

## LEGISLATIVE BILL 711

Passed over the Governor's veto April 19, 1978

Introduced by Chambers, 11

AN ACT to amend section 29-2522, Reissue Revised Statutes of Nebraska, 1943, and section 29-2524, Reissue Revised Statutes of Nebraska, 1943, as amended by section 23, Legislative Bill 748, Eighty-fifth Legislature, Second Session, 1978, relating to criminal procedure; to require a review and analysis of certain cases; to provide guidelines for sentencing in criminal homicide cases; and to repeal the other sections.

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

Section 1. The Legislature hereby finds that:

(1) Life is the most valuable possession of a human being, and before taking it, the state should apply and follow the most scrupulous standards of fairness and uniformity;

(2) The death penalty, because of its enormity and finality, should never be imposed arbitrarily nor as a result of local prejudice or public hysteria;

(3) State law should be applied uniformly throughout the state and since the death penalty is a statewide law an offense which would not result in a death sentence in one portion of the state should not result in death in a different portion;

(4) Charges resulting from the same or similar circumstances have, in the past, not been uniform and have produced radically differing results; and

(5) In order to compensate for the lack of uniformity in charges which are filed as a result of similar circumstances it is necessary for the Supreme Court to review and analyze all criminal homicides committed under the existing law in order to insure that each case produces a result similar to that arrived at in other cases with the same or similar circumstances.

Sec. 2. The Supreme Court shall within a reasonable time after the effective date of this act, review and analyze all cases involving criminal homicide committed on or after April 20, 1973. Such review and

analysis shall examine (1) the facts including mitigating and aggravating circumstances, (2) the charges filed, (3) the crime for which defendant was convicted, and (4) the sentence imposed. Such review shall be updated as new criminal homicide cases occur.

Sec. 3. The Supreme Court shall, upon appeal, determine the propriety of the sentence in each case involving a criminal homicide by comparing such case with previous cases involving the same or similar circumstances. No sentence imposed shall be greater than those imposed in other cases with the same or similar circumstances. The Supreme Court may reduce any sentence which it finds not to be consistent with this act.

Sec. 4. Each district court shall provide all records required by the Supreme Court in order to conduct its review and analysis pursuant to this act.

Sec. 5. That section 29-2522, Reissue Revised Statutes of Nebraska, 1943, be amended to read as follows:

29-2522. After hearing all of the evidence and arguments in the sentencing proceeding, the judge or judges shall fix the sentence at either death or life imprisonment, but such determination shall be based upon the following considerations:

(1) Whether sufficient aggravating circumstances exist to justify imposition of a sentence of death; or

(2) Whether sufficient mitigating circumstances exist which approach or exceed the weight given to the aggravating circumstances; or :

(3) Whether the sentence of death is excessive or disproportionate to the penalty imposed in similar cases, considering both the crime and the defendant.

In each case in which the court imposes the death sentence, the determination of the court shall be in writing and shall be supported by written findings of fact based upon the records of the trial and the sentencing proceeding, and referring to the aggravating and mitigating circumstances involved in its determination.

Sec. 6. That section 29-2524, Reissue Revised Statutes of Nebraska, 1943, as amended by section 23, Legislative Bill 748, Eighty-fifth Legislature, Second Session, 1978, be amended to read as follows:

29-2524. Nothing in sections 24-342, 28-303, 28-313, and 29-2519 to 29-2546, and sections 1 to 5 of this act shall be in any way deemed to repeal or limit existing procedures for automatic review of capital cases, nor shall it in any way limit the right of the Supreme Court to reduce a sentence of death to a sentence of life imprisonment in accordance with the provisions of section 29-2308, nor shall it limit the right of the Board of Pardons to commute any sentence of death to a sentence of life imprisonment.

Sec. 7. That original section 29-2522, Reissue Revised Statutes of Nebraska, 1943, and section 29-2524, Reissue Revised Statutes of Nebraska, 1943, as amended by section 23, Legislative Bill 748, Eighty-fifth Legislature, Second Session, 1978, are repealed.