

LEGISLATURE OF NEBRASKA  
NINETY-EIGHTH LEGISLATURE  
FIRST SESSION

**LEGISLATIVE BILL 781**

Introduced by Kruse, 13

Read first time January 22, 2003

Committee: Judiciary

A BILL

1 FOR AN ACT relating to the death penalty; to amend sections 28-303,  
2 29-2027, 29-2519, and 29-2524, Reissue Revised Statutes  
3 of Nebraska, as amended by sections 3, 7, 10, and 16,  
4 Legislative Bill 1, Ninety-seventh Legislature, Third  
5 Special Session, 2002, and section 29-2523, Revised  
6 Statutes Supplement, 2002, as amended by section 15,  
7 Legislative Bill 1, Ninety-seventh Legislature, Third  
8 Special Session, 2002; to prohibit the application of the  
9 death penalty on the basis of race; to provide for a  
10 hearing; to harmonize provisions; and to repeal the  
11 original sections.

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

1                   Section 1.   Section 28-303, Reissue Revised Statutes of  
2 Nebraska, as amended by section 3, Legislative Bill 1,  
3 Ninety-seventh Legislature, Third Special Session, 2002, is amended  
4 to read:

5                   28-303.    A person commits murder in the first degree if  
6 he or she kills another person (1) purposely and with deliberate  
7 and premeditated malice, or (2) in the perpetration of or attempt  
8 to perpetrate any sexual assault in the first degree, arson,  
9 robbery, kidnapping, hijacking of any public or private means of  
10 transportation, or burglary, or (3) by administering poison or  
11 causing the same to be done; or if by willful and corrupt perjury  
12 or subornation of the same he or she purposely procures the  
13 conviction and execution of any innocent person. The determination  
14 of whether murder in the first degree shall be punished as a Class  
15 I or Class IA felony shall be made pursuant to sections 29-2519 to  
16 29-2524 ~~and section 13 of this act~~ and section 4 of this act.

17                   Sec. 2.    Section 29-2027, Reissue Revised Statutes of  
18 Nebraska, as amended by section 7, Legislative Bill 1,  
19 Ninety-seventh Legislature, Third Special Session, 2002, is amended  
20 to read:

21                   29-2027.    In all trials for murder the jury before whom  
22 such trial is had, if they find the prisoner guilty thereof, shall  
23 ascertain in their verdict whether it is murder in the first or  
24 second degree or manslaughter; and if such person is convicted by  
25 confession in open court, the court shall proceed by examination of  
26 witnesses in open court, to determine the degree of the crime, and  
27 shall pronounce sentence accordingly or as provided in sections  
28 29-2519 to 29-2524 ~~and section 13 of this act~~ and section 4 of this

1 act for murder in the first degree.

2           Sec. 3.     Section 29-2519, Reissue Revised Statutes of  
3 Nebraska, as amended by section 10, Legislative Bill 1,  
4 Ninety-seventh Legislature, Third Special Session, 2002, is amended  
5 to read:

6           29-2519.   (1) The Legislature hereby finds that it is  
7 reasonable and necessary to establish mandatory standards for the  
8 imposition of the sentence of death; that the imposition of the  
9 death penalty in every instance of the commission of the crimes  
10 specified in section 28-303 fails to allow for mitigating factors  
11 which may dictate against the penalty of death; and that the  
12 rational imposition of the death sentence requires the  
13 establishment of specific legislative guidelines to be applied in  
14 individual cases by the court. The Legislature therefor determines  
15 that the death penalty should be imposed only for the crimes set  
16 forth in section 28-303 and, in addition, that it shall only be  
17 imposed in those instances when the aggravating circumstances  
18 existing in connection with the crime outweigh the mitigating  
19 circumstances, as set forth in sections 29-2520 to 29-2524 ~~and~~  
20 ~~section 13 of this act~~ and section 4 of this act.

21           (2) The Legislature hereby finds and declares that:

22           (a) The decision of the United States Supreme Court in  
23 Ring v. Arizona (2002) requires that Nebraska revise its sentencing  
24 process in order to ensure that rights of persons accused of murder  
25 in the first degree, as required under the Sixth and Fourteenth  
26 Amendments of the United States Constitution, are protected;

27           (b) The changes made by ~~this legislative bill~~ Laws 2002,  
28 LB 1, Ninety-seventh Legislature, Third Special Session, are

1 intended to be procedural only in nature and ameliorative of the  
2 state's prior procedures for determination of aggravating  
3 circumstances in the sentencing process for murder in the first  
4 degree;

5 (c) The changes made by ~~this legislative bill~~ Laws 2002,  
6 LB 1, Ninety-seventh Legislature, Third Special Session, are not  
7 intended to alter the substantive provisions of sections 28-303 and  
8 29-2520 to 29-2524 and section 4 of this act;

9 (d) The aggravating circumstances defined in section  
10 29-2523 have been determined by the United States Supreme Court to  
11 be "functional equivalents of elements of a greater offense" for  
12 purposes of the defendant's Sixth Amendment right, as applied to  
13 the states under the Fourteenth Amendment, to a jury determination  
14 of such aggravating circumstances, but the aggravating  
15 circumstances are not intended to constitute elements of the crime  
16 generally unless subsequently so required by the state or federal  
17 constitution; and

18 (e) To the extent that such can be applied in accordance  
19 with state and federal constitutional requirements, it is the  
20 intent of the Legislature that the changes to the murder in the  
21 first degree sentencing process made by ~~this legislative bill~~ Laws  
22 2002, LB 1, Ninety-seventh Legislature, Third Special Session,  
23 shall apply to any murder in the first degree sentencing proceeding  
24 commencing on or after ~~the effective date of this act~~ November 23,  
25 2002.

