

AMENDMENTS TO LB 543

Introduced by Coash

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

3           Section 1. Section 28-104, Reissue Revised Statutes of  
4 Nebraska, is amended to read:

5           28-104 The terms offense and crime are synonymous as used  
6 in this code and mean a violation of, or conduct defined by, any  
7 statute for which a fine, or imprisonment, ~~or death~~ may be imposed.

8           Sec. 2. Section 28-105, Revised Statutes Cumulative  
9 Supplement, 2012, is amended to read:

10           28-105 (1) For purposes of the Nebraska Criminal Code and  
11 any statute passed by the Legislature after the date of passage of  
12 the code, felonies are divided into ~~nine~~ eight classes which are  
13 distinguished from one another by the following penalties which are  
14 authorized upon conviction:

15	<del>Class I felony</del>	<del>Death</del>
16	<del>Class IA felony</del>	<del>Life imprisonment</del>
17	<u>Class IA felony</u>	<u>Life imprisonment without possibility of parole</u>
18	Class IB felony	Maximum - life imprisonment
19		Minimum - twenty years imprisonment
20	Class IC felony	Maximum - fifty years imprisonment
21		Mandatory minimum - five years imprisonment
22	Class ID felony	Maximum - fifty years imprisonment
23		Mandatory minimum - three years imprisonment

1 Class II felony Maximum - fifty years imprisonment  
2 Minimum - one year imprisonment  
3 Class III felony Maximum - twenty years imprisonment, or  
4 twenty-five thousand dollars fine, or both  
5 Minimum - one year imprisonment  
6 Class IIIA felony Maximum - five years imprisonment, or  
7 ten thousand dollars fine, or both  
8 Minimum - none  
9 Class IV felony Maximum - five years imprisonment, or  
10 ten thousand dollars fine, or both  
11 Minimum - none

12 ~~(2)~~ (2)(a) All sentences of imprisonment for Class IA,  
13 IB, IC, ID, II, and III felonies and sentences of one year or  
14 more for Class IIIA and IV felonies shall be served in institutions  
15 under the jurisdiction of the Department of Correctional Services.

16 (b) Sentences of less than one year shall be served in  
17 the county jail except as provided in this subsection. If the  
18 department certifies that it has programs and facilities available  
19 for persons sentenced to terms of less than one year, the court  
20 may order that any sentence of six months or more be served  
21 in any institution under the jurisdiction of the department. Any  
22 such certification shall be given by the department to the State  
23 Court Administrator, who shall forward copies thereof to each judge  
24 having jurisdiction to sentence in felony cases.

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

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

3           Sec. 3. Section 28-303, Reissue Revised Statutes of  
4 Nebraska, is amended to read:

5           28-303 A person commits murder in the first degree if  
6 he or she kills another person (1) purposely and with deliberate  
7 and premeditated malice, or (2) in the perpetration of or attempt  
8 to perpetrate any sexual assault in the first degree, arson,  
9 robbery, kidnapping, hijacking of any public or private means of  
10 transportation, or burglary, or (3) by administering poison or  
11 causing the same to be done. Murder in the first degree is a Class  
12 IA felony.  ~~or if by willful and corrupt perjury or subornation of~~  
13  ~~the same he or she purposely procures the conviction and execution~~  
14  ~~of any innocent person. The determination of whether murder in the~~  
15  ~~first degree shall be punished as a Class I or Class IA felony~~  
16  ~~shall be made pursuant to sections 29-2519 to 29-2524.~~

17           Sec. 4. Section 29-1602, Reissue Revised Statutes of  
18 Nebraska, is amended to read:

19           29-1602 All informations shall be filed in the court  
20 having jurisdiction of the offense specified ~~therein,~~ in the  
21 informations, by the prosecuting attorney of the proper county as  
22 informant. The prosecuting attorney shall subscribe his or her name  
23 thereto and endorse thereon the names of the witnesses known to him  
24 or her at the time of filing. After the information has been filed,  
25 the prosecuting attorney shall endorse on the information the names  
26 of such other witnesses as shall then be known to him or her as the  
27 court in its discretion may prescribe.  ~~except that if a notice of~~

1 ~~aggravation is contained in the information as provided in section~~  
2 ~~29-1603, the prosecuting attorney may endorse additional witnesses~~  
3 ~~at any time up to and including the thirtieth day prior to the~~  
4 ~~trial of guilt.~~

5           Sec. 5. A sentence of life imprisonment without  
6 possibility of parole imposed for a Class IA felony means that,  
7 subject only to the constitutional power of the Board of Pardons in  
8 Article IV, section 13, of the Constitution of Nebraska to modify  
9 such sentence by commutation, a person so sentenced shall not under  
10 any circumstances whatsoever be paroled.

11           Sec. 6. The changes made by this legislative bill shall  
12 not (1) limit the discretionary authority of the sentencing court  
13 to order restitution as part of any sentence or (2) alter the  
14 discretion and authority of the Department of Correctional Services  
15 to determine the appropriate security measures and conditions  
16 during the confinement of any committed offender.

