

**ONE HUNDREDTH LEGISLATURE - SECOND SESSION -
2008**

COMMITTEE STATEMENT

LB1063

Hearing Date: February 01, 2008

Committee On: Judiciary

Introducer(s): (Chambers)

Title: Change a penalty from death to life imprisonment without possibility of parole

Roll Call Vote - Final Committee Action:

Placed on General File with Amendments

Vote Results:

7 Yes	Senators Ashford, Chambers, Lathrop, McDonald, McGill, Pedersen, Schimek
1 No	Senators Pirsch
0 Absent	
0 Present, not voting	

Proponents:

Jack Gould
Amy Sadle
Miriam Kelle
James Mowbray
Curtis McCarty
Jim Cunningham

Representing:

Common Cause Nebraska
Citizen
Citizen
NCPA
Self
Nebraska Catholic Conference

Opponents:

Representing:

Joe Kelly
Mark Young
Neutral:
Robert Klotz

Nebraska County Attorney Assoc.
Nebraska County Attorney Assoc.
Representing:
Citizen

Summary of purpose and/or change:

Legislative Bill 1063 proposes to change the maximum penalty for first degree murder in Nebraska from death to life imprisonment without possibility of parole and with order or restitution.

Below is a section by section description of LB 1063.

Section 1 – Legislative Intent

Section 2 – Amends 23-2406 relating to counties contracting with public defenders to strike the phrase “including capital cases”

Section 3 - Amends 24-1106 relating to appeals to replace a reference to capital cases with a reference to cases in which life imprisonment without parole has been imposed.

Section 4 – Amends 25-1140.09 to remove a reference to a capital sentencing notice provision which required preparation of transcripts in all capital cases and is no longer applicable.

Section 5 - Amends section 27-609 to update the statute so that it is gender neutral.

Section 6 – Amends 27-803 (21) to remove a reference to a crime punishable by death.

Section 7 - Amends 28-104 to strike a reference to a criminal violation for which death may be imposed

Section 8 - Amends 28-104, the change the penalty for a Class I felony from death to life imprisonment without possibility of parole and with order of restitution. Also replaces the penalty for a Class IA felony from life imprisonment without parole to life imprisonment.

Section 9 – Amends 28-303, the first degree murder statute, to remove the death penalty and replace it with life imprisonment without possibility of parole.

Section 10 – Amends 29-1603, which sets forth the required contents of criminal information, to remove reference to the death penalty and replace it with life imprisonment without possibility of parole.

Section 11- Amends 29-1822, relating to mentally incompetent criminal defendants, to remove language staying the imposition of the death penalty during a period of mental incompetence.

Section 12 – Amends 29-2004, relating to jury selection, to replace language referring to the death penalty with life imprisonment without possibility of parole.

Section 13 - Amends 29-2005, which provides the number of preemptory juror challenges a defendant is entitled to in capital cases, to replace references to the death penalty with life imprisonment without possibility of parole.

Section 14 – Amends 29-2006, which lists the basis for good cause challenges of prospective jurors, to strike as the basis for a challenge in death eligible cases that a juror would be unable to render a guilty verdict if the accused faced the possibility of receiving the death penalty.

Section 15 – Amends 29-2020, relating to requesting a bill of exceptions, to strike language referring to a procedure only used in death penalty cases.

Section 16 – Amends 29-2027 to change a statutory reference to remove an unnecessary reference to a legislative intent section (29-2519) and a title section (29-2524).

Section 17 – Amends 29-2204, the indeterminate sentencing statute, to remove outdated language and references to the death penalty

Section 18 - Amends 29-2282, the restitution statute, to include the pain and suffering of the victim as an item for which restitution may be ordered in cases where the victim dies as a result of the offense.

Section 19 – Amends 29-2407, which provides that criminal fines and costs are to be a lien against a defendant, to remove references to the death penalty.

Section 20 – Amends 29-2520, the statute setting forth the sentencing procedures for first degree murder convictions, to strike the term “without parole” from the provision setting forth the penalty for first degree murder if no notice of aggravation is filed.

Section 21 - Amends 29-2521, the statute setting forth the procedure for determining aggravating and mitigating circumstances in first degree murder sentencing proceedings, to replace death with “life imprisonment without possibility of parole”

Section 22 – Amends 29-2522, which outlines procedures for first degree murder sentence determination proceedings, to replace death with “life imprisonment without possibility of parole”, to strike “without parole” from the references to the minimum penalty for first degree murder and to strike language regarding the setting of an execution date.

Section 23 – Amends 29-2523, setting forth the statutory aggravating factors for first degree murder, to correct a statutory reference, make technical corrections and change the aggravating factor “the defendant knowingly created a great risk of death to at least several persons” to “knowingly created a great risk of death to more than one person”.

Section 24 – New Language clarifying that a sentence of life imprisonment without possibility of parole means there is no parole eligibility unless such a sentence is first commuted by the Board of Pardons.

Section 25 – New language stating that an individual receiving a sentence of life imprisonment without possibility of parole shall be ordered to make restitution to the victim’s estate for the pain and suffering inflicted upon the victim, the cost of any medical care rendered to the victim prior to death, and the cost of burial and funeral expenses.

Section 26 – New language clarifying that the changes made by this bill shall not restrict or limit the ability of a court to order restitution in cases other than first degree murder convictions or restrict the ability of the Department of Corrections to determine appropriate security considerations for confined offenders.

Section 27 –New Language requiring death sentences issued prior to effective date of this act which have not been carried out to be changed to life imprisonment without possibility of parole and with order of restitution.

Section 28 - Amends 29-2801, establishing the procedures for state habeas corpus petitions, to remove references to capital sentences and make other technical corrections.

Section 29 – Amends 29-3205 to correct a statutory reference and remove a reference to a death sentence.

Sections 30 to 34 – Amends sections 29-3920, 3922, and 3928-3930, relating to the Public Advocacy Commission, to strike references to capital cases and insert first degree murder.

Section 35 – Amends section 55-480 to clarify a statutory reference to the Nebraska Code of Military Justice.

Section 36 - Amends 83-1,105.01, relating to indeterminate sentencing, to include a sentence of life imprisonment without possibility of parole within the existing exception for life sentences.

Section 37 – Amends 83-1,110.02, the medical parole statutes to replace death penalty with life imprisonment without possibility of parole.

Section 38 – Amends 83-4,143, the Work Ethic Camp eligibility statute, to remove a reference to a capital crime.

Section 39 – Repealer

Explanation of amendments, if any:

AM 1841 TO LB 1063

AM 1841 would make the following changes to LB 1063:

- Would provide that the only penalty for a Class I felony would be life imprisonment without the possibility of parole. This bill would eliminate the extra hearing required for aggravators and mitigating evidence as required in the determination between a life sentence and a death sentence, by only providing for life imprisonment w/o possibility of parole for a Class I felony, thus doing away with the need to distinguish between a minimum and maximum penalty.
- Would eliminate the inclusion of mandatory restitution as part of the sentence as found in section 25 of the original bill. The bill would retain section 26 of the original bill that provides that this bill does not hinder the discretionary authority of the sentencing court to order restitution and does not alter the discretion of the Department of Correctional Services to determine the appropriate security measures and conditions during the confinement of any committed offender, this authority is found in section 21 of AM 1841.
- Would also provide that a person who was convicted of a Murder in the First Degree (Section 28-303), would not be eligible to be placed in an incarceration work camp.

Senator Brad Ashford, Chairperson