

LEGISLATIVE BILL 146

Approved by the Governor March 24, 1973

Introduced by Chambers, 11

AN ACT relating to crimes and punishment; to abolish the death penalty; to amend sections 29-2301 and 29-2306, Reissue Revised Statutes of Nebraska, 1943, and sections 24-342, 28-401, and 28-417, Revised Statutes Supplement, 1972; and to repeal the original sections, and also sections 29-2306.01, 29-2306.02, 29-2306.03, 29-2307, 29-2501 to 29-2508, 29-2510, 29-2512 to 29-2515, 29-2517, and 29-2518, Reissue Revised Statutes of Nebraska, 1943, and sections 29-2509, 29-2511, and 29-2516, Revised Statutes Supplement, 1972.

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

Section 1. That section 24-342, Revised Statutes Supplement, 1972, be amended to read as follows:

24-342. It shall be the duty of such reporter to furnish on the application of the county attorney, or any party to a suit in which a stenographic report of the proceedings has been made, ~~upon receipt of notice from the clerk of the district court as provided in section 29-2306-02, or~~ upon the filing of a praecipe for a bill of exceptions by an appealing party in the office of the clerk of the district court as provided in section 25-1140, a transcribed copy of the proceedings so recorded, or any part thereof. The reporter shall be entitled to receive, in addition to his salary, a fee of forty-five cents per hundred words, to be paid by the party requesting the same; except (1) where such copy is required by the county attorney, his fee therefor shall be paid by the county in the same manner as other claims are paid, or (2) where the defendant in a criminal case, after conviction, shall make an affidavit that he is unable by reason of his poverty to pay for such copy, the court or judge thereof may, by order endorsed on such affidavit, direct the reporter to deliver such transcribed copy to such defendant, and his fees fee therefor shall be paid by the county in the same manner as other claims are allowed and paid. ~~7-or-(3)-when-such copy-is-prepared-in-any-criminal-case-in-which-the sentence-adjudged-is-capital-his-fees-therefor-shall-be paid-by-the-county-in-the-same-manner-as-other-claims-are allowed-or-paid.~~ The procedure for preparation,

settlement, signature, allowance, certification, filing, and amendment of a bill of exceptions shall be regulated and governed by rules of practice prescribed by the Supreme Court. The fee paid shall be taxed, by the clerk of the district court to the party against whom the judgment or decree is rendered, except as otherwise ordered by the presiding district judge.

Sec. 2. That section 28-401, Revised Statutes Supplement, 1972, be amended to read as follows:

28-401. Whoever shall purposely and of deliberate and premeditated malice or in the perpetration of or attempt to perpetrate any rape, arson, robbery or burglary, or by administering poison, or causing the same to be done, kill another; or, whoever by willful and corrupt perjury or subornation of the same, shall purposely procure the conviction and execution of any innocent person, every person so offending shall be deemed guilty of murder in the first degree, and upon conviction thereof shall ~~suffer death or shall~~ be imprisoned in the Nebraska Penal and Correctional Complex during life. ~~if the accused is found guilty by a jury, they shall fix the punishment by their verdict; upon a plea of guilty, or after a finding of guilt by the court sitting without a jury, and after the defendant has been fully informed of his constitutional rights, the punishment shall be fixed by the court.~~

Sec. 3. That section 28-417, Revised Statutes Supplement, 1972, be amended to read as follows:

28-417. Whoever shall kidnap or forcibly or fraudulently carry off or decoy out of this state any person or persons or shall arrest or imprison any person or persons, with the intention of having such person or persons carried out of the state, unless it be in pursuance of the laws thereof, shall be confined in the Nebraska Penal and Correctional Complex not less than three nor more than twenty years. Whoever shall unlawfully carry off or decoy, entice away, secrete or imprison any person, for the purpose of extorting from such person or from his or her relatives or friends any money, property or promise, or for the purpose of compelling the performance of any act by such person or by any other person, association or corporation, shall upon conviction be imprisoned in the Nebraska Penal and Correctional Complex for not less than three nor more than fifty years. Whoever, having for any of the purposes aforesaid unlawfully carried off or enticed away, decoyed, secreted or imprisoned any person, shall in furtherance of any such purpose, do or threaten to do any injury to the person so carried off, decoyed, enticed

away, secreted or imprisoned, such person so offending shall upon conviction suffer death if the jury shall so direct, or be imprisoned in the Nebraska Penal and Correctional Complex for not less than three nor more than fifty years as determined by the court. If the accused is found guilty by a jury, they shall fix the punishment by their verdict; upon a plea of guilty, or after a finding of guilt by the court sitting without a jury, and after the defendant has been fully informed of his constitutional rights, the punishment shall be fixed by the court. Whoever shall threaten to carry off, entice away, secrete or imprison any person for the purpose of extorting money from such person, or from his or her relatives or friends, shall upon conviction be imprisoned in the Nebraska Penal and Correctional Complex not less than one nor more than twenty years.

Sec. 4. That section 29-2301, Reissue Revised Statutes of Nebraska, 1943, be amended to read as follows:

29-2301. When a person shall be convicted of an offense, except when the punishment is capital, and shall give notice to the court of his intention to apply for a writ of error, the court may, on application of the person so convicted, suspend the execution of the sentence or judgment against him for one month in order to give the person so convicted an opportunity to apply for such writ. When any such conviction is of an offense the punishment whereof is capital, notice of intention to apply for a writ of error shall not be required, and at least one hundred days shall intervene between the date of such sentence and judgment, and the day appointed for the execution thereof. Where the defendant is, prior to pronouncement of judgment, at liberty under bail, the court, in its discretion, may allow the defendant to continue at liberty under his bail bond during the period of suspension of sentence authorized by this section. If the defendant is not at liberty under bail, he may be admitted to bail during the period of suspension of sentence, as provided in section 29-901.

Sec. 5. That section 29-2306, Reissue Revised Statutes of Nebraska, 1943, be amended to read as follows:

29-2306. In all criminal cases except when the punishment is capital, writs of error shall be issued by the Clerk of the Supreme Court upon receipt by him from the clerk of the district court of a certified copy of the notice of appeal and of the docket fee which has been filed and paid as provided in section 25-1912. In case a defendant in a criminal case shall, within one month

after the rendition of the judgment, order or sentence, file an affidavit with the clerk of the district court that he is unable by reason of poverty to pay the costs, then no payment of the docket fee shall be required of him. The clerk of the district court shall forward a certified copy of such affidavit to the Clerk of the Supreme Court and in cases where such affidavit is filed, the Supreme Court shall acquire jurisdiction of the case when the notice of appeal is filed with the clerk of the district court. In cases in which such affidavits of poverty have been filed, the amount of the costs shall be endorsed on the mandate and the same shall be paid by the county in which the indictment was found. The filing by a defendant or by the county attorney in a criminal case of notice of appeal with the clerk of the district court shall be deemed an application for a writ of error.

Sec. 6. That original sections 29-2301 and 29-2306, Reissue Revised Statutes of Nebraska, 1943, and sections 24-342, 28-401, and 28-417, Revised Statutes Supplement, 1972, and also sections 29-2306.01, 29-2306.02, 29-2306.03, 29-2307, 29-2501 to 29-2508, 29-2510, 29-2512 to 29-2515, 29-2517, and 29-2518, Reissue Revised Statutes of Nebraska, 1943, and sections 29-2509, 29-2511, and 29-2516, Revised Statutes Supplement, 1972, are repealed.