

LEGISLATURE OF NEBRASKA

ONE HUNDREDTH LEGISLATURE

SECOND SESSION

LEGISLATIVE BILL 1063

Introduced by Chambers, 11.

Read first time January 22, 2008

Committee: Judiciary

A BILL

1 FOR AN ACT relating to criminal procedure; to amend sections
2 23-3406, 24-1106, 27-609, 28-104, 29-1822, 29-2005,
3 29-2006, 29-2020, 29-2282, 29-2407, 29-2801, 29-3205,
4 29-3928, and 55-480, Reissue Revised Statutes of
5 Nebraska, sections 25-1140.09, 27-803, 28-105, 28-303,
6 29-1603, 29-2004, 29-2027, 29-2204, 29-2520, 29-2521,
7 29-2522, 29-2523, 29-3920, 29-3922, 29-3929, 29-3930,
8 83-1,105.01, and 83-1,110.02, Revised Statutes Cumulative
9 Supplement, 2006, and section 83-4,143, Revised Statutes
10 Supplement, 2007; to change a penalty from death to
11 life imprisonment without possibility of parole as
12 prescribed; to provide for restitution; to eliminate
13 capital punishment provisions; to harmonize provisions;
14 to repeal the original sections; and to outright repeal

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1 sections 24-1105, 29-2521.01, 29-2521.03, 29-2521.04,
2 29-2524.01, 29-2524.02, 29-2527, 29-2528, 29-2532,
3 29-2533, 29-2534, 29-2535, 29-2536, 29-2537, 29-2538,
4 29-2539, 29-2540, 29-2541, 29-2542, 29-2543, 29-2544,
5 29-2545, 29-2546, 29-2811, and 83-1,132, Reissue Revised
6 Statutes of Nebraska, and sections 28-105.01, 29-2519,
7 29-2521.02, 29-2524, and 29-2525, Revised Statutes
8 Cumulative Supplement, 2006.

9 Be it enacted by the people of the State of Nebraska,

1 Section 1. The Legislature finds that:

2 (1) Life is the most valuable possession of a human
3 being. The state should exercise utmost care to protect its
4 residents' lives from homicide, accident, and arbitrary taking by
5 the state;

6 (2) The experience of this state with the death penalty
7 has been fraught with errors, frustration, and delay due to
8 constitutional mistakes in the statutes, defective legal procedures
9 and implementation of the statutes, lack of uniformity in
10 application, and inordinately heavy expenditures of money and time;

11 (3) The financial costs of attempting to implement the
12 death penalty statutes are not justifiable in light of the other
13 needs of this state and particularly because evidence does not
14 establish that the death penalty effectively deters first-degree
15 murder;

16 (4) The Legislature remains troubled by the lack of any
17 meaningful procedure in the courts to ensure uniform application of
18 the death penalty throughout the state despite the Legislature's
19 express finding in 1978 of a radical lack of uniformity;

20 (5) The history of attempts to carry out the death
21 penalty in Nebraska demonstrates an inordinate burden on the
22 justice system and on the lives of the innocent families and
23 associates of both the victims and the convicted parties;

24 (6) A maximum sentence of life imprisonment without
25 possibility of parole and with order of restitution, subject

1 only to the constitutional power of the Board of Pardons, and
2 including a mandatory order of restitution, is preferable to the
3 current capital punishment scheme. Such a maximum sentence reflects
4 this state's desire to ensure the safety of its citizens, assist
5 victims' families when possible, and yet preserve this state's
6 values of human life, uniform fairness, and basic decency;

7 (7) The Legislature acknowledges the necessity of a Board
8 of Pardons as established by the Constitution of Nebraska and that
9 of other states and acknowledges its power to commute sentences.
10 Parole, however, is a function of the Board of Parole upon which
11 the Legislature can set limitations, and the changes made by this
12 legislative bill are intended to prohibit parole for those persons
13 given the maximum sentence for first-degree murder; and

14 (8) The existing capital punishment scheme is a failure
15 and has taken an unacceptable toll on the state's reputation for
16 simple fairness, basic decency, and care for the dignity of human
17 life. The state rejects the concept that by killing it can teach
18 its residents not to kill.

19 Sec. 2. Section 23-3406, Reissue Revised Statutes of
20 Nebraska, is amended to read:

21 23-3406 (1) The contract negotiated between the county
22 board and the contracting attorney shall specify the categories of
23 cases in which the contracting attorney is to provide services.

24 (2) The contract negotiated between the county board and
25 the contracting attorney shall be awarded for at least a two-year

1 term. Removal of the contracting attorney short of the agreed term
2 may be for good cause only.

3 (3) The contract between the county board and the
4 contracting attorney may specify a maximum allowable caseload for
5 each full-time or part-time attorney who handles cases under the
6 contract. Caseloads shall allow each lawyer to give every client
7 the time and effort necessary to provide effective representation.

8 (4) The contract between the county board and the
9 contracting attorney shall provide that the contracting attorney be
10 compensated at a minimum rate which reflects the following factors:

11 (a) The customary compensation in the community for
12 similar services rendered by a privately retained counsel to a
13 paying client or by government or other publicly paid attorneys to
14 a public client;

15 (b) The time and labor required to be spent by the
16 attorney; and

17 (c) The degree of professional ability, skill, and
18 experience called for and exercised in the performance of the
19 services.

20 (5) The contract between the county board and the
21 contracting attorney shall provide that the contracting attorney
22 may decline to represent clients with no reduction in compensation
23 if the contracting attorney is assigned more cases which require an
24 extraordinary amount of time and preparation than the contracting
25 attorney can competently handle.

1 (6) The contract between the contracting attorney and
2 the county board shall provide that the contracting attorney shall
3 receive at least ten hours of continuing legal education annually
4 in the area of criminal law. The contract between the county board
5 and the contracting attorney shall provide funds for the continuing
6 legal education of the contracting attorney in the area of criminal
7 law.

8 (7) The contract between the county board and the
9 contracting attorney shall require that the contracting attorney
10 provide legal counsel to all clients in a professional, skilled
11 manner consistent with minimum standards set forth by the American
12 Bar Association and the Canons of Ethics for Attorneys in the
13 State of Nebraska. The contract between the county board and the
14 contracting attorney shall provide that the contracting attorney
15 shall be available to eligible defendants upon their request, or
16 the request of someone acting on their behalf, at any time the
17 Constitution of the United States or the Constitution of Nebraska
18 requires the appointment of counsel.

19 (8) The contract between the county board and the
20 contracting attorney shall provide for reasonable compensation
21 over and above the normal contract price for cases which require an
22 extraordinary amount of time and preparation. ~~including capital~~
23 ~~eases.~~

24 Sec. 3. Section 24-1106, Reissue Revised Statutes of
25 Nebraska, is amended to read:

1 24-1106 (1) In cases which were appealable to the Supreme
2 Court before September 6, 1991, the appeal, if taken, shall be to
3 the Court of Appeals ~~except in capital cases,~~ cases in which life
4 imprisonment without possibility of parole has been imposed, cases
5 in which life imprisonment has been imposed, and cases involving
6 the constitutionality of a statute.

7 (2) Any party to a case appealed to the Court of Appeals
8 may file a petition in the Supreme Court to bypass the review
9 by the Court of Appeals and for direct review by the Supreme
10 Court. The procedure and time for filing the petition shall be
11 as provided by rules of the Supreme Court. In deciding whether to
12 grant the petition, the Supreme Court may consider one or more of
13 the following factors:

14 (a) Whether the case involves a question of first
15 impression or presents a novel legal question;

16 (b) Whether the case involves a question of state or
17 federal constitutional interpretation;

18 (c) Whether the case raises a question of law regarding
19 the validity of a statute;

20 (d) Whether the case involves issues upon which there is
21 an inconsistency in the decisions of the Court of Appeals or of the
22 Supreme Court; and

23 (e) Whether the case is one of significant public
24 interest.

25 When a petition for direct review is granted, the case

1 shall be docketed for hearing before the Supreme Court.

2 (3) The Supreme Court shall by rule provide for the
3 removal of a case from the Court of Appeals to the Supreme Court
4 for decision by the Supreme Court at any time before a final
5 decision has been made on the case by the Court of Appeals. The
6 removal may be on the recommendation of the Court of Appeals or on
7 motion of the Supreme Court. Cases may be removed from the Court of
8 Appeals for decision by the Supreme Court for any one or more of
9 the reasons set forth in subsection (2) of this section or in order
10 to regulate the caseload existing in either the Court of Appeals
11 or the Supreme Court. The Chief Judge of the Court of Appeals and
12 the Chief Justice of the Supreme Court shall regularly inform each
13 other of the number and nature of cases docketed in the respective
14 court.

