

# redefining third dimension | state crimes

## Legislature will consider new state criminal code

By Kim Shepherd

The decision to keep non-controversial items out of the proposed criminal code revision just to avoid long debate on the floor of the Legislature may boomerang.

Sen. John DeCamp of Neligh said the Judiciary Committee's avoidance of controversial issues will cause him to fight the bill's passage.

DeCamp tried to keep the bill from passing out of committee but failed. Lincoln Sen. Roland Luedtke said he expects DeCamp to fight the bill when it reaches the floor.

DeCamp said he felt the bill revising Nebraska's criminal code, LB623, should have dealt with the realities of sex, alcohol, gambling and prostitution but does not.

"We still have archaic crap in LB623 telling us who, what, when and where we can make love," DeCamp said.

### DeCamp recommends delay

He recommends the bill be delayed another year to avoid its passage during an election year. Senators are afraid of deleting the code's out-dated language because they are scared they won't be re-elected if they do, DeCamp said.

"We could work on this bill for 10 years and it would still be archaic and obsolete," Luedtke said.

Victimless crimes could have been dealt with in LB623, according to John Evans, lawyer for the judiciary committee, but they were not because the bill was intended to be non-controversial.

Cohabitation and alcoholism are considered by some as examples of victimless crimes.

"I don't know that they'll (victimless crimes) ever be dealt with," Evans said. "Alcoholism may be dealt with soon because it has been recognized as an illness," he said.

### Social gambling still illegal

There was an attempt to legalize social gambling in LB623, but the committee decided a constitutional amendment would be needed to do it, Evans said. The committee did not want to risk an unconstitutional ruling on the bill just by including legalization of social gambling, he added.

Laws dealing with rape and drug use have been rewrit-

ten and adopted since 1969 when work on the revision of the code began, therefore they reflect current attitudes, Evans said.

In 1969 the Nebraska Commission on Law Enforcement and Criminal Justice used federal funds to begin an extensive revision of Chapter 28 (which is the present criminal code), of the Nebraska state statutes.

For two years an advisory group to the Judiciary Committee held a series of meetings to discuss revision of the criminal code. The revised code, LB8, was drafted in 1971 and presented to the Legislature during its 1972 session.

### Lawyers', judges' opinions sought

LB8 revised Chapter 28 of the state statutes. No public hearings were held during the committee's work in the early seventies. They relied instead on the opinions of lawyers, prosecutors, public defenders, judges and law enforcement officials, said Mike Johnson, a member of the advisory group.

DeCamp, a Judiciary Committee member, said he did not agree with the content of LB8 so he introduced his own bill, LB329. His bill was a take-off of the Hawaiian Criminal Code, which decriminalizes victimless crimes.

The Legislature decided not to act on either bill and sent them back to committee.

Public reaction to the bills was sought in 1972 and staff members held public hearings across the state, said Steve Schneiderwind, a research assistant for the Judiciary Committee.

Response to the hearings was good and several amendments to the bill were suggested, Schneiderwind said.

### Modern code needed

Streamlining and modernizing the criminal code is the main purpose of LB623, Evans said.

"It was old, everything was sloppy," he said. "As more laws were passed they were just added on (to the code)."

Besides taking out obsolete language, Evans said, he thought the major accomplishment of LB623 was the classification of crimes. The penalties are lumped together under certain classes, but the seriousness of the crimes have not been altered, he said.

Both Evans and Schneiderwind agree that the lumping

of penalties gives more leeway to the judges.

Evans said he foresees possible problems with leaving so much up to the judge.

"People will say with so much left up to the judge's discretion, the penalties may differ with the same crime from Scottsbluff to Lincoln," Evans said.

### Penalties easier to understand

Schneiderwind said he thought the classification may make the penalties easier to understand.

"It may clear up some of the crime area," he said. "The criminal will know what (penalty) he's going to get," he added.

LB623 separates penalties into felony and misdemeanor categories, each of which includes five sub-classes.

For example, included under class III felony are manslaughter, sexual assault, dispensing of hard drugs and criminal syndicalism (pyramid sales).

Class III misdemeanors include administering medicine while intoxicated, littering, violation of embalming fluid regulations, failure to report child abuse and mutilation of a flag.

### City takes care of funny laws

Evans said most of the "funny" laws like spitting on sidewalks are in city ordinances, so the committee did not have to include these in the criminal code. However, some state laws, like horse thievery, now are out-dated and have been eliminated in LB623, he added.

The proposed code has renamed some crimes, Evans said. For example, shooting a neighbor's dog used to be considered cruelty to animals, he said, but under the proposed revisions it would be called destruction of property.

"It's the same penalty for a different offense," Evans said.

