

One Hundred Third Legislature - First Session - 2013

Introducer's Statement of Intent

LB542

Chairperson: Senator Brad Ashford

Committee: Judiciary

Date of Hearing: February 22, 2013

The following constitutes the reasons for this bill and the purposes which are sought to be accomplished thereby:

The offending statutory language repealed by LB 542 is section 29-2523(1) (d):

The murder was especially heinous, atrocious, cruel, or manifested exceptional depravity by ordinary standards of morality and intelligence. . .

The U.S. Supreme Court has ruled that a mandatory death sentence is unconstitutional for its failure to give consideration to the individualized characteristics of defendants.

In an attempt to distinguish a death penalty case from an “ordinary” murder, a scheme of “aggravating” circumstances was devised, at least one of which must be present to warrant a death sentence. Section 29-2523(1) (d) is one such “aggravator.”

It is the most litigated, judicially “interpreted, tweaked and defined”, confusing, unworkable, disagreed-upon aggravator in the litter. No one knows precisely what it means; no one can say precisely what it means – because it is not susceptible of precise meaning.

The best efforts of Bench & Bar to bring order out of the statutory chaos have proved to be futile. Almost every attempt by the courts has only further muddied the legal waters.

In criminal law, especially where a life literally hangs n the balance, vagueness, indefiniteness, uncertainty are unacceptable and offend against both the U.S. and the Nebraska Constitutions. Overturning death sentences has resulted.

The only consensus prosecutors, defense counsel, and courts appear to have reached is that the offending “aggravator” is unworkable, unusable and, therefore, incapable of constitutional application.

The only reasonable, practical course regarding section 29-2523(1) (d) is: go, it should; go, it must; and when LB 542 is enacted into law, go, it shall.

Confirming, is the fact that Douglas County Attorney Don Kleine, in a recent death penalty case (relying on research of office staff) decided against relying on the “aggravator” due to its problematic baggage picked up by way of varying judicial rulings that added to and subtracted from the “meaning” and “application” of the provision, leaving doubt and uncertainty in their wake.

In point of inescapable legal fact, section 29-2523(1) (d) has morphed into little more than extremely troubling statutory surplusage whose primary “contribution” to death penalty litigation continues to be the spawning of more (unpredictable in its outcome) litigation.

No longer should it encumber the Statutes.

Principal Introducer: _____

Senator Ernie Chambers