15 Sec. 4. Section 25-1140.09, Revised Statutes Cumulative
16 Supplement, 2006, is amended to read:

17 25-1140.09 On the application of the county attorney or
18 any party to a suit in which a record of the proceedings has
19 been made, ~~upon receipt of the notice provided in section 29-2525,~~
20 or upon the filing of a praecipe for a bill of exceptions by an
21 appealing party in the office of the clerk of the district court
22 as provided in section 25-1140, the court reporter shall prepare
23 a transcribed copy of the proceedings so recorded or any part
24 thereof. The reporter shall be entitled to receive, in addition
25 to his or her salary, a per-page fee as prescribed by the Supreme

1 Court for the original copy and each additional copy, to be paid by
2 the party requesting the same except as otherwise provided in this
3 section.

4 When the transcribed copy of the proceedings is required
5 by the county attorney, the fee therefor shall be paid by the
6 county in the same manner as other claims are paid. When the
7 defendant in a criminal case, after conviction, makes an affidavit
8 that he or she is unable by reason of his or her poverty to pay
9 for such copy, the court or judge thereof may, by order endorsed
10 on such affidavit, direct delivery of such transcribed copy to such
11 defendant, and the fee shall be paid by the county in the same
12 manner as other claims are allowed and paid. ~~When such copy is
13 prepared in any criminal case in which the sentence adjudged is
14 capital, the fees therefor shall be paid by the county in the same
15 manner as other claims are allowed or paid.~~

16 The fee for preparation of a bill of exceptions and
17 the procedure for preparation, settlement, signature, allowance,
18 certification, filing, and amendment of a bill of exceptions shall
19 be regulated and governed by rules of practice prescribed by the
20 Supreme Court. The fee paid shall be taxed, by the clerk of the
21 district court, to the party against whom the judgment or decree
22 is rendered except as otherwise ordered by the presiding district
23 judge.

24 Sec. 5. Section 27-609, Reissue Revised Statutes of
25 Nebraska, is amended to read:

1 27-609 (1) For the purpose of attacking the credibility
2 of a witness, evidence that he or she has been convicted of a
3 crime shall be admitted if elicited from him or her or established
4 by public record during cross-examination, but only if the crime
5 (a) was punishable by ~~death~~ ~~or~~ imprisonment in excess of one year
6 under the law under which he or she was convicted or (b) involved
7 dishonesty or false statement regardless of the punishment.

8 (2) Evidence of a conviction under this rule is not
9 admissible if a period of more than ten years has elapsed since
10 the date of such conviction or of the release of the witness from
11 confinement, whichever is the later date.

12 (3) Evidence of a conviction is not admissible under this
13 rule if the conviction has been the subject of a pardon, annulment,
14 or other equivalent procedure which was based on innocence.

15 (4) Evidence of juvenile adjudications is not admissible
16 under this rule.

17 (5) Pendency of an appeal renders evidence of a
18 conviction inadmissible.

19 Sec. 6. Section 27-803, Revised Statutes Cumulative
20 Supplement, 2006, is amended to read:

21 27-803 Subject to the provisions of section 27-403, the
22 following are not excluded by the hearsay rule, even though the
23 declarant is available as a witness:

24 (1) A statement relating to a startling event or
25 condition made while the declarant was under the stress of

1 excitement caused by the event or condition;

2 (2) A statement of the declarant's then existing state of
3 mind, emotion, sensation, or physical condition (such as intent,
4 plan, motive, design, mental feeling, pain, and bodily health),
5 but not including a statement of memory or belief to prove the
6 fact remembered or believed unless it relates to the execution,
7 revocation, identification, or terms of declarant's will;

8 (3) Statements made for purposes of medical diagnosis or
9 treatment and describing medical history, or past or present
10 symptoms, pain, or sensations, or the inception or general
11 character of the cause or external source thereof insofar as
12 reasonably pertinent to diagnosis or treatment;

13 (4) A memorandum or record concerning a matter about
14 which a witness once had knowledge but now has insufficient
15 recollection to enable him or her to testify fully and accurately,
16 shown to have been made or adopted by the witness when the matter
17 was fresh in his or her memory and to reflect that knowledge
18 correctly. If admitted, the memorandum or record may be read into
19 evidence but may not itself be received as an exhibit unless
20 offered by an adverse party;

21 (5) A memorandum, report, record, or data compilation,
22 in any form, of acts, events, or conditions, other than opinions
23 or diagnoses, made at or near the time of such acts, events, or
24 conditions, in the course of a regularly conducted activity, if it
25 was the regular course of such activity to make such memorandum,

1 report, record, or data compilation at the time of such act, event,
2 or condition, or within a reasonable time thereafter, as shown by
3 the testimony of the custodian or other qualified witness unless
4 the source of information or method or circumstances of preparation
5 indicate lack of trustworthiness. The circumstances of the making
6 of such memorandum, report, record, or data compilation, including
7 lack of personal knowledge by the entrant or maker, may be shown to
8 affect its weight;

9 (6) Evidence that a matter is not included in the
10 memoranda, reports, records, or data compilations, in any form,
11 kept in accordance with the provisions of subdivision (5) of this
12 section to prove the nonoccurrence or nonexistence of the matter,
13 if the matter was of a kind of which a memorandum, report, record,
14 or data compilation was regularly made and preserved, unless the
15 sources of information or other circumstances indicate a lack of
16 trustworthiness;

17 (7) Upon reasonable notice to the opposing party prior to
18 trial, records, reports, statements, or data compilations made by
19 a public official or agency of facts required to be observed and
20 recorded pursuant to a duty imposed by law, unless the sources of
21 information or the method or circumstances of the investigation are
22 shown by the opposing party to indicate a lack of trustworthiness;

23 (8) Records or data compilations, in any form, of births,
24 fetal deaths, deaths, or marriages, if the report thereof was made
25 to a public office pursuant to requirements of law;

1 (9) To prove the absence of a record, report, statement,
2 or data compilation, in any form, or the nonoccurrence or
3 nonexistence of a matter of which a record, report, statement, or
4 data compilation, in any form, was regularly made and preserved by
5 a public office or agency, evidence in the form of a certification
6 in accordance with section 27-902, or testimony, that diligent
7 search failed to disclose the record, report, statement, or data
8 compilation or entry;

9 (10) Statements of births, marriages, divorces, deaths,
10 legitimacy, ancestry, relationship by blood or marriage, or other
11 similar facts of personal or family history, contained in a
12 regularly kept record of a religious organization;

13 (11) Statements of fact contained in a certificate that
14 the maker performed a marriage or other ceremony or administered
15 a sacrament, made by a member of the clergy, public official, or
16 other person authorized by the rules or practices of a religious
17 organization or by law to perform the act certified, and purporting
18 to have been issued at the time of the act or within a reasonable
19 time thereafter;

20 (12) Statements of births, marriages, divorces, deaths,
21 legitimacy, ancestry, relationship by blood or marriage, or other
22 similar facts of personal or family history contained in family
23 Bibles, genealogies, charts, engravings on rings, inscriptions on
24 family portraits, engravings on urns, crypts, or tombstones or the
25 like;

1 (13) The record of a document purporting to establish or
2 affect an interest in property, as proof of the content of the
3 original recorded document and its execution and delivery by each
4 person by whom it purports to have been executed, if the record is
5 a record of a public office and an applicable statute authorized
6 the recording of documents of that kind in that office;

7 (14) A statement contained in a document purporting to
8 establish or affect an interest in property if the matter stated
9 was relevant to the purpose of the document, unless dealings with
10 the property since the document was made have been inconsistent
11 with the truth of the statement or the purport of the document;

12 (15) Statements in a document in existence thirty years
13 or more whose authenticity is established;

14 (16) Market quotations, tabulations, lists, directories,
15 or other published compilations, generally used and relied upon by
16 the public or by persons in particular occupations;

17 (17) Statements contained in published treatises,
18 periodicals, or pamphlets on a subject of history, medicine, or
19 other science or art, established as a reliable authority by the
20 testimony or admission of the witness or by other expert testimony
21 or by judicial notice, to the extent called to the attention of an
22 expert witness upon cross-examination or relied upon by the expert
23 witness in direct examination. If admitted, the statements may be
24 read into evidence but may not be received as exhibits;