LB623, along with companion bills LB706 and LB707, were advanced to the floor on Feb. 23. Sen. Luedtke said the committee would term these their preferred bills. Preferred bills do not wait in line and are considered first.

LB706 and LB707 propose revisions of criminal laws that are not included in Chapter 28 of the Nebraska state statutes.

## Code defines death penalty, abortion

By Anita Stork

When Nebraska lawmakers voted on a proposed revision of the Nebraska Criminal Code, they also will be saying either aye or nay to a mandatory death penalty.

Eliminating the "capriciousness in imposing the death penalty" is the intent of Neligh Sen. John DeCamp's amendment to LB702, which makes the death penalty mandatory for certain crimes.

LB702 is a companion bill to LB623, which revises the criminal code and mandates the death penalty for those crimes outlined in LB702.

*"You will never come up with a system that is completely perfect."*



Photo by Steve Boerner  
Neligh Sen. John DeCamp

The Legislature's Judiciary Committee approved LB702 as amended and sent it to the Unicameral floor for debate on Feb. 23.

In response to DeCamp's amendment, Chambers introduced six amendments which offer "the governor, state senators and chimpanzees the opportunity to pull the switch executing capital offenders."

Chambers said anyone instrumental in enacting the death penalty should help execute it. He said he knows the legislature will never approve his amendments.

DeCamp said Chambers was presenting a non-philosophy.

"When Chambers talks about monkeys and executing criminals in Memorial Stadium, he is merely avoiding the real issue," DeCamp said.

### Crimes calling for death penalty

DeCamp's amendment states that every person found guilty of first degree murder will be executed if any one or more of the following special circumstances exist:

- murder with conspiracy
- murder of a policeman engaged in the performance of his duty in cases where the defendant knew or reasonably should have known that the victim was a policeman on duty.

-deliberate and premeditated murder of a material witness to a crime to prevent his testimony in any criminal proceeding.

-murder committed during the commission or attempted commission of a robbery, rape or incest.

-the defendant has been convicted previously of more than one offense of first or second degree murder.

-kidnapping, with or without murder

Every person otherwise found guilty of first degree murder would receive life imprisonment. Those convicted of second degree murder would receive a penalty ranging from five years imprisonment to life imprisonment. The death penalty could not be imposed on anyone younger than 18 years old.

### Taking lives improper

Chambers, in opposing the death penalty, said, it "is totally improper for the state to take human lives."

"Capital punishment is illegal for both legal and constitutional reasons," Chambers added. "The Nebraska Supreme Court declared the death penalty unconstitutional in 1972."

"We should have a realistic death penalty, as this bill provides for, or else no death penalty at all," DeCamp said.

A mandatory death penalty would be a deterrent to crime, DeCamp said, because "from my personal experience in Vietnam we were more afraid of being killed than captured."

DeCamp said his amendment insured that the same punishment would be given to "the richest, most affluent

man and the poorest, uneducated man."

The death penalty is never fairly administered, Chambers said.

"The poor, the minority peoples and the oppressed are the primary victims, while the rich and powerful escape punishment," Chambers said.

### Favored can escape penalty

Even with mandatory capital punishment, there are "too many places the favored can get off," according to Chambers.

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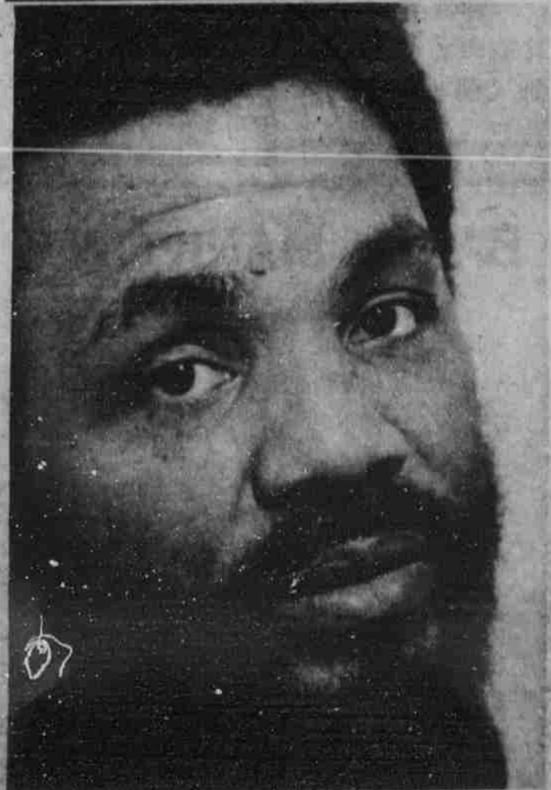


Photo by Steve Boerner  
Omaha Sen. Ernie Chambers