26 Sec. 4. (1) No person convicted of a crime for which  
27 there is a possible death sentence shall be subject to or given a  
28 sentence of death if such sentence was sought or imposed on the

1 basis of race.

2 (2) A finding that race was the basis of the decision to  
3 seek the death penalty may be established if the court finds that  
4 race was a significant factor in the decision to seek the death  
5 penalty at the time the death sentence was sought.

6 (3) Evidence relevant to establish a finding that race  
7 was the basis of the decision to seek the death penalty may include  
8 statistical evidence or other evidence, or both, that the death  
9 penalty was sought significantly more frequently:

10 (a) Upon persons of one race than upon persons of another  
11 race;

12 (b) Upon persons charged with capital offenses against  
13 persons of one race than upon persons charged with capital offenses  
14 against persons of another race.

15 (4) The defendant shall state with particularity how the  
16 evidence supports a claim that racial considerations were a  
17 significant factor in the decision to seek a death sentence in his  
18 or her case. The court shall schedule a hearing on the claim and  
19 shall prescribe a time for the submission of evidence by both  
20 parties. If the court finds that race was a significant factor in  
21 the basis to seek the death sentence, the court shall order that  
22 the death sentence shall not be sought.

23 (5) The defendant shall have the burden of proof by a  
24 preponderance of the evidence that race was a significant factor in  
25 the decision to seek the death penalty. The state may offer  
26 evidence in rebuttal of the claims or evidence of the defendant.

27 Sec. 5. Section 29-2523, Revised Statutes Supplement,  
28 2002, as amended by section 15, Legislative Bill 1, Ninety-seventh

1 Legislature, Third Special Session, 2002, is amended to read:

2           29-2523.     The aggravating and mitigating circumstances  
3 referred to in sections 29-2519 to 29-2524 ~~and section 13 of this~~  
4 ~~act~~ and section 4 of this act shall be as follows:

5           (1) Aggravating Circumstances:

6           (a) The offender was previously convicted of another  
7 murder or a crime involving the use or threat of violence to the  
8 person, or has a substantial prior history of serious assaultive or  
9 terrorizing criminal activity;

10           (b) The murder was committed in an effort to conceal the  
11 commission of a crime, or to conceal the identity of the  
12 perpetrator of such crime;

13           (c) The murder was committed for hire, or for pecuniary  
14 gain, or the defendant hired another to commit the murder for the  
15 defendant;

16           (d) The murder was especially heinous, atrocious, cruel,  
17 or manifested exceptional depravity by ordinary standards of  
18 morality and intelligence;

19           (e) At the time the murder was committed, the offender  
20 also committed another murder;

21           (f) The offender knowingly created a great risk of death  
22 to at least several persons;

23           (g) The victim was a public servant having lawful custody  
24 of the offender or another in the lawful performance of his or her  
25 official duties and the offender knew or should have known that the  
26 victim was a public servant performing his or her official duties;

27           (h) The murder was committed knowingly to disrupt or  
28 hinder the lawful exercise of any governmental function or the

1 enforcement of the laws; or

2 (i) The victim was a law enforcement officer engaged in  
3 the lawful performance of his or her official duties as a law  
4 enforcement officer and the offender knew or reasonably should have  
5 known that the victim was a law enforcement officer.

6 (2) Mitigating Circumstances:

7 (a) The offender has no significant history of prior  
8 criminal activity;

9 (b) The offender acted under unusual pressures or  
10 influences or under the domination of another person;

11 (c) The crime was committed while the offender was under  
12 the influence of extreme mental or emotional disturbance;

13 (d) The age of the defendant at the time of the crime;

14 (e) The offender was an accomplice in the crime committed  
15 by another person and his or her participation was relatively  
16 minor;

17 (f) The victim was a participant in the defendant's  
18 conduct or consented to the act; or

19 (g) At the time of the crime, the capacity of the  
20 defendant to appreciate the wrongfulness of his or her conduct or  
21 to conform his or her conduct to the requirements of law was  
22 impaired as a result of mental illness, mental defect, or  
23 intoxication.

24 Sec. 6. Section 29-2524, Reissue Revised Statutes of  
25 Nebraska, as amended by section 16, Legislative Bill 1,  
26 Ninety-seventh Legislature, Third Special Session, 2002, is amended  
27 to read:

28 29-2524. Nothing in sections 25-1140.09, 28-303, 28-313,

1 and 29-2519 to 29-2546 ~~and section 13 of this act~~ and section 4 of  
2 this act shall be in any way deemed to repeal or limit existing  
3 procedures for automatic review of capital cases, nor shall they in  
4 any way limit the right of the Supreme Court to reduce a sentence  
5 of death to a sentence of life imprisonment without parole in  
6 accordance with the provisions of section 29-2308, nor shall they  
7 limit the right of the Board of Pardons to commute any sentence of  
8 death to a sentence of life imprisonment without parole.

9           Sec. 7. Original sections 28-303, 29-2027, 29-2519, and  
10 29-2524, Reissue Revised Statutes of Nebraska, as amended by  
11 sections 3, 7, 10, and 16, Legislative Bill 1, Ninety-seventh  
12 Legislature, Third Special Session, 2002, and section 29-2523,  
13 Revised Statutes Supplement, 2002, as amended by section 15,  
14 Legislative Bill 1, Ninety-seventh Legislature, Third Special  
15 Session, 2002, are repealed.