25 (18) Reputation among members of his or her family by

1 blood, adoption, or marriage, or among his or her associates, or
2 in the community, concerning a person's birth, adoption, marriage,
3 divorce, death, legitimacy, relationship by blood, adoption, or
4 marriage, ancestry, or other similar fact of his or her personal or
5 family history;

6 (19) Reputation in a community, arising before the
7 controversy, as to boundaries of or customs affecting lands in
8 the community, and reputation as to events of general history
9 important to the community or state or nation in which located;

10 (20) Reputation of a person's character among his or her
11 associates or in the community;

12 (21) Evidence of a final judgment, entered after a
13 trial or upon a plea of guilty (but not upon a plea of nolo
14 contendere), adjudging a person guilty of a crime punishable by
15 death ~~or~~ imprisonment in excess of one year, to prove any fact
16 essential to sustain the judgment, but not including, when offered
17 by the government in a criminal prosecution for purposes other than
18 impeachment, judgments against a person other than the accused.
19 The pendency of an appeal may be shown but does not affect
20 admissibility;

21 (22) Judgments as proof of matters of personal, family,
22 or general history, or boundaries, essential to the judgment, if
23 the same would be provable by evidence of reputation; and

24 (23) A statement not specifically covered by any of
25 the foregoing exceptions but having equivalent circumstantial

1 guarantees of trustworthiness, if the court determines that (a)
2 the statement is offered as evidence of a material fact, (b) the
3 statement is more probative on the point for which it is offered
4 than any other evidence which the proponent can procure through
5 reasonable efforts, and (c) the general purposes of these rules and
6 the interests of justice will best be served by admission of the
7 statement into evidence. A statement may not be admitted under this
8 exception unless the proponent of it makes known to the adverse
9 party, sufficiently in advance of the trial or hearing to provide
10 the adverse party with a fair opportunity to prepare to meet it,
11 his or her intention to offer the statement and the particulars of
12 it, including the name and address of the declarant.

13 Sec. 7. Section 28-104, Reissue Revised Statutes of
14 Nebraska, is amended to read:

15 28-104 The terms offense and crime are synonymous as used
16 in this code and mean a violation of, or conduct defined by, any
17 statute for which a fine, or imprisonment, ~~or death~~ may be imposed.

18 Sec. 8. Section 28-105, Revised Statutes Cumulative
19 Supplement, 2006, is amended to read:

20 28-105 (1) For purposes of the Nebraska Criminal Code and
21 any statute passed by the Legislature after the date of passage
22 of the code, felonies are divided into nine classes which are
23 distinguished from one another by the following penalties which are
24 authorized upon conviction:

1	Class I felony	Death
2	<u>Class I felony</u>	<u>Maximum - life imprisonment</u>
3		<u>without possibility of parole</u>
4		<u>and with order of restitution</u>
5		<u>Minimum - life imprisonment</u>
6	Class IA felony	Life imprisonment without parole
7	<u>Class IA felony</u>	<u>Life imprisonment</u>
8	Class IB felony	Maximum - life imprisonment
9		Minimum - twenty years imprisonment
10	Class IC felony	Maximum - fifty years imprisonment
11		Mandatory minimum - five years imprisonment
12	Class ID felony	Maximum - fifty years imprisonment
13		Mandatory minimum - three years imprisonment
14	Class II felony	Maximum - fifty years imprisonment
15		Minimum - one year imprisonment
16	Class III felony	Maximum - twenty years imprisonment, or
17		twenty-five thousand dollars fine, or both
18		Minimum - one year imprisonment
19	Class IIIA felony	Maximum - five years imprisonment, or
20		ten thousand dollars fine, or both
21		Minimum - none
22	Class IV felony	Maximum - five years imprisonment, or
23		ten thousand dollars fine, or both
24		Minimum - none

25 (2) All sentences of imprisonment for Class I, IA, IB,

1 IC, ID, II, and III felonies and sentences of one year or more
2 for Class IIIA and IV felonies shall be served in institutions
3 under the jurisdiction of the Department of Correctional Services.
4 Sentences of less than one year shall be served in the county jail
5 except as provided in this subsection. If the department certifies
6 that it has programs and facilities available for persons sentenced
7 to terms of less than one year, the court may order that any
8 sentence of six months or more be served in any institution under
9 the jurisdiction of the department. Any such certification shall
10 be given by the department to the State Court Administrator, who
11 shall forward copies thereof to each judge having jurisdiction to
12 sentence in felony cases.

13 (3) Nothing in this section shall limit the authority
14 granted in sections 29-2221 and 29-2222 to increase sentences for
15 habitual criminals.

16 (4) A person convicted of a felony for which a mandatory
17 minimum sentence is prescribed shall not be eligible for probation.

18 Sec. 9. Section 28-303, Revised Statutes Cumulative
19 Supplement, 2006, is amended to read:

20 28-303 A person commits murder in the first degree if
21 he or she kills another person (1) purposely and with deliberate
22 and premeditated malice, or (2) in the perpetration of or attempt
23 to perpetrate any sexual assault in the first degree, arson,
24 robbery, kidnapping, hijacking of any public or private means
25 of transportation, or burglary, or (3) by administering poison

1 or causing the same to be done; or if by willful and corrupt
2 perjury or subornation of the same he or she purposely procures
3 the conviction and execution of any innocent person. Murder in the
4 first degree is a Class I felony. The determination of whether
5 murder in the first degree shall be punished as a ~~Class I or Class~~
6 ~~IA felony~~ by a sentence of life imprisonment without possibility of
7 parole or by a sentence of life imprisonment shall be made pursuant
8 to sections ~~29-2519 to 29-2524.~~ 29-2520 to 29-2523.

9 Sec. 10. Section 29-1603, Revised Statutes Cumulative
10 Supplement, 2006, is amended to read:

11 29-1603 (1) All informations shall be verified by the
12 oath of the county attorney, complainant, or some other person, and
13 the offenses charged therein shall be stated with the same fullness
14 and precision in matters of substance as is required in indictments
15 in like cases.

16 (2)(a) Any information charging a violation of section
17 28-303 and in which ~~the death penalty~~ life imprisonment without
18 possibility of parole is sought shall contain a notice of
19 aggravation which alleges one or more aggravating circumstances,
20 as such aggravating circumstances are provided in section 29-2523.
21 The notice of aggravation shall be filed as provided in section
22 29-1602. It shall constitute sufficient notice to describe the
23 alleged aggravating circumstances in the language provided in
24 section 29-2523.

25 (b) The state shall be permitted to add to or amend a

1 notice of aggravation at any time up to and including the thirtieth
2 day prior to the trial of guilt.

3 (c) The existence or contents of a notice of aggravation
4 shall not be disclosed to the jury until after the verdict is
5 rendered in the trial of guilt.

6 (3) Different offenses and different degrees of the same
7 offense may be joined in one information, in all cases in which the
8 same might by different counts be joined in one indictment; and in
9 all cases a defendant or defendants shall have the same right, as
10 to proceedings therein, as the defendant or defendants would have
11 if prosecuted for the same offense upon indictment.

12 Sec. 11. Section 29-1822, Reissue Revised Statutes of
13 Nebraska, is amended to read:

14 29-1822 A person who becomes mentally incompetent after
15 the commission of a crime or misdemeanor shall not be tried for
16 the offense during the continuance of the incompetency. If, after
17 the verdict of guilty and before judgment pronounced, such person
18 becomes mentally incompetent, then no judgment shall be given
19 while such incompetency shall continue, and if, after judgment and
20 before execution of the sentence, such person shall become mentally
21 incompetent, then in case the punishment be capital, the execution
22 thereof shall be stayed until the recovery of such person from the
23 incompetency. continues.

24 Sec. 12. Section 29-2004, Revised Statutes Cumulative
25 Supplement, 2006, is amended to read:

1 29-2004 (1) All parties may stipulate that the jury may
2 be selected up to thirty-one days prior to the date of trial. The
3 stipulation must be unanimous among all parties and evidenced by a
4 joint stipulation to the county court.

