

LEGISLATURE OF NEBRASKA  
NINETY-SEVENTH LEGISLATURE  
SECOND SESSION

**LEGISLATIVE BILL 1109**

Introduced by Brashear, 4  
Read first time January 15, 2002  
Committee: Judiciary

A BILL

1 FOR AN ACT relating to criminal procedure; to amend sections  
2 29-1912, 29-3001, 29-3004, and 29-3504, Reissue Revised  
3 Statutes of Nebraska, and section 29-2261, Revised  
4 Statutes Supplement, 2000; to change provisions relating  
5 to discovery and postconviction proceedings; to authorize  
6 the use and disclosure of presentence investigations and  
7 reports by the Nebraska Commission on Law Enforcement and  
8 Criminal Justice as prescribed; to provide for fees; to  
9 redefine the term administration of criminal justice in  
10 the Security, Privacy, and Dissemination of Criminal  
11 History Information Act; and to repeal the original  
12 sections.  
13 Be it enacted by the people of the State of Nebraska,

1                   Section 1. Section 29-1912, Reissue Revised Statutes of  
2 Nebraska, is amended to read:

3                   29-1912. (1) When a defendant is charged with a felony  
4 or when a defendant is charged with a misdemeanor or a violation of  
5 a city or village ordinance for which imprisonment is a possible  
6 penalty, he or she may request the court where the case is to be  
7 tried, at any time after the filing of the indictment, information,  
8 or complaint, to order the prosecuting attorney to permit the  
9 defendant to inspect and copy or photograph:

10                   (a) The defendant's statement, if any. For purposes of  
11 this subdivision, statement ~~shall mean~~ means a written statement  
12 made by the defendant and signed or otherwise adopted or approved  
13 by him or her, or a stenographic, mechanical, electrical, or other  
14 recording, or a transcription thereof, which is a substantially  
15 verbatim recital of an oral statement made by the defendant to an  
16 agent of the prosecution, state, or political subdivision thereof,  
17 and recorded contemporaneously with the making of such oral  
18 statement;

19                   (b) The defendant's prior criminal record, if any;

20                   (c) The defendant's recorded testimony before a grand  
21 jury;

22                   (d) The names and addresses of witnesses on whose  
23 evidence the charge is based;

24                   (e) The results and reports of physical or mental  
25 examinations, ~~and of~~ scientific tests, or experiments made in  
26 connection with the particular case, or copies thereof; ~~and~~

27                   (f) Documents, papers, books, accounts, letters,  
28 photographs, objects, or other tangible things of whatsoever kind

1 or nature which could be used as evidence by the prosecuting  
2 authority; and

3 (g) Investigative law enforcement reports, including  
4 witness statements.

5 (2) The court may issue such an order pursuant to ~~the~~  
6 ~~provisions~~ of this section. In the exercise of its judicial  
7 discretion the court shall consider among other things whether:

8 (a) The request is material to the preparation of the  
9 defense;

10 (b) The request is not made primarily for the purpose of  
11 harassing the prosecution or its witnesses;

12 (c) The request, if granted, would not unreasonably delay  
13 the trial of the offense and an earlier request by the defendant  
14 could not have reasonably been made;

15 (d) There is no substantial likelihood that the request,  
16 if granted, would preclude a just determination of the issues at  
17 the trial of the offense; or

18 (e) The request, if granted, would not result in the  
19 possibility of bodily harm to, or coercion of, witnesses.

20 (3) Whenever the court refuses to grant an order pursuant  
21 to ~~the provisions~~ of this section, it shall render its findings in  
22 writing together with the facts upon which the findings are based.

23 (4) Whenever the prosecuting attorney believes that the  
24 granting of an order under ~~the provisions~~ of this section will  
25 result in the possibility of bodily harm to witnesses or that  
26 witnesses will be coerced, the court may permit him or her to make  
27 such a showing in the form of a written statement to be inspected  
28 by the court alone. The statement shall be sealed and preserved in

1 the records of the court to be made available to the appellate  
2 court in the event of an appeal by the defendant.

3 Sec. 2. Section 29-2261, Revised Statutes Supplement,  
4 2000, is amended to read:

5 29-2261. (1) Unless it is impractical to do so, when an  
6 offender has been convicted of a felony, the court shall not impose  
7 sentence without first ordering a presentence investigation of the  
8 offender and according due consideration to a written report of  
9 such investigation.

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

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

24 Such investigation shall also include:

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

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

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

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

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

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

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

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

28           (7) If an offender is sentenced to imprisonment, a copy

1 of the report of any presentence investigation or psychiatric  
2 examination shall be transmitted forthwith to the Department of  
3 Correctional Services or, when the defendant is committed to the  
4 custody of a specific institution, to such institution.

