

LEGISLATIVE BILL 402

Approved by the Governor February 19, 1982

Introduced by Nichol, 48

AN ACT relating to criminal procedure; to provide a procedure whereby the prosecution may appeal the sentence imposed in a criminal case.

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

Section 1. Whenever a defendant is found guilty of a felony, following a trial or the entry of a plea of guilty or tendering a plea of nolo contendere, the county attorney charged with the prosecution of such defendant may appeal the sentence imposed to the Supreme Court if such attorney reasonably believes, based on all of the facts and circumstances of the particular case, that the sentence is excessively lenient.

Sec. 2. Appeals under section 1 of this act shall be taken as follows:

(1) Within ten days of the imposition of sentence, the county attorney shall request the approval of the Attorney General to proceed with such appeal. A copy of such request for approval shall be sent to the defendant or counsel for the defendant;

(2) If the Attorney General approves the request described in subdivision (1) of this section, the county attorney shall file a notice of appeal indicating such approval in the district court. Such notice of appeal must be filed within twenty days of the imposition of sentence. A copy of the notice of appeal shall be sent to the defendant or counsel for the defendant;

(3) If the Attorney General does not approve the request described in subdivision (1) of this section, an appeal under this act shall not be permitted; and

(4) In addition to such notice of appeal, the docket fee required by law in appeals to the Supreme Court shall be deposited with the clerk of the district court.

Upon compliance with the requirements of this section, the appeal shall proceed as provided by law for appeals to the Supreme Court.

Sec. 3. If the appeal has been properly filed, as set forth in section 2 of this act, the Supreme Court, upon a review of the record, shall determine whether the

sentence imposed is excessively lenient, having regard for:

- (1) The nature and circumstances of the offense;
- (2) The history and characteristics of the defendant;
- (3) The need for the sentence imposed:
 - (a) To afford adequate deterrence to criminal conduct;
 - (b) To protect the public from further crimes of the defendant;
 - (c) To reflect the seriousness of the offense, to promote respect for the law, and to provide just punishment for the offense; and
 - (d) To provide the defendant with needed educational or vocational training, medical care, or other correctional treatment in the most effective manner; and
- (4) Any other matters appearing in the record which the court shall deem pertinent.

Sec. 4. Upon consideration of the criteria enumerated in section 3 of this act, the Supreme Court shall:

- (1) If it determines that the sentence imposed is excessively lenient, set aside the sentence, and:
 - (a) Remand the cause for imposition of a greater sentence;
 - (b) Remand the case for further sentencing proceedings; or
 - (c) Impose a greater sentence; or

(2) If it determines that the sentence imposed is not excessively lenient, affirm the sentence.

Sec. 5. If a more severe sentence is imposed by the Supreme Court or on remand, any time served on the sentence appealed from shall be deemed to have been served on the new sentence imposed under subdivision (1) of section 4 of this act.

Sec. 6. Nothing contained in this act shall affect the right of the defendant to appeal the conviction and sentence, as otherwise provided by law.