5 (2) In all cases, except as may be otherwise expressly
6 provided, the accused shall be tried by a jury drawn, summoned, and
7 impaneled according to provisions of the code of civil procedure,
8 except that whenever in the opinion of the court the trial is
9 likely to be a protracted one, the court may, immediately after
10 the jury is impaneled and sworn, direct the calling of one or two
11 additional jurors, to be known as alternate jurors. Such jurors
12 shall be drawn from the same source and in the same manner, and
13 have the same qualifications as regular jurors, and be subject to
14 examination and challenge as such jurors, except that each party
15 shall be allowed one peremptory challenge to each alternate juror.
16 The alternate jurors shall take the proper oath or affirmation
17 and shall be seated near the regular jurors with equal facilities
18 for seeing and hearing the proceedings in the cause, and shall
19 attend at all times upon the trial of the cause in company with
20 the regular jurors. They shall obey all orders and admonitions
21 of the court, and if the regular jurors are ordered to be kept
22 in the custody of an officer during the trial of the cause, the
23 alternate jurors shall also be kept with the other jurors and,
24 except as hereinafter provided, shall be discharged upon the final
25 submission of the cause to the jury. If an information charging a

1 violation of section 28-303 and in which ~~the death penalty~~ life
2 imprisonment without possibility of parole is sought contains a
3 notice of aggravation, the alternate jurors shall be retained as
4 provided in section 29-2520. If, before the final submission of the
5 cause a regular juror dies or is discharged, the court shall order
6 the alternate juror, if there is but one, to take his or her place
7 in the jury box. If there are two alternate jurors the court shall
8 select one by lot, who shall then take his or her place in the jury
9 box. After an alternate juror is in the jury box he or she shall be
10 subject to the same rules as a regular juror.

11 Sec. 13. Section 29-2005, Reissue Revised Statutes of
12 Nebraska, is amended to read:

13 29-2005 Every person arraigned for any crime punishable
14 ~~with death, or~~ by imprisonment for life without possibility of
15 parole or imprisonment for life, shall be admitted on his or her
16 trial to a peremptory challenge of twelve jurors. Every ~~and no~~
17 ~~more,~~ every person arraigned for any offense that may be punishable
18 by imprisonment for a term exceeding eighteen months and less than
19 life, shall be admitted to a peremptory challenge of six jurors. In
20 ~~and in~~ all other criminal trials, the defendant shall be allowed
21 a peremptory challenge of three jurors. The attorney prosecuting
22 on behalf of the state shall be admitted to a peremptory challenge
23 of twelve jurors in all cases when the offense is punishable with
24 ~~death or~~ by imprisonment for life without possibility of parole or
25 imprisonment for life, six jurors when the offense is punishable

1 by imprisonment for a term exceeding eighteen months and less than
 2 life, and three jurors in all other cases. In each case for which
 3 ~~÷ PROVIDED, that in all cases where~~ alternate jurors are called, as
 4 provided in section 29-2004, ~~then in that case~~ both the defendant
 5 and the attorney prosecuting for the state shall each be allowed
 6 one added peremptory challenge to each alternate juror.

7 Sec. 14. Section 29-2006, Reissue Revised Statutes of
 8 Nebraska, is amended to read:

9 29-2006 The following shall be good causes for challenge
 10 to any person called as a juror or alternate juror, on the trial of
 11 any indictment:

12 (1) That he or she was a member of the grand jury which
 13 found the indictment;

14 (2) ~~that he~~ That he or she has formed or expressed an
 15 opinion as to the guilt or innocence of the accused. If ~~÷ PROVIDED,~~
 16 ~~if~~ a juror or alternate juror ~~shall state~~ states that he or she
 17 has formed or expressed an opinion as to the guilt or innocence of
 18 the accused, the court shall thereupon proceed to examine, on oath,
 19 such juror or alternate juror as to the ground of such opinion;
 20 and if it ~~shall appear~~ appears to have been founded upon reading
 21 newspaper statements, communications, comments, or reports, or upon
 22 rumor or hearsay, and not upon conversations with witnesses of the
 23 transactions or reading reports of their testimony or hearing them
 24 testify, and the juror or alternate juror ~~shall say~~ says on oath
 25 that he or she feels able, notwithstanding such opinion, to render

1 an impartial verdict upon the law and the evidence, the court, if
 2 satisfied that such juror or alternate juror is impartial and will
 3 render such verdict, may, in its discretion, admit such juror or
 4 alternate juror as competent to serve in such case;

5 ~~(3) in indictments for an offense the punishment whereof~~
 6 ~~is capital, that his opinions are such as to preclude him from~~
 7 ~~finding the accused guilty of an offense punishable with death;~~ (4)
 8 ~~that he~~ That he or she is a relation within the fifth degree to the
 9 person alleged to be injured or attempted to be injured, or to the
 10 person on whose complaint the prosecution was instituted, or to the
 11 defendant;

12 ~~(5) that he~~ (4) That he or she has served on the petit
 13 jury which was sworn in the same cause against the same defendant
 14 and which jury either rendered a verdict which was set aside or was
 15 discharged, after hearing the evidence;

16 ~~(6) that he~~ (5) That he or she has served as a juror in a
 17 civil case brought against the defendant for the same act;

18 ~~(7) that he~~ (6) That he or she has been in good faith
 19 subpoenaed as a witness in the case;

20 ~~(8) that he~~ (7) That he or she is a habitual drunkard;
 21 and

22 ~~(9) the~~ (8) The same challenges shall be as are allowed
 23 in criminal prosecutions that are allowed to parties in civil
 24 cases.

25 Sec. 15. Section 29-2020, Reissue Revised Statutes of

1 Nebraska, is amended to read:

2 29-2020 ~~Except as provided in section 29-2525 for cases~~
 3 ~~when the punishment is capital,~~ In all criminal cases when a
 4 defendant feels aggrieved by any opinion or decision of the court,
 5 he or she may order a bill of exceptions. The ordering, preparing,
 6 signing, filing, correcting, and amending of the bill of exceptions
 7 shall be governed by the rules established in such matters in civil
 8 cases.

9 Sec. 16. Section 29-2027, Revised Statutes Cumulative
 10 Supplement, 2006, is amended to read:

11 29-2027 In all trials for murder the jury before whom
 12 such trial is had, if they find the prisoner guilty thereof, shall
 13 ascertain in their verdict whether it is murder in the first or
 14 second degree or manslaughter; and if such person is convicted by
 15 confession in open court, the court shall proceed by examination
 16 of witnesses in open court, to determine the degree of the crime,
 17 and shall pronounce sentence accordingly or as provided in sections
 18 ~~29-2519 to 29-2524~~ 29-2520 to 29-2523 for murder in the first
 19 degree.

20 Sec. 17. Section 29-2204, Revised Statutes Cumulative
 21 Supplement, 2006, is amended to read:

22 29-2204 (1) Except when a term of life imprisonment
 23 without possibility of parole is required by law, in imposing an
 24 indeterminate sentence upon an offender the court shall:

25 ~~(a)(i) Until July 1, 1998, fix the minimum and maximum~~

1 limits of the sentence to be served within the limits provided by
2 law, except that when a maximum limit of life is imposed by the
3 court for a Class IB felony, the minimum limit may be any term of
4 years not less than the statutory mandatory minimum; and

5 ~~(ii) Beginning July 1, 1998:~~

6 ~~(A) (a) (i)~~ Fix the minimum and maximum limits of the
7 sentence to be served within the limits provided by law for any
8 class of felony other than a Class IV felony, except that when
9 a maximum limit of life is imposed by the court for a Class IB
10 felony, the minimum limit may be any term of years not less than
11 the statutory mandatory minimum. If the criminal offense is a Class
12 IV felony, the court shall fix the minimum and maximum limits of
13 the sentence, but the minimum limit fixed by the court shall not be
14 less than the minimum provided by law nor more than one-third of
15 the maximum term and the maximum limit shall not be greater than
16 the maximum provided by law; or

17 ~~(B) (ii)~~ Impose a definite term of years, in which event
18 the maximum term of the sentence shall be the term imposed by the
19 court and the minimum term shall be the minimum sentence provided
20 by law;

21 (b) Advise the offender on the record the time the
22 offender will serve on his or her minimum term before attaining
23 parole eligibility assuming that no good time for which the
24 offender will be eligible is lost; and

25 (c) Advise the offender on the record the time the

1 offender will serve on his or her maximum term before attaining
2 mandatory release assuming that no good time for which the offender
3 will be eligible is lost.

4 If any discrepancy exists between the statement of
5 the minimum limit of the sentence and the statement of parole
6 eligibility or between the statement of the maximum limit of the
7 sentence and the statement of mandatory release, the statements
8 of the minimum limit and the maximum limit shall control the
9 calculation of the offender's term. If the court imposes more
10 than one sentence upon an offender or imposes a sentence upon
11 an offender who is at that time serving another sentence, the
12 court shall state whether the sentences are to be concurrent or
13 consecutive.

