

AMENDMENTS TO LB 476

Introduced by Flood, 19

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

3 Section 1. Section 29-2524, Revised Statutes Cumulative
4 Supplement, 2006, is amended to read:

5 29-2524 Nothing in sections 25-1140.09, 28-303, 28-313,
6 and 29-2519 to 29-2546 and sections 7 and 8 of this act shall be in
7 any way deemed to repeal or limit existing procedures for automatic
8 review of capital cases, nor shall they in any way limit the right
9 of the Supreme Court to reduce a sentence of death to a sentence of
10 life imprisonment without parole in accordance with the provisions
11 of section 29-2308, nor shall they limit the right of the Board
12 of Pardons to commute any sentence of death to a sentence of life
13 imprisonment without parole.

14 Sec. 2. Section 29-2532, Reissue Revised Statutes of
15 Nebraska, is amended to read:

16 29-2532 (1)(a) The mode of inflicting the punishment
17 of death, in all cases, shall be cases in which the crime for
18 which the punishment of death has been imposed was committed
19 prior to the effective date of this act, shall be, at the
20 option of the convicted person being punished and as provided
21 in subdivisions (1)(b) and (c) of this subsection, (i) by
22 causing to pass through the body of the convicted person a
23 current or currents of electricity of sufficient intensity to

1 cause death, and the application of such current or currents
2 shall be continued until such convicted person is dead- or
3 (ii) by intravenous administration of a lethal quantity of an
4 ultra-short-acting barbiturate in combination with a chemical
5 paralytic agent and potassium chloride, or other equally effective
6 substances, sufficient to cause death.

7 (b) If the convicted person being punished was sentenced
8 to death prior to the effective date of this act, then the warden
9 of the Department of Correctional Services facility designated by
10 the Director of Correctional Services to carry out the sentence
11 of death, or his or her designee, shall provide written notice
12 to the convicted person of the requirement to choose a mode of
13 inflicting the punishment of death set forth in this section within
14 thirty days after the effective date of this act. Such notice shall
15 state that a failure to choose shall result in the punishment of
16 death being inflicted pursuant to subdivision (1)(a)(ii) of this
17 subsection. If a choice is made by the convicted person, it shall
18 be made in writing and received by the warden or his or her
19 designee within thirty days after receipt by the convicted person
20 of the warden's written notice.

21 (c) If the convicted person being punished was sentenced
22 to death on or after the effective date of this act, then
23 the warden of the Department of Correctional Services facility
24 designated by the Director of Correctional Services to carry out
25 the sentence of death, or his or her designee, shall provide
26 written notice to the convicted person of the requirement to choose
27 a mode of inflicting the punishment of death set forth in this

1 section within thirty days after the sentence has been affirmed by
2 the Nebraska Supreme Court pursuant to section 29-2528. Such notice
3 shall state that a failure to choose shall result in the punishment
4 of death being inflicted pursuant to subdivision (1)(a)(ii) of
5 this subsection. If a choice is made by the convicted person, it
6 shall be made in writing and received by the warden or his or her
7 designee within thirty days after receipt by the convicted person
8 of the warden's written notice.

9 (d) If the convicted person being punished fails to
10 choose as provided in this subsection, the mode of inflicting the
11 punishment of death shall be pursuant to subdivision (1)(a)(ii) of
12 this section.

13 (2) The mode of inflicting the punishment of death, in
14 cases in which the crime for which the punishment of death has
15 been imposed was committed on or after the effective date of this
16 act, shall be by intravenous administration of a lethal quantity
17 of an ultra-short-acting barbiturate in combination with a chemical
18 paralytic agent and potassium chloride, or other equally effective
19 substances, sufficient to cause death.

20 (3) The warden of the Nebraska Penal and Correctional
21 Complex, Department of Correctional Services facility designated by
22 the Director of Correctional Services to carry out the sentence
23 of death, and in case of his such warden's death, sickness,
24 absence, or inability to act, then the deputy warden, shall be the
25 executioner. The ~~+~~ PROVIDED, the warden may in writing specially
26 designate and appoint a suitable and competent person to act for
27 him or her, and under his or her direction, as executioner in

1 any particular case. A crime punishable by death ~~must~~ shall be
2 punished according to ~~the provisions herein made~~ this section and
3 not otherwise.

4 (4) If the Supreme Court of the United States declares
5 that the mode of inflicting the punishment of death under
6 subdivision (1)(a)(i) or (ii) of this section violates the
7 United States Constitution, or if the Nebraska Supreme Court
8 declares that the mode of inflicting the punishment of death under
9 subdivision (1)(a)(i) or (ii) of this section violates the United
10 States Constitution of the Constitution of Nebraska, the mode of
11 inflicting the punishment of death shall be by the other remaining
12 statutory mode of inflicting the punishment of death.

