

LEGISLATURE OF NEBRASKA  
ONE HUNDRED FIFTH LEGISLATURE  
SECOND SESSION

**LEGISLATIVE BILL 872**

Introduced by Harr, 8.

Read first time January 05, 2018

Committee: Judiciary

- 1 A BILL FOR AN ACT relating to criminal procedure; to amend sections
- 2 29-2315.01, 29-2315.02, 29-2316, 29-2317, 29-2319, and 29-2320,
- 3 Reissue Revised Statutes of Nebraska; to change provisions relating
- 4 to appeals by prosecutors; to harmonize provisions; and to repeal
- 5 the original sections.
- 6 Be it enacted by the people of the State of Nebraska,

1 Section 1. Section 29-2315.01, Reissue Revised Statutes of Nebraska,  
2 is amended to read:

3 29-2315.01 The prosecuting attorney may take exception to any ruling  
4 or decision of the court made during the prosecution of a cause by filing  
5 with the clerk of the district court a notice of intention to prosecute  
6 an appeal within thirty days after the entry of a judgment, decree, or  
7 final order. ~~The presenting to the trial court the application for leave~~  
8 ~~to docket an appeal with reference to the rulings or decisions of which~~  
9 ~~complaint is made. Such application shall contain a copy of the ruling or~~  
10 ~~decision complained of, the basis and reasons for objection thereto, and~~  
11 ~~a statement by the prosecuting attorney as to the part of the record he~~  
12 ~~or she proposes to present to the appellate court. Such application shall~~  
13 ~~be presented to the trial court within twenty days after the final order~~  
14 ~~is entered in the cause, and upon presentation, if the trial court finds~~  
15 ~~it is in conformity with the truth, the judge of the trial court shall~~  
16 ~~sign the same and shall further indicate thereon whether in his or her~~  
17 ~~opinion the part of the record which the prosecuting attorney proposes to~~  
18 ~~present to the appellate court is adequate for a proper consideration of~~  
19 ~~the matter. The prosecuting attorney shall then present such application~~  
20 ~~to the appellate court within thirty days from the date of the final~~  
21 ~~order. If the application is granted, the prosecuting attorney shall,~~  
22 within thirty days after the filing of ~~from such notice,~~ granting order a  
23 bill of exceptions in accordance with section 29-2020 if such bill of  
24 exceptions is desired and otherwise proceed to obtain a review of the  
25 case as provided in section 25-1912.

26 Sec. 2. Section 29-2315.02, Reissue Revised Statutes of Nebraska, is  
27 amended to read:

28 29-2315.02 When a notice is filed ~~If the application be granted,~~  
29 ~~the trial court shall appoint a lawyer to argue the case against the~~  
30 ~~prosecuting attorney, which lawyer shall receive for his or her services~~  
31 ~~a fee not exceeding two hundred dollars, to be fixed by such court, and~~

1 to be paid out of the treasury of the county. For such purpose, the court  
2 may appoint the defendant's attorney, but if he or she is not appointed  
3 the defendant may in any event appear and participate through an attorney  
4 of his or her own choice.

5 Sec. 3. Section 29-2316, Reissue Revised Statutes of Nebraska, is  
6 amended to read:

7 29-2316 The judgment of the court in any action taken pursuant to  
8 section 29-2315.01 shall not be reversed nor in any manner affected when  
9 doing so would violate the Double Jeopardy Clause of the Constitution of  
10 the United States ~~the defendant in the trial court has been placed~~  
11 ~~legally in jeopardy~~, but in such cases the decision of the appellate  
12 court shall determine the law to govern in any similar case which may be  
13 pending at the time the decision is rendered or which may thereafter  
14 arise in the state. When the decision of the appellate court establishes  
15 that the final order of the trial court was erroneous and when doing so  
16 would not violate the Double Jeopardy Clause of the Constitution of the  
17 United States ~~the defendant had not been placed legally in jeopardy prior~~  
18 ~~to the entry of such erroneous order~~, the trial court may upon  
19 application of the prosecuting attorney issue its warrant for the  
20 rearrest of the defendant and the cause against him or her shall  
21 thereupon proceed in accordance with the law as determined by the  
22 decision of the appellate court.