14 (2)(a) When the court is of the opinion that imprisonment
15 may be appropriate but desires more detailed information as a
16 basis for determining the sentence to be imposed than has been
17 provided by the presentence report required by section 29-2261, the
18 court shall commit an offender to the Department of Correctional
19 Services for a period not exceeding ninety days. The department
20 shall conduct a complete study of the offender during that time,
21 inquiring into such matters as his or her previous delinquency or
22 criminal experience, social background, capabilities, and mental,
23 emotional, and physical health and the rehabilitative resources
24 or programs which may be available to suit his or her needs. By
25 the expiration of the period of commitment or by the expiration

1 of such additional time as the court shall grant, not exceeding
2 a further period of ninety days, the offender shall be returned
3 to the court for sentencing and the court shall be provided
4 with a written report of the results of the study, including
5 whatever recommendations the department believes will be helpful to
6 a proper resolution of the case. After receiving the report and the
7 recommendations, the court shall proceed to sentence the offender
8 in accordance with subsection (1) of this section. The term of the
9 sentence shall run from the date of original commitment under this
10 subsection.

11 (b) In order to encourage the use of this procedure
12 in appropriate cases, all costs incurred during the period the
13 defendant is held in a state institution under this subsection
14 shall be a responsibility of the state and the county shall
15 be liable only for the cost of delivering the defendant to the
16 institution and the cost of returning him or her to the appropriate
17 court for sentencing or such other disposition as the court may
18 then deem appropriate.

19 (3) Except when a ~~term of life is required by law,~~ the
20 defendant is found guilty of a Class I or Class IA felony, whenever
21 the defendant was under eighteen years of age at the time he or she
22 committed the crime for which he or she was convicted, the court
23 may, in its discretion, instead of imposing the penalty provided
24 for the crime, make such disposition of the defendant as the court
25 deems proper under the Nebraska Juvenile Code. Prior to making a

1 disposition which commits the juvenile to the Office of Juvenile
2 Services, the court shall order the juvenile to be evaluated by the
3 office if the juvenile has not had an evaluation within the past
4 twelve months.

5 Sec. 18. Section 29-2282, Reissue Revised Statutes of
6 Nebraska, is amended to read:

7 29-2282 In determining restitution, if the offense
8 results in damage, destruction, or loss of property, the court may
9 require: (1) Return of the property to the victim, if possible;
10 (2) payment of the reasonable value of repairing the property,
11 including property returned by the defendant; or (3) payment of
12 the reasonable replacement value of the property, if return or
13 repair is impossible, impractical, or inadequate. If the offense
14 results in bodily injury, the court may require payment of
15 necessary medical care, including, but not limited to, physical or
16 psychological treatment and therapy, and payment for income lost
17 due to such bodily injury. If the offense results in the death of
18 the victim, the court may require payment to be made to the estate
19 of the victim for any pain and suffering of the victim caused by
20 the offense, for the cost of any medical care prior to death, and
21 for funeral and burial expenses.

22 Sec. 19. Section 29-2407, Reissue Revised Statutes of
23 Nebraska, is amended to read:

24 29-2407 Judgments for fines and costs in criminal cases
25 shall be a lien upon all the property of the defendant within the

1 county from the time of docketing the case by the clerk of the
2 proper court, and judgments upon forfeited recognizance shall be a
3 like lien from the time of forfeiture. No property of any convict
4 shall be exempt from execution issued upon any such judgment as
5 set out in this section against such convict except in cases when
6 the convict is sentenced to a Department of Correctional Services
7 adult correctional facility for a period of more than two years,
8 ~~or to suffer death,~~ in which cases case there shall be the same
9 exemptions as at the time may be provided by law for civil cases.
10 The lien on real estate of any such judgment for costs shall
11 terminate as provided in section 25-1716.

12 Sec. 20. Section 29-2520, Revised Statutes Cumulative
13 Supplement, 2006, is amended to read:

14 29-2520 (1) Whenever any person is found guilty of a
15 violation of section 28-303 and the information contains a notice
16 of aggravation as provided in section 29-1603, the district court
17 shall, as soon as practicable, fix a date for an aggravation
18 hearing to determine the alleged aggravating circumstances. If no
19 notice of aggravation has been filed, the district court shall
20 enter a sentence of life imprisonment, ~~without parole.~~

21 (2) Unless the defendant waives his or her right to a
22 jury determination of the alleged aggravating circumstances, such
23 determination shall be made by:

24 (a) The jury which determined the defendant's guilt; or

25 (b) A jury impaneled for purposes of the determination of

1 the alleged aggravating circumstances if:

2 (i) The defendant waived his or her right to a jury at
3 the trial of guilt and either was convicted before a judge or was
4 convicted on a plea of guilty or nolo contendere; or

5 (ii) The jury which determined the defendant's guilt has
6 been discharged.

7 A jury required by subdivision (2)(b) of this section
8 shall be impaneled in the manner provided in sections 29-2004 to
9 29-2010.

10 (3) The defendant may waive his or her right to a
11 jury determination of the alleged aggravating circumstances. The
12 court shall accept the waiver after determining that it is made
13 freely, voluntarily, and knowingly. If the defendant waives his
14 or her right to a jury determination of the alleged aggravating
15 circumstances, such determination shall be made by a panel of
16 judges as a part of the sentencing determination proceeding as
17 provided in section 29-2521.

18 (4)(a) At an aggravation hearing before a jury for the
19 determination of the alleged aggravating circumstances, the state
20 may present evidence as to the existence of the aggravating
21 circumstances alleged in the information. The Nebraska Evidence
22 Rules shall apply at the aggravation hearing.

23 (b) Alternate jurors who would otherwise be discharged
24 upon final submission of the cause to the jury shall be retained
25 during the deliberation of the defendant's guilt but shall not

1 participate in such deliberations. Such alternate jurors shall
2 serve during the aggravation hearing as provided in section 29-2004
3 but shall not participate in the jury's deliberations under this
4 subsection.

5 (c) If the jury serving at the aggravation hearing is
6 the jury which determined the defendant's guilt, the jury may
7 consider evidence received at the trial of guilt for purposes
8 of reaching its verdict as to the existence or nonexistence of
9 aggravating circumstances in addition to the evidence received at
10 the aggravation hearing.

11 (d) After the presentation and receipt of evidence at
12 the aggravation hearing, the state and the defendant or his or her
13 counsel may present arguments before the jury as to the existence
14 or nonexistence of the alleged aggravating circumstances.

15 (e) The court shall instruct the members of the jury
16 as to their duty as jurors, the definitions of the aggravating
17 circumstances alleged in the information, and the state's burden to
18 prove the existence of each aggravating circumstance alleged in the
19 information beyond a reasonable doubt.

20 (f) The jury at the aggravation hearing shall deliberate
21 and return a verdict as to the existence or nonexistence of each
22 alleged aggravating circumstance. Each aggravating circumstance
23 shall be proved beyond a reasonable doubt. Each verdict with
24 respect to each alleged aggravating circumstance shall be
25 unanimous. If the jury is unable to reach a unanimous verdict

1 with respect to an aggravating circumstance, such aggravating
2 circumstance shall not be weighed in the sentencing determination
3 proceeding as provided in section 29-2521.

4 (g) Upon rendering its verdict as to the determination of
5 the aggravating circumstances, the jury shall be discharged.

6 (h) If no aggravating circumstance is found to exist, the
7 court shall enter a sentence of life imprisonment, ~~without parole.~~
8 If one or more aggravating circumstances are found to exist, the
9 court shall convene a panel of three judges to hold a hearing
10 to receive evidence of mitigation and sentence excessiveness
11 or disproportionality as provided in subsection (3) of section
12 29-2521.