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

13 (9) Data obtained from presentence investigations and  
14 reports used to complete the study shall not be deemed confidential  
15 and may be disclosed to persons, organizations, or agencies. The  
16 release of such information pursuant to this section shall not make  
17 otherwise confidential information a public record. The commission  
18 may charge and collect a reasonable fee that will recover the  
19 commission's cost of distribution of the data. The commission may  
20 provide access to such information for viewing purposes by  
21 electronic means, if available, under security provisions which  
22 assure the integrity and security of such information and may  
23 charge and collect a fee that recovers such costs.

24 Sec. 3. Section 29-3001, Reissue Revised Statutes of  
25 Nebraska, is amended to read:

26 29-3001. (1) A prisoner in custody under sentence and  
27 claiming a right to be released on the ground that there was such a  
28 denial or infringement of the rights of the prisoner as to render

1 the judgment void or voidable under the Constitution of this state  
2 or the Constitution of the United States, may file a verified  
3 motion ~~at any time~~ in the court which imposed such sentence,  
4 stating the grounds relied upon, and asking the court to vacate or  
5 set aside the sentence. The motion may be filed at any time except  
6 as provided in subsection (3) of this section.

7           (2) Unless the motion and the files and records of the  
8 case show to the satisfaction of the court that the prisoner is  
9 entitled to no relief, the court shall cause notice thereof to be  
10 served on the county attorney, grant a prompt hearing thereon, and  
11 determine the issues and make findings of fact and conclusions of  
12 law with respect thereto. If the court finds that there was such a  
13 denial or infringement of the rights of the prisoner as to render  
14 the judgment void or voidable under the Constitution of this state  
15 or the Constitution of the United States, the court shall vacate  
16 and set aside the judgment and shall discharge the prisoner or  
17 resentence him or her or grant a new trial as may appear  
18 appropriate. Proceedings under ~~the provisions of~~ sections 29-3001  
19 to 29-3004 shall be civil in nature. Costs shall be taxed as in  
20 habeas corpus cases.

21           (3) A court may entertain and determine such motion  
22 without requiring the production of the prisoner, whether or not a  
23 hearing is held. Testimony of the prisoner or other witnesses may  
24 be offered by deposition. The court need not entertain a second  
25 motion or successive motions for similar relief on behalf of the  
26 same prisoner. If the grounds stated by the prisoner in a second  
27 or successive motion for relief could have been asserted by the  
28 prisoner in a direct appeal or prior motion or were in existence

1 and not raised at the time a prior motion was asserted, the court  
2 shall dismiss such motion unless the court determines that there is  
3 a substantial likelihood of the prisoner succeeding on the merits  
4 of his or her claim.

5           Sec. 4.   Section 29-3004, Reissue Revised Statutes of  
6 Nebraska, is amended to read:

7           29-3004.   (1) The district court may appoint not to  
8 exceed two attorneys to represent the prisoners in all proceedings  
9 under sections 29-3001 to 29-3004. In a motion for postconviction  
10 relief in a capital case, the district court shall appoint two  
11 attorneys.

12           (2) The district court, upon hearing the application,  
13 shall fix reasonable expenses and fees, and the county board shall  
14 allow payment to the attorney or attorneys in the full amount  
15 determined by the court.

16           (3) The attorney or attorneys shall be competent and  
17 shall provide effective counsel. In a capital case at least one  
18 attorney shall:

19           (a) Have been admitted to the practice of law in the  
20 State of Nebraska for at least seven years;

21           (b) Be an experienced and active trial practitioner with  
22 at least five years' experience in criminal litigation, including  
23 felony litigation;

24           (c) Have prior experience as counsel in at least three  
25 jury or bench trials of serious and complex criminal cases; and

26           (d) Have prior experience as counsel in at least three  
27 cases under sections 29-3001 to 29-3004.

28           Sec. 5.   Section 29-3504, Reissue Revised Statutes of

1 Nebraska, is amended to read:

2           29-3504. Administration of criminal justice shall mean  
3 performance of any of the following activities: Detection,  
4 apprehension, detention, pretrial release, pretrial diversion,  
5 posttrial release, prosecution, defense by a full-time public  
6 defender's office, defense by the Commission on Public Advocacy,  
7 adjudication, correctional supervision, or rehabilitation of  
8 accused persons or criminal offenders. The administration of  
9 criminal justice shall include criminal identification activities  
10 and the collection, storage, and dissemination of criminal history  
11 record information.

12           Sec. 6. Original sections 29-1912, 29-3001, 29-3004, and  
13 29-3504, Reissue Revised Statutes of Nebraska, and section 29-2261,  
14 Revised Statutes Supplement, 2000, are repealed.