13 Sec. 3. Section 29-2533, Reissue Revised Statutes of
14 Nebraska, is amended to read:

15 29-2533 When any convicted person shall be sentenced
16 to be electrocuted, is punished by death, such punishment shall
17 be inflicted ~~within the walls of the Department of Correctional~~
18 ~~Services adult correctional facility,~~ or within the yard or
19 enclosure adjacent thereto, at a Department of Correctional
20 Services facility under the supervision of the warden of such
21 facility and in such a manner as to exclude the view of all persons
22 save except those permitted to be present as provided in sections
23 29-2534 and 29-2535.

24 Sec. 4. Section 29-2542, Reissue Revised Statutes of
25 Nebraska, is amended to read:

26 29-2542 If any person escapes who has been convicted
27 of a crime punishable by death, ~~and~~ has been sentenced to be

1 ~~electrocuted, shall escape, and shall not be death, and has not~~
2 ~~been~~ retaken before the time fixed for his or her execution,
3 ~~it shall be lawful for the warden,~~ the Director of Correctional
4 Services or his or her designee may rearrest such person, or any
5 sheriff or other officer or person ~~to~~ may rearrest such person and
6 return him or her to the custody of the ~~warden of the Nebraska~~
7 ~~Penal and Correctional Complex,~~ who shall thereupon make return
8 ~~thereof to~~ Department of Correctional Services. The director shall
9 then notify the Governor of the state, and the Governor shall
10 ~~thereupon~~ issue a warrant, fixing and appointing a day for the
11 execution. The director shall ensure that the designated warden
12 carries out the execution, which shall be carried into effect by
13 ~~the warden~~ in the same manner as herein provided for the execution
14 of an ~~original~~ a sentence of death.

15 Sec. 5. Section 29-2543, Reissue Revised Statutes of
16 Nebraska, is amended to read:

17 29-2543 Whenever any person has been tried and convicted
18 before any district court in this state of a crime punishable by
19 death and under the conviction has been sentenced by the court ~~to~~
20 ~~suffer to~~ death, it shall be the duty of the clerk of the court
21 before which the conviction was had to issue a warrant, under the
22 seal of the court, reciting therein the conviction and sentence
23 directed to the ~~warden of the Nebraska Penal and Correctional~~
24 ~~Complex,~~ Director of Correctional Services, commanding him or her
25 to proceed at the time named in the sentence to carry the same
26 into execution by causing the person so convicted and sentenced to
27 be electrocuted by the passage of an electric current through the

1 ~~body until dead.~~ the director to cause the death of the convicted
2 person. The clerk shall deliver the warrant to the sheriff of
3 the county in which conviction was had and such sheriff shall
4 thereupon forthwith remove such convicted person to a Department
5 of Correctional Services ~~adult correctional~~ facility of the state
6 and there deliver him or her, together with the warrant, into the
7 custody of the ~~warden~~ director who shall receive and safely keep
8 such ~~convict~~ convicted person within a Department of Correctional
9 Services ~~adult correctional~~ facility until the time of execution or
10 until otherwise ordered by competent authority.

11 Sec. 6. Section 29-2544, Reissue Revised Statutes of
12 Nebraska, is amended to read:

13 29-2544 It shall be the duty of the ~~warden of the~~
14 ~~Nebraska Penal and Correctional Complex~~ Director of Correctional
15 Services on receipt of such warrant, if the Supreme Court or a
16 judge thereof shall not have ordered a suspension of the execution,
17 and if the Board of Pardons shall not have commuted such sentence,
18 or granted a reprieve or pardon to such ~~convict,~~ convicted person,
19 to proceed at the time named in the warrant to carry the sentence
20 into execution in the manner herein provided; and of the manner of
21 his or her executing the warrant, and of his or her doings thereon,
22 he or she shall forthwith make return to the clerk, who shall cause
23 the warrant and return to be recorded as a part of the records of
24 the case.

25 Sec. 7. Notwithstanding any other provision of law, the
26 assistance with, participation in, or performance of ancillary or
27 other functions pursuant to the administration of the substance or

1 substances described in subdivision (1)(a)(ii) or subsection (2) of
2 section 29-2532 in order to carry out the punishment of death as
3 provided by law shall not be construed to constitute the practice
4 of medicine and shall not be a violation of the Uniform Controlled
5 Substances Act or sections 71-2501 to 71-2512.

6 Sec. 8. Notwithstanding any other provision of law,
7 any pharmacist or pharmaceutical supplier is authorized to
8 distribute drugs to the Director of Correctional Services or his
9 or her designee, without prescription, in order to carry out the
10 punishment of death as provided by law.

11 Sec. 9. If any section in this act or any part of any
12 section is declared invalid or unconstitutional, the declaration
13 shall not affect the validity or constitutionality of the remaining
14 portions.

15 Sec. 10. Original sections 29-2532, 29-2533, 29-2542,
16 29-2543, and 29-2544, Reissue Revised Statutes of Nebraska, and
17 section 29-2524, Revised Statutes Cumulative Supplement, 2006, are
18 repealed.

19 Sec. 11. Since an emergency exists, this act takes effect
20 when passed and approved according to law.