13 Sec. 21. Section 29-2521, Revised Statutes Cumulative
14 Supplement, 2006, is amended to read:

15 29-2521 (1) When a person has been found guilty of murder
16 in the first degree and (a) a jury renders a verdict finding the
17 existence of one or more aggravating circumstances as provided in
18 section 29-2520 or (b)(i) the information contains a notice of
19 aggravation as provided in section 29-1603 and (ii) such person
20 waives his or her right to a jury determination of the alleged
21 aggravating circumstances, the sentence of such person shall be
22 determined by:

23 (a) A panel of three judges, including the judge who
24 presided at the trial of guilt or who accepted the plea and two
25 additional active district court judges named at random by the

1 Chief Justice of the Supreme Court. The judge who presided at
2 the trial of guilt or who accepted the plea shall act as the
3 presiding judge for the sentencing determination proceeding under
4 this section; or

5 (b) If the Chief Justice of the Supreme Court has
6 determined that the judge who presided at the trial of guilt or
7 who accepted the plea is disabled or disqualified after receiving
8 a suggestion of such disability or disqualification from the clerk
9 of the court in which the finding of guilty was entered, a panel
10 of three active district court judges named at random by the Chief
11 Justice of the Supreme Court. The Chief Justice of the Supreme
12 Court shall name one member of the panel at random to act as the
13 presiding judge for the sentencing determination proceeding under
14 this section.

15 (2) In the sentencing determination proceeding before
16 a panel of judges when the right to a jury determination of
17 the alleged aggravating circumstances has been waived, the panel
18 shall, as soon as practicable after receipt of the written report
19 resulting from the presentence investigation ordered as provided
20 in section 29-2261, hold a hearing. At such hearing, evidence
21 may be presented as to any matter that the presiding judge
22 deems relevant to sentence and shall include matters relating to
23 the aggravating circumstances alleged in the information, to any
24 of the mitigating circumstances set forth in section 29-2523,
25 and to sentence excessiveness or disproportionality. The Nebraska

1 Evidence Rules shall apply to evidence relating to aggravating
2 circumstances. Each aggravating circumstance shall be proved beyond
3 a reasonable doubt. Any evidence at the sentencing determination
4 proceeding which the presiding judge deems to have probative value
5 may be received. The state and the defendant or his or her counsel
6 shall be permitted to present argument for or against the sentence
7 of death- life imprisonment without possibility of parole. The
8 presiding judge shall set forth the general order of procedure at
9 the outset of the sentencing determination proceeding. The panel
10 shall make written findings of fact based upon the trial of guilt
11 and the sentencing determination proceeding, identifying which, if
12 any, of the alleged aggravating circumstances have been proven to
13 exist beyond a reasonable doubt. Each finding of fact with respect
14 to each alleged aggravating circumstance shall be unanimous. If the
15 panel is unable to reach a unanimous finding of fact with respect
16 to an aggravating circumstance, such aggravating circumstance shall
17 not be weighed in the sentencing determination proceeding. After
18 the presentation and receipt of evidence and argument, the panel
19 shall determine an appropriate sentence as provided in section
20 29-2522.

21 (3) When a jury renders a verdict finding the existence
22 of one or more aggravating circumstances as provided in section
23 29-2520, the panel of judges shall, as soon as practicable after
24 receipt of the written report resulting from the presentence
25 investigation ordered as provided in section 29-2261, hold

1 a hearing to receive evidence of mitigation and sentence
2 excessiveness or disproportionality. Evidence may be presented
3 as to any matter that the presiding judge deems relevant to
4 (a) mitigation, including, but not limited to, the mitigating
5 circumstances set forth in section 29-2523, and (b) sentence
6 excessiveness or disproportionality as provided in subdivision (3)
7 of section 29-2522. Any such evidence which the presiding judge
8 deems to have probative value may be received. The state and the
9 defendant and his or her counsel shall be permitted to present
10 argument for or against the sentence of death. life imprisonment
11 without possibility of parole. The presiding judge shall set forth
12 the general order of procedure at the outset of the sentencing
13 determination proceeding. After the presentation and receipt of
14 evidence and argument, the panel shall determine an appropriate
15 sentence as provided in section 29-2522.

16 Sec. 22. Section 29-2522, Revised Statutes Cumulative
17 Supplement, 2006, is amended to read:

18 29-2522 The panel of judges for the sentencing
19 determination proceeding shall either unanimously fix the sentence
20 at ~~death~~ life imprisonment without possibility of parole or, if the
21 sentence of ~~death~~ life imprisonment without possibility of parole
22 was not unanimously agreed upon by the panel, fix the sentence
23 at life imprisonment. ~~without parole.~~ Such sentence determination
24 shall be based upon the following considerations:

25 (1) Whether the aggravating circumstances as determined

1 to exist justify imposition of a sentence of ~~death,~~ life
2 imprisonment without possibility of parole;

3 (2) Whether sufficient mitigating circumstances exist
4 which approach or exceed the weight given to the aggravating
5 circumstances; or

6 (3) Whether the sentence of ~~death~~ life imprisonment
7 without possibility of parole is excessive or disproportionate to
8 the penalty imposed in similar cases, considering both the crime
9 and the defendant.

10 In each case, the determination of the panel of judges
11 shall be in writing and refer to the aggravating and mitigating
12 circumstances weighed in the determination of the panel.

13 ~~If an order is entered sentencing the defendant to death,~~
14 ~~a date for execution shall not be fixed until after the conclusion~~
15 ~~of the appeal provided for by section 29-2525.~~

16 Sec. 23. Section 29-2523, Revised Statutes Cumulative
17 Supplement, 2006, is amended to read:

18 29-2523 The aggravating and mitigating circumstances
19 referred to in sections ~~29-2519 to 29-2524~~ 29-2520 to 29-2523
20 shall be as follows:

21 (1) Aggravating Circumstances:

22 (a) The offender was previously convicted of another
23 murder or a crime involving the use or threat of violence to the
24 person, or has a substantial prior history of serious assaultive or
25 terrorizing criminal activity;

1 (b) The murder was committed in an effort to conceal
2 the commission of a crime, or to conceal the identity of the
3 perpetrator of such crime;

4 (c) The murder was committed for hire, or for pecuniary
5 gain, or the ~~defendant~~ offender hired another to commit the murder
6 for the defendant;

7 (d) The murder was especially heinous, atrocious, cruel,
8 or manifested exceptional depravity by ordinary standards of
9 morality and intelligence;

10 (e) At the time the murder was committed, the offender
11 also committed another murder;

12 (f) The offender knowingly created a great risk of death
13 to ~~at least several persons;~~ more than one person;

14 (g) The victim was a public servant having lawful custody
15 of the offender or another in the lawful performance of his or her
16 official duties and the offender knew or should have known that the
17 victim was a public servant performing his or her official duties;

18 (h) The murder was committed knowingly to disrupt or
19 hinder the lawful exercise of any governmental function or the
20 enforcement of the laws; or

21 (i) The victim was a law enforcement officer engaged in
22 the lawful performance of his or her official duties as a law
23 enforcement officer and the offender knew or reasonably should have
24 known that the victim was a law enforcement officer.

25 (2) Mitigating Circumstances:

1 (a) The offender has no significant history of prior
2 criminal activity;

3 (b) The offender acted under unusual pressures or
4 influences or under the domination of another person;

5 (c) The crime was committed while the offender was under
6 the influence of extreme mental or emotional disturbance;

7 (d) The age of the ~~defendant~~ offender at the time of the
8 crime;

9 (e) The offender was an accomplice in the crime committed
10 by another person and his or her participation was relatively
11 minor;

12 (f) The victim was a participant in the defendant's
13 conduct or consented to the act; or

14 (g) At the time of the crime, the capacity of the
15 ~~defendant~~ offender to appreciate the wrongfulness of his or her
16 conduct or to conform his or her conduct to the requirements of
17 law was impaired as a result of mental illness, mental defect, or
18 intoxication.

19 Sec. 24. A sentence of life imprisonment without
20 possibility of parole imposed pursuant to sections 29-2520 to
21 29-2523 means that subject only to the constitutional power of the
22 Board of Pardons in Article IV, section 13, of the Constitution of
23 Nebraska, a person so sentenced shall not under any circumstances
24 whatsoever be paroled.

25 Sec. 25. A person sentenced pursuant to section 29-2520

1 to 29-2523 to life imprisonment without possibility of parole and
2 with order of restitution shall be ordered, pursuant to sections
3 29-2280 to 29-2289, to make compensatory payment to the estate of
4 the victim of the crime for any pain and suffering of the victim
5 caused or contributed to by the defendant, for the cost of any
6 medical care prior to death necessitated by the crime, and for
7 funeral and burial expenses.

8 Sec. 26. The changes made by this legislative bill
9 shall not (1) limit the discretionary authority of the sentencing
10 court to order restitution as part of any sentence other than
11 life imprisonment without possibility of parole or (2) alter the
12 discretion and authority of the Department of Correctional Services
13 to determine the appropriate security measures and conditions
14 during the confinement of any committed offender.

