

E AND R AMENDMENTS TO LB 504

Introduced by Hansen, 26, Chairman Enrollment and Review

1           1. Strike the original sections and all amendments thereto and  
2 insert the following new sections:

3           Section 1. Section 29-2261, Revised Statutes Cumulative Supplement,  
4 2014, is amended to read:

5           29-2261 (1) Unless it is impractical to do so, when an offender has  
6 been convicted of a felony other than murder in the first degree, the  
7 court shall not impose sentence without first ordering a presentence  
8 investigation of the offender and according due consideration to a  
9 written report of such investigation. When an offender has been convicted  
10 of murder in the first degree and (a) a jury renders a verdict finding  
11 the existence of one or more aggravating circumstances as provided in  
12 section 29-2520 or (b)(i) the information contains a notice of  
13 aggravation as provided in section 29-1603 and (ii) the offender waives  
14 his or her right to a jury determination of the alleged aggravating  
15 circumstances, the court shall not commence the sentencing determination  
16 proceeding as provided in section 29-2521 without first ordering a  
17 presentence investigation of the offender and according due consideration  
18 to a written report of such investigation.

19           (2) A court may order a presentence investigation in any case,  
20 except in cases in which an offender has been convicted of a Class IIIA  
21 misdemeanor, a Class IV misdemeanor, a Class V misdemeanor, a traffic  
22 infraction, or any corresponding city or village ordinance.

23           (3) The presentence investigation and report shall include, when  
24 available, an analysis of the circumstances attending the commission of  
25 the crime, the offender's history of delinquency or criminality, physical  
26 and mental condition, family situation and background, economic status,  
27 education, occupation, and personal habits, and any other matters that

1 the probation officer deems relevant or the court directs to be included.  
2 All local and state police agencies and Department of Correctional  
3 Services adult correctional facilities shall furnish to the probation  
4 officer copies of such criminal records, in any such case referred to the  
5 probation officer by the court of proper jurisdiction, as the probation  
6 officer shall require without cost to the court or the probation officer.

7 Such investigation shall also include:

8 (a) Any written statements submitted to the county attorney by a  
9 victim; and

10 (b) Any written statements submitted to the probation officer by a  
11 victim.

12 (4) If there are no written statements submitted to the probation  
13 officer, he or she shall certify to the court that:

14 (a) He or she has attempted to contact the victim; and

15 (b) If he or she has contacted the victim, such officer offered to  
16 accept the written statements of the victim or to reduce such victim's  
17 oral statements to writing.

18 For purposes of subsections (3) and (4) of this section, the term  
19 victim shall be as defined in section 29-119.

20 (5) Before imposing sentence, the court may order the offender to  
21 submit to psychiatric observation and examination for a period of not  
22 exceeding sixty days or such longer period as the court determines to be  
23 necessary for that purpose. The offender may be remanded for this purpose  
24 to any available clinic or mental hospital, or the court may appoint a  
25 qualified psychiatrist to make the examination. The report of the  
26 examination shall be submitted to the court.

27 (6) Any presentence report, substance abuse evaluation, or  
28 psychiatric examination shall be privileged and shall not be disclosed  
29 directly or indirectly to anyone other than a judge, probation officers  
30 to whom an offender's file is duly transferred, the probation  
31 administrator or his or her designee, or others entitled by law to

1 receive such information, including personnel and mental health  
2 professionals for the Nebraska State Patrol specifically assigned to sex  
3 offender registration and community notification for the sole purpose of  
4 using such report or examination for assessing risk and for community  
5 notification of registered sex offenders. For purposes of this  
6 subsection, mental health professional means (a) a practicing physician  
7 licensed to practice medicine in this state under the Medicine and  
8 Surgery Practice Act, (b) a practicing psychologist licensed to engage in  
9 the practice of psychology in this state as provided in section 38-3111,  
10 ~~or~~ (c) a practicing mental health professional licensed or certified in  
11 this state as provided in the Mental Health Practice Act, or (d) a  
12 substance abuse therapist licensed or certified in this state to conduct  
13 substance abuse evaluations and treatment.

14 (7) The court may permit inspection of the report, evaluation, or  
15 examination of parts thereof by the offender or his or her attorney, or  
16 other person having a proper interest therein, whenever the court finds  
17 it is in the best interest of a particular offender. Beginning July 1,  
18 2016, the court shall permit inspection of the presentence report or  
19 parts of the report, substance abuse evaluation, or psychiatric  
20 examination, as determined by the court, by the attorney of the offender  
21 and counsel for the prosecution. Such inspection shall be by electronic  
22 access only unless the court determines such access is not available to  
23 the attorney of the offender or counsel for the prosecution. The State  
24 Court Administrator shall determine and develop the means of electronic  
25 access to such presentence report, evaluations, and examinations. Upon  
26 application by counsel for the prosecution or the defendant, the court  
27 may order that addresses, telephone numbers, and other contact  
28 information for victims or witnesses named in the report or examination  
29 be redacted upon a showing by a preponderance of the evidence that such  
30 redaction is warranted in the interests of public safety. The court may  
31 allow fair opportunity for an offender to provide additional information

1 for the court's consideration.

2 (8 7) If an offender is sentenced to imprisonment, a copy of the  
3 report of any presentence investigation, substance abuse evaluation, or  
4 psychiatric examination shall be transmitted immediately to the  
5 Department of Correctional Services. Upon request, the Board of Parole or  
6 the Office of Parole Administration may receive a copy of the report from  
7 the department.

8 (9 8) Notwithstanding subsections ~~subsection~~ (6) and (7) of this  
9 section, the Supreme Court or an agent of the Supreme Court acting under  
10 the direction and supervision of the Chief Justice shall have access to  
11 psychiatric examinations, substance abuse evaluations, and presentence  
12 investigations and reports for research purposes. The Supreme Court and  
13 its agent shall treat such information as confidential, and nothing  
14 identifying any individual shall be released.

15 Sec. 2. Original section 29-2261, Revised Statutes Cumulative  
16 Supplement, 2014, is repealed.

17 2. On page 1, line 3, after the semicolon insert "to provide for  
18 access to substance abuse evaluations;".