23 Sec. 4. Section 29-2317, Reissue Revised Statutes of Nebraska, is  
24 amended to read:

25 29-2317 (1) A prosecuting attorney may take exception to any ruling  
26 or decision of the county court made during the prosecution of a cause by  
27 filing with the clerk of the county ~~presenting to the court~~ a notice of  
28 intention ~~intent~~ to prosecute ~~take~~ an appeal to the district court within  
29 thirty days after the entry of a judgment, decree, or final order ~~with~~  
30 ~~reference to the rulings or decisions of which complaint is made.~~

31 (2) The prosecuting attorney shall, within thirty days after the

1 ~~filing of such notice, order a bill of exceptions in accordance with~~  
2 ~~section 25-2732 if such bill of exceptions is desired and otherwise~~  
3 ~~proceed to obtain a review of the case as provided in section 25-2729.~~  
4 ~~The notice shall contain a copy of the rulings or decisions complained~~  
5 ~~of, the basis and reasons for objection thereto, and a statement by the~~  
6 ~~prosecuting attorney as to the part of the record he or she proposes to~~  
7 ~~present to the district court. The notice shall be presented to the court~~  
8 ~~within twenty days after the final order is entered in the cause. If the~~  
9 ~~court finds it is in conformity with the truth, the judge shall sign it~~  
10 ~~and shall indicate thereon whether, in his or her opinion, the part of~~  
11 ~~the record which the prosecuting attorney proposes to present to the~~  
12 ~~district court is adequate for a proper consideration of the matter.~~

13 ~~(3) The prosecuting attorney shall then file the notice in the~~  
14 ~~district court within thirty days from the date of final order and within~~  
15 ~~thirty days from the date of filing the notice shall file a bill of~~  
16 ~~exceptions covering the part of the record referred to in the notice.~~  
17 ~~Such appeal shall be on the record.~~

18 Sec. 5. Section 29-2319, Reissue Revised Statutes of Nebraska, is  
19 amended to read:

20 29-2319 (1) The judgment of the court in any action taken under the  
21 provisions of sections 29-2317 and 29-2318 shall not be reversed nor in  
22 any manner affected when doing so would violate the Double Jeopardy  
23 Clause of the Constitution of the United States ~~the defendant in the~~  
24 ~~trial court has been placed legally in jeopardy, but in such cases the~~  
25 ~~decision of the district court shall determine the law to govern in any~~  
26 ~~similar case which may be pending at the time the decision is rendered,~~  
27 ~~or which may thereafter arise in the district.~~

28 (2) When the decision of the district court establishes that the  
29 final order of the trial court was erroneous and when doing so would not  
30 violate the Double Jeopardy Clause of the Constitution of the United  
31 States ~~that the defendant had not been placed legally in jeopardy prior~~

1 ~~to the entry of such erroneous order,~~ the trial court may upon  
2 application of the prosecuting attorney issue its warrant for the  
3 rearrest of the defendant and the cause against the defendant shall  
4 thereupon proceed in accordance with the law as determined by the  
5 decision of the district court.

6 (3) The prosecuting attorney may take exception to any ruling or  
7 decision of the district court in the manner provided by sections  
8 29-2315.01 to 29-2316.

9 Sec. 6. Section 29-2320, Reissue Revised Statutes of Nebraska, is  
10 amended to read:

11 29-2320 Whenever a defendant is found guilty of a felony or  
12 misdemeanor following a trial or the entry of a plea of guilty or  
13 tendering a plea of nolo contendere, the prosecuting attorney charged  
14 with the prosecution of such defendant or the Attorney General may appeal  
15 the sentence imposed if there is a reasonable belief, based on all of the  
16 facts and circumstances of the particular case, that the sentence is  
17 excessively lenient.

18 Sec. 7. Original sections 29-2315.01, 29-2315.02, 29-2316, 29-2317,  
19 29-2319, and 29-2320, Reissue Revised Statutes of Nebraska, are repealed.