17           Sec. 7. In any criminal proceeding in which the death  
18 penalty has been imposed but not carried out prior to the effective  
19 date of this act, it is the intent of the Legislature that such  
20 penalty shall be changed to life imprisonment without possibility  
21 of parole.

22           Sec. 8. Section 83-1,110.02, Reissue Revised Statutes of  
23 Nebraska, is amended to read:

24           83-1,110.02 (1) A committed offender who is otherwise  
25 eligible for parole, who is not under sentence of ~~death~~ life  
26 imprisonment without possibility of parole or of life imprisonment,  
27 and who because of an existing medical or physical condition is

1 determined by the department to be terminally ill or permanently  
2 incapacitated may be considered for medical parole by the board. A  
3 committed offender may be eligible for medical parole in addition  
4 to any other parole. The department shall identify committed  
5 offenders who may be eligible for medical parole based upon their  
6 medical records.

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

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

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

26 Sec. 9. Section 83-4,143, Revised Statutes Cumulative  
27 Supplement, 2012, is amended to read:

1           83-4,143 (1) It is the intent of the Legislature that  
2 the court target the felony offender (a) who is eligible and  
3 by virtue of his or her criminogenic needs is suitable to be  
4 sentenced to intensive supervision probation with placement at the  
5 incarceration work camp, (b) for whom the court finds that other  
6 conditions of a sentence of intensive supervision probation, in  
7 and of themselves, are not suitable, and (c) who, without the  
8 existence of an incarceration work camp, would, in all likelihood,  
9 be sentenced to prison.

10           (2) When the court is of the opinion that imprisonment is  
11 appropriate, but that a brief and intensive period of regimented,  
12 structured, and disciplined programming within a secure facility  
13 may better serve the interests of society, the court may place an  
14 offender in an incarceration work camp for a period not to exceed  
15 one hundred eighty days as a condition of a sentence of intensive  
16 supervision probation. The court may consider such placement if the  
17 offender (a) is a male or female offender convicted of a felony  
18 offense in a district court, (b) is medically and mentally fit  
19 to participate, with allowances given for reasonable accommodation  
20 as determined by medical and mental health professionals, and (c)  
21 has not previously been incarcerated for a violent felony crime.  
22 Offenders convicted of a crime under ~~sections~~ section 28-303 or  
23 28-319 to 28-322.04 ~~or of any capital crime~~ are not eligible to be  
24 placed in an incarceration work camp.

25           (3) It is also the intent of the Legislature that the  
26 Board of Parole may recommend placement of felony offenders at  
27 the incarceration work camp. The offenders recommended by the

1 board shall be offenders currently housed at other Department  
2 of Correctional Services adult correctional facilities and shall  
3 complete the incarceration work camp programming prior to release  
4 on parole.

5 (4) When the Board of Parole is of the opinion that  
6 a felony offender currently incarcerated in a Department of  
7 Correctional Services adult correctional facility may benefit  
8 from a brief and intensive period of regimented, structured, and  
9 disciplined programming immediately prior to release on parole, the  
10 board may direct placement of such an offender in an incarceration  
11 work camp for a period not to exceed one hundred eighty days as  
12 a condition of release on parole. The board may consider such  
13 placement if the felony offender (a) is medically and mentally fit  
14 to participate, with allowances given for reasonable accommodation  
15 as determined by medical and mental health professionals, and (b)  
16 has not previously been incarcerated for a violent felony crime.  
17 Offenders convicted of a crime under ~~sections~~ section 28-303 or  
18 28-319 to 28-322.04 ~~or of any capital crime~~ are not eligible to be  
19 placed in an incarceration work camp.

20 (5) The Director of Correctional Services may assign a  
21 felony offender to an incarceration work camp if he or she believes  
22 it is in the best interests of the felony offender and of society,  
23 except that offenders convicted of a crime under ~~sections~~ section  
24 28-303 or 28-319 to 28-321 ~~or of any capital crime~~ 28-322.04 are  
25 not eligible to be assigned to an incarceration work camp pursuant  
26 to this subsection.

27 Sec. 10. Original sections 28-104, 28-303, 29-1602, and

1 83-1,110.02, Reissue Revised Statutes of Nebraska, and sections  
2 28-105 and 83-4,143, Revised Statutes Cumulative Supplement, 2012,  
3 are repealed.

4           Sec. 11. The following sections are outright repealed:  
5 Sections 24-1105, 28-105.01, 29-2519, 29-2521, 29-2521.01,  
6 29-2521.03, 29-2521.04, 29-2521.05, 29-2523, 29-2524.01,  
7 29-2524.02, 29-2525, 29-2527, 29-2528, 29-2811, and 83-1,132,  
8 Reissue Revised Statutes of Nebraska, and sections 29-2520,  
9 29-2521.02, 29-2522, 29-2524, 29-2537, 29-2538, 29-2539, 29-2540,  
10 29-2541, 29-2542, 29-2543, 29-2546, 83-1,105.01, 83-964, 83-965,  
11 83-966, 83-967, 83-968, 83-969, 83-970, 83-971, and 83-972, Revised  
12 Statutes Cumulative Supplement, 2012.