15 Sec. 27. In any criminal proceeding in which the death
16 penalty has been imposed but not carried out prior to the effective
17 date of this act, it is the intention, will, and sense of the
18 Legislature that such penalty shall be changed to life imprisonment
19 without possibility of parole and with order of restitution.

20 Sec. 28. Section 29-2801, Reissue Revised Statutes of
21 Nebraska, is amended to read:

22 29-2801 If any person, except persons convicted of some
23 crime or offense for which they stand committed, ~~or persons~~
24 ~~committed for treason or felony, the punishment whereof is capital,~~
25 ~~plainly and specially expressed in the warrant of commitment,~~ now

1 ~~or in the future, is or shall be~~ confined in any jail of this
 2 state, ~~or shall be~~ is unlawfully deprived of his or her liberty,
 3 and ~~shall make~~ makes application, either by ~~him~~ himself or herself
 4 or by any person on his or her behalf, to any one of the judges
 5 of the district court, or to any county judge, and does at the
 6 same time produce to such judge a copy of the commitment or cause
 7 of detention of such person, or if the person so imprisoned or
 8 detained is imprisoned or detained without any legal authority,
 9 upon making the same appear to such judge, by oath or affirmation,
 10 it ~~shall be his duty~~ is the duty of the judge forthwith to allow
 11 a writ of habeas corpus, which writ shall be issued forthwith by
 12 the clerk of the district court, or by the county judge, as the
 13 case may require, under the seal of the court whereof the person
 14 allowing such writ is a judge, directed to the proper officer,
 15 person, or persons who detains detain such prisoner.

16 Sec. 29. Section 29-3205, Reissue Revised Statutes of
 17 Nebraska, is amended to read:

18 29-3205 ~~Sections 29-3201 to 29-3210 of~~ The Uniform
 19 Rendition of Prisoners as Witnesses in Criminal Proceedings Act
 20 shall not apply to any person in this state confined as mentally
 21 ill, ~~or under sentence of death.~~

22 Sec. 30. Section 29-3920, Revised Statutes Cumulative
 23 Supplement, 2006, is amended to read:

24 29-3920 The Legislature finds that:

25 (1) County property owners should be given some relief

1 from the obligation of providing mandated indigent defense services
2 which in most instances are required because of state laws
3 establishing crimes and penalties;

4 (2) Property tax relief can be accomplished if the state
5 begins to assist the counties with the obligation of providing
6 indigent defense services required by state laws establishing
7 crimes and penalties;

8 (3) Property tax relief in the form of state assistance
9 to the counties of Nebraska in providing for indigent defense
10 services will also increase accountability because the state,
11 which is the governmental entity responsible for passing criminal
12 statutes, will likewise be responsible for paying some of the
13 costs;

14 (4) Property tax relief in the form of state assistance
15 to the counties of Nebraska in providing for indigent defense
16 services will also improve inconsistent and inadequate funding of
17 indigent defense services by the counties;

18 (5) Property tax relief in the form of state assistance
19 to the counties of Nebraska in providing for indigent defense
20 services will also lessen the impact on county property taxpayers
21 of the cost of a high profile ~~death penalty~~ first-degree murder
22 case which can significantly affect the finances of the counties;
23 and

24 (6) To accomplish property tax relief in the form of the
25 state assisting the counties of Nebraska in providing for indigent

1 defense services, the Commission on Public Advocacy Operations Cash
2 Fund should be established to fund the operation of the Commission
3 on Public Advocacy and to fund reimbursement requests as determined
4 by section 29-3933.

5 Sec. 31. Section 29-3922, Revised Statutes Cumulative
6 Supplement, 2006, is amended to read:

7 29-3922 For purposes of the County Revenue Assistance
8 Act:

9 (1) Chief counsel means an attorney appointed to be
10 the primary administrative officer of the commission pursuant to
11 section 29-3928;

12 (2) Commission means the Commission on Public Advocacy;

13 (3) Commission staff means attorneys, investigators,
14 and support staff who are performing work for the ~~capital~~
15 first-degree murder litigation division, appellate division, DNA
16 testing division, and major case resource center;

17 (4) Contracting attorney means an attorney contracting to
18 act as a public defender pursuant to sections 23-3404 to 23-3408;

19 (5) Council means the Indigent Defense Standards Advisory
20 Council;

21 (6) Court-appointed attorney means an attorney other than
22 a contracting attorney or a public defender appointed by the court
23 to represent an indigent person;

24 (7) Indigent defense services means legal services
25 provided to indigent persons by an indigent defense system in

1 ~~capital~~ first-degree murder cases, felony cases, misdemeanor cases,
2 juvenile cases, mental health commitment cases, child support
3 enforcement cases, and paternity establishment cases;

4 (8) Indigent defense system means a system of providing
5 services, including any services necessary for litigating a case,
6 by a contracting attorney, court-appointed attorney, or public
7 defender;

8 (9) Indigent person means a person who is indigent
9 and unable to obtain legal counsel as determined pursuant to
10 subdivision (3) of section 29-3901; and

11 (10) Public defender means an attorney appointed or
12 elected pursuant to sections 23-3401 to 23-3403.

13 Sec. 32. Section 29-3928, Reissue Revised Statutes of
14 Nebraska, is amended to read:

15 29-3928 The commission shall appoint a chief counsel. The
16 responsibilities and duties of the chief counsel shall be defined
17 by the commission and shall include the overall supervision of
18 the workings of the various divisions of the commission. The chief
19 counsel shall be qualified for his or her position, shall have been
20 licensed to practice law in the State of Nebraska for at least five
21 years prior to the effective date of the appointment, and shall
22 be experienced in the practice of criminal defense, including the
23 defense of ~~capital~~ first-degree murder cases. The chief counsel
24 shall serve at the pleasure of the commission. The salary of the
25 chief counsel shall be set by the commission.

1 Sec. 33. Section 29-3929, Revised Statutes Cumulative
2 Supplement, 2006, is amended to read:

3 29-3929 The primary duties of the chief counsel shall be
4 to provide direct legal services to indigent defendants, and the
5 chief counsel shall:

6 (1) Supervise the operations of the appellate division,
7 the ~~capital~~ first-degree murder litigation division, the DNA
8 testing division, and the major case resource center;

9 (2) Prepare a budget and disburse funds for the
10 operations of the commission;

11 (3) Present to the commission an annual report on the
12 operations of the commission, including an accounting of all funds
13 received and disbursed, an evaluation of the cost-effectiveness of
14 the commission, and recommendations for improvement;

15 (4) Convene or contract for conferences and training
16 seminars related to criminal defense;

17 (5) Perform other duties as directed by the commission;

18 (6) Establish and administer projects and programs for
19 the operation of the commission;

20 (7) Appoint and remove employees of the commission and
21 delegate appropriate powers and duties to them;

22 (8) Adopt and promulgate rules and regulations for the
23 management and administration of policies of the commission and the
24 conduct of employees of the commission;

25 (9) Transmit monthly to the commission a report of the

1 operations of the commission for the preceding calendar month;

2 (10) Execute and carry out all contracts, leases, and
3 agreements authorized by the commission with agencies of federal,
4 state, or local government, corporations, or persons; and

5 (11) Exercise all powers and perform all duties necessary
6 and proper in carrying out his or her responsibilities.

7 Sec. 34. Section 29-3930, Revised Statutes Cumulative
8 Supplement, 2006, is amended to read:

9 29-3930 The following divisions are established within
10 the commission:

11 (1) The ~~capital~~ first-degree murder litigation division
12 shall be available to assist in the defense of ~~capital~~ first-degree
13 murder cases in Nebraska, subject to caseload standards of the
14 commission;

15 (2) The appellate division shall be available to
16 prosecute appeals to the Court of Appeals and the Supreme Court,
17 subject to caseload standards of the commission;

18 (3) The violent crime and drug defense division shall
19 be available to assist in the defense of certain violent and
20 drug crimes as defined by the commission, subject to the caseload
21 standards of the commission;

22 (4) The DNA testing division shall be available to assist
23 in representing persons who are indigent who have filed a motion
24 pursuant to the DNA Testing Act, subject to caseload standards; and

25 (5) The major case resource center shall be available to

1 assist public defenders, contracting attorneys, or court-appointed
2 attorneys with the defense of a felony offense, subject to caseload
3 standards of the commission.

