report of such shall be transmitted to the Governor, the Clerk of the Legislature, and the Chief Justice of the Supreme Court. The review and analysis shall be updated as new cases of criminal homicide occur. The commission shall update such report annually to the parties named in this subdivision;

(8) Transmit monthly to the commission a report of the operations of the commission for the preceding calendar month;

(9) ~~(8)~~ Execute and carry out the provisions of all contracts, leases, and agreements authorized by the commission with agencies of federal, state, or local government, corporations, or persons;

(10) ~~(9)~~ Perform such additional duties as may be assigned to him or her by the commission, the chairperson of the commission, or by law; and

(11) ~~(10)~~ Exercise all powers and perform all duties necessary and proper in carrying out his or her responsibilities.

Sec. 4. Laws 1999, LB 76A, section 1, is amended to read:

Section 1. There is hereby appropriated (1) \$160,000 from the General Fund for FY1999-00 and (2) \$-0- from the General Fund for FY2000-01 to the Nebraska Commission on Law Enforcement and Criminal Justice, for Program 198, to aid in carrying out the provisions of Legislative Bill 76, Ninety-sixth Legislature, First Session, 1999, and this act.

No expenditures for permanent and temporary salaries and per diems for state employees shall be made from funds appropriated in this section.

Any unexpended balance existing on June 30, 2000, is hereby reappropriated.

Sec. 5. Original sections 29-2261, 29-2521.02, and 81-1425, Reissue Revised Statutes of Nebraska, and Laws 1999, LB 76A, section 1, are repealed.

Sec. 6. Since an emergency exists, this act takes effect when passed and approved according to law.