4 Sec. 35. Section 55-480, Reissue Revised Statutes of
5 Nebraska, is amended to read:

6 55-480 Though not specifically mentioned in ~~this code,~~
7 the Nebraska Code of Military Justice, all disorders and neglects
8 to the prejudice of good order and discipline in the armed forces,
9 all conduct of a nature to bring discredit upon the armed forces,
10 and all crimes and offenses ~~not capital,~~ of which persons subject
11 to ~~this~~ the code may be guilty, shall be taken cognizance of by a
12 court-martial, according to the nature and degree of the offense,
13 and shall be punished at the discretion of that court.

14 Sec. 36. Section 83-1,105.01, Revised Statutes Cumulative
15 Supplement, 2006, is amended to read:

16 83-1,105.01 Except when a term of life imprisonment
17 without possibility of parole or life imprisonment is required by
18 law, in imposing an indeterminate sentence upon an offender the
19 court shall:

20 (1) Fix the minimum and maximum limits of the sentence
21 to be served within the limits provided by law for any class of
22 felony other than a Class IV felony, except that when a maximum
23 limit of life is imposed by the court for a Class IB felony, the
24 minimum limit may be any term of years not less than the statutory
25 mandatory minimum. If the criminal offense is a Class IV felony,

1 the court shall fix the minimum and maximum limits of the sentence,
2 but the minimum limit fixed by the court shall not be less than
3 the minimum provided by law nor more than one-third of the maximum
4 term and the maximum limit shall not be greater than the maximum
5 provided by law;

6 (2) Impose a definite term of years, in which event the
7 maximum term of the sentence shall be the term imposed by the court
8 and the minimum term shall be the minimum sentence provided by law;
9 or

10 (3) (a) When the court is of the opinion that imprisonment
11 may be appropriate but desires more detailed information as a
12 basis for determining the sentence to be imposed than has been
13 provided by the presentence report required by section 29-2261, the
14 court shall commit an offender to the Department of Correctional
15 Services for a period not exceeding ninety days. The department
16 shall conduct a complete study of the offender during that time,
17 inquiring into such matters as his or her previous delinquency or
18 criminal experience, social background, capabilities, and mental,
19 emotional, and physical health and the rehabilitative resources
20 or programs which may be available to suit his or her needs. By
21 the expiration of the period of commitment or by the expiration
22 of such additional time as the court shall grant, not exceeding
23 a further period of ninety days, the offender shall be returned
24 to the court for sentencing and the court shall be provided
25 with a written report of the results of the study, including

1 whatever recommendations the department believes will be helpful to
2 a proper resolution of the case. After receiving the report and the
3 recommendations, the court shall proceed to sentence the offender
4 in accordance with any applicable provision of law. The term of the
5 sentence shall run from the date of original commitment under this
6 subdivision.

7 (b) In order to encourage the use of this procedure
8 in appropriate cases, all costs incurred during the period the
9 offender is held in a state institution under this subdivision
10 shall be the responsibility of the state and the county shall
11 be liable only for the cost of delivering the offender to the
12 institution and the cost of returning him or her to the appropriate
13 court for sentencing or such other disposition as the court may
14 then deem appropriate.

15 Sec. 37. Section 83-1,110.02, Revised Statutes Cumulative
16 Supplement, 2006, is amended to read:

17 83-1,110.02 (1) A committed offender who is otherwise
18 eligible for parole, who is not under sentence of ~~death~~ life
19 imprisonment without possibility of parole or of life imprisonment,
20 and who because of an existing medical or physical condition is
21 determined by the department to be terminally ill or permanently
22 incapacitated may be considered for medical parole by the board. A
23 committed offender may be eligible for medical parole in addition
24 to any other parole. The department shall identify committed
25 offenders who may be eligible for medical parole based upon their

1 medical records.

2 (2) The board shall decide to grant medical parole only
3 after a review of the medical, institutional, and criminal records
4 of the committed offender and such additional medical evidence
5 from board-ordered examinations or investigations as the board in
6 its discretion determines to be necessary. The decision to grant
7 medical parole and to establish conditions of release on medical
8 parole in addition to the conditions stated in subsection (3) of
9 this section is within the sole discretion of the board.

10 (3) As conditions of release on medical parole, the board
11 shall require that the committed offender agree to placement for
12 medical treatment and that he or she be placed for a definite or
13 indefinite period of time in a hospital, a hospice, or another
14 housing accommodation suitable to his or her medical condition,
15 including, but not limited to, his or her family's home, as
16 specified by the board.

17 (4) The parole term of a medical parolee shall be for
18 the remainder of his or her sentence as reduced by any adjustment
19 for good conduct pursuant to the Nebraska Treatment and Corrections
20 Act.

21 Sec. 38. Section 83-4,143, Revised Statutes Supplement,
22 2007, is amended to read:

23 83-4,143 (1) It is the intent of the Legislature that
24 the court target the felony offender (a) who is eligible and
25 by virtue of his or her criminogenic needs is suitable to be

1 sentenced to intensive supervision probation with placement at the
2 incarceration work camp, (b) for whom the court finds that other
3 conditions of a sentence of intensive supervision probation, in
4 and of themselves, are not suitable, and (c) who, without the
5 existence of an incarceration work camp, would, in all likelihood,
6 be sentenced to prison.

7 (2) When the court is of the opinion that imprisonment is
8 appropriate, but that a brief and intensive period of regimented,
9 structured, and disciplined programming within a secure facility
10 may better serve the interests of society, the court may place an
11 offender in an incarceration work camp for a period not to exceed
12 one hundred eighty days as a condition of a sentence of intensive
13 supervision probation. The court may consider such placement if the
14 offender (a) is a male or female offender convicted of a felony
15 offense in a district court, (b) is medically and mentally fit
16 to participate, with allowances given for reasonable accommodation
17 as determined by medical and mental health professionals, and (c)
18 has not previously been incarcerated for a violent felony crime.
19 Offenders convicted of a crime under sections 28-319 to 28-321
20 or of any capital crime are not eligible to be placed in an
21 incarceration work camp.

22 (3) It is also the intent of the Legislature that the
23 Board of Parole may recommend placement of felony offenders at
24 the incarceration work camp. The offenders recommended by the
25 board shall be offenders currently housed at other Department

1 of Correctional Services adult correctional facilities and shall
2 complete the incarceration work camp programming prior to release
3 on parole.

4 (4) When the Board of Parole is of the opinion that
5 a felony offender currently incarcerated in a Department of
6 Correctional Services adult correctional facility may benefit
7 from a brief and intensive period of regimented, structured, and
8 disciplined programming immediately prior to release on parole, the
9 board may direct placement of such an offender in an incarceration
10 work camp for a period not to exceed one hundred eighty days as
11 a condition of release on parole. The board may consider such
12 placement if the felony offender (a) is medically and mentally fit
13 to participate, with allowances given for reasonable accommodation
14 as determined by medical and mental health professionals, and (b)
15 has not previously been incarcerated for a violent felony crime.
16 Offenders convicted of a crime under sections 28-319 to 28-321
17 ~~or of any capital crime~~ are not eligible to be placed in an
18 incarceration work camp.

19 Sec. 39. Original sections 23-3406, 24-1106, 27-609,
20 28-104, 29-1822, 29-2005, 29-2006, 29-2020, 29-2282, 29-2407,
21 29-2801, 29-3205, 29-3928, and 55-480, Reissue Revised Statutes
22 of Nebraska, sections 25-1140.09, 27-803, 28-105, 28-303, 29-1603,
23 29-2004, 29-2027, 29-2204, 29-2520, 29-2521, 29-2522, 29-2523,
24 29-3920, 29-3922, 29-3929, 29-3930, 83-1,105.01, and 83-1,110.02,
25 Revised Statutes Cumulative Supplement, 2006, and section 83-4,143,

1 Revised Statutes Supplement, 2007, are repealed.

2 Sec. 40. The following sections are outright repealed:

3 Sections 24-1105, 29-2521.01, 29-2521.03, 29-2521.04, 29-2524.01,

4 29-2524.02, 29-2527, 29-2528, 29-2532, 29-2533, 29-2534, 29-2535,

5 29-2536, 29-2537, 29-2538, 29-2539, 29-2540, 29-2541, 29-2542,

6 29-2543, 29-2544, 29-2545, 29-2546, 29-2811, and 83-1,132, Reissue

7 Revised Statutes of Nebraska, and sections 28-105.01, 29-2519,

8 29-2521.02, 29-2524, and 29-2525, Revised Statutes Cumulative

9 Supplement, 2006.