

# ONE HUNDRED FOURTH LEGISLATURE - FIRST SESSION - 2015

## COMMITTEE STATEMENT

### LB268

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**Hearing Date:** Wednesday March 04, 2015

**Committee On:** Judiciary

**Introducer:** Chambers

**One Liner:** Change a penalty from death to life imprisonment without parole, eliminate a homicide report, and change provisions relating to murder in the first degree and restitution

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**Roll Call Vote - Final Committee Action:**

Advanced to General File with amendment(s)

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**Vote Results:**

**Aye:** 8 Senators Chambers, Coash, Ebke, Krist, Morfeld, Pansing Brooks, Seiler, Williams

**Nay:**

**Absent:**

**Present Not Voting:**

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**Verbal Testimony:**

**Proponents:**

SEN. ERNIE CHAMBERS

ASHLEY GAGE

GWENDOLEN HINES

MIRIAM KELLE

ANN SHERER

JERRY PATTERSON

TOM STRIGENZ

GREG SCHLEPPENBACH

WILLIAM THORNTON

JOHN KRECJI

LOREN SCHMIT

**Representing:**

INTRODUCER

SELF

SOCIAL JUSTICE COMMITTEE OF THE UNITARIAN CHURCH OF LINCOLN

SELF

UNITED METHODIST CHURCH, NEBRASKANS FOR PEACE

SELF

NCDA

NE CATHOLIC CONFERENCE

SELF

SELF

SELF

**Opponents:**

DON KLEIN

**Representing:**

DOUGLAS COUNTY ATTORNEY, NE COUNTY ATTORNEY ASSOCIATION

**Neutral:**

**Representing:**

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**Summary of purpose and/or changes:**

LB268 would change the maximum penalty for first degree murder in Nebraska from death to life imprisonment without possibility of parole.

Section 1 - Legislative Intent

Section 2 - Amends 23-3406 relating to counties contracting with public defenders to strike the phrase "including capital

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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to a capital sentencing notice provision which required preparation of transcripts in all capital cases and is no longer applicable.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 28-104 to strike a reference to a criminal violation for which death may be imposed

Section 6 - Amends 28-105, the change the penalty for a Class I felony from death to life imprisonment without possibility of parole.

Section 7 - Amends 28-303, the first degree murder statute, to remove from this section the ability to convict for a first degree murder offense, a person who "by willful and corrupt perjury or subornation of the same he or she purposely procures the conviction and execution of any innocent person."

Section 8--Amends 29-1602, Strikes the word "therein" and replaces it with "in the information".

Section 9 - 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 10- 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 11 - Amends 29-2004, relating to jury selection, to replace language referring to the death penalty with life imprisonment without possibility of parole.

Section 12 - 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 13 - 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 14 - Amends 29-2020, relating to requesting a bill of exceptions, to strike language referring to a procedure only used in death penalty cases.

Section 15 - Amends 29-2027 to change a statutory reference to remove an unnecessary reference to a title section (29-2524).

Section 16 - Amends 29-2204, the indeterminate sentencing statute, to remove outdated language and references to the death penalty

Section 17--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 18 - 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 19 - Creates a new section to provide that only subject to the constitutional powers provided to the Board of Pardons, a person sentenced for the conviction of a Class I felony shall serve a term of life imprisonment without parole. This section also provides that a person sentenced to life imprisonment for a Class IA felony would only be considered

for parole as provided under sections 83-192 and 83-1,106 to 83-1,125.

Section 20 -New language clarifying that the changes made by this bill shall not restrict or limit the ability of a court to order restitution or restrict the ability of the Department of Corrections to determine appropriate security considerations for confined offenders.

Section 21 -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.

Section 22 - 29-2519 to strike statutory references of death sentences and sentences of death in this section and replaces them with life imprisonment without parole. This section also strikes the legislative intent pertaining to the Ring v. Arizona (2000) U.S. Supreme Court decision.

Section 23--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 24 - 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 25 - 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 26 - Amends 29-2801, establishing the procedures for state habeas corpus petitions, to remove references to capital sentences and make other technical corrections.

Section 27 - Amends 29-3205 to correct a statutory reference and remove a reference to a death sentence.

Sections 28 to 32 -Amend section 29-3920, 29-3922, and 29-3928 to 29-3930, relating to the Public Advocacy Commission, to strike references to capital cases and insert first degree murder.

Section 33 - Amends section 55-480 to clarify a statutory reference to the Nebraska Code of Military Justice.

Section 34 -Amends 83-1,110.02, the medical parole statutes to replace death penalty with life imprisonment without possibility of parole.

Section 35 -Amends 83-4,143, the Work Ethic Camp eligibility statute, to remove a reference to a capital crime.

Section 36 -Would repeal the sections amended by this Act.

Section 37 -Would outright repeal other sections relating to the death penalty.

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**Explanation of amendments:**

AM754 to LB268 would eliminate the Class I felony classification and the corresponding penalty of death. This would change the maximum penalty for first degree murder in Nebraska from death to life imprisonment.

This amendment strikes the legislative findings stated in section 1 of the green copy of the bill. This amendment also eliminates certain sentencing procedures which were amended, but not eliminated, in the green copy of the bill.

AM754 would replace the original sections of LB268 with the following sections:

Section 1 would amend 23-3406 by striking the phrase "including capital cases" from the provision regarding county contracts with public defenders.

Section 2 would amend 23-3408 to strike a reference to a Class I felony. The Class I felony classification is eliminated on page 6, line 21. This section was not amended by the green copy of LB268.

Section 3 would amend 24-1106 to strike a reference to capital cases from a provision relating to appeals. The green copy of LB268 would have inserted the phrase, "without possibility of parole".

Section 4 would amend 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 would amend 28-104 to strike a reference to a criminal violation for which death may be imposed.

Section 6 would amend 28-105, to eliminate the Class I felony classification and the corresponding penalty of death. The green copy of LB268 would have changed the penalty for a Class I felony from death to life imprisonment without possibility of parole.

Section 7 would amend 28-201 to strike a reference to the Class I felony classification from a provision regarding criminal attempt. This section was not amended by the green copy of LB268.

Section 8 would amend 28-202 to strike a reference to the Class I felony classification from a provision regarding conspiracy, and to change outdated language. This section was not amended by the green copy of LB268.

Section 9 would amend 28-303, the first degree murder statute, to remove from this section the ability to convict for a first degree murder offense, a person who purposely procures the conviction and execution of any innocent person. This section would also strike reference to the Class I felony classification, which was not affected by the green copy of LB268.

Section 10 would amend 28-1356 to strike a reference to the Class I felony classification from a section regarding penalties for racketeering. This section was not amended by the green copy of LB268.

Section 11 would amend 29-1602, to strike the word "therein" and replace it with "in the information". This section would also strike reference to the notice of aggravation provision, which is eliminated on page 10, lines 15 to 27. The notice of aggravation provision was amended, but not eliminated, in the green copy of the bill.

Section 12 would amend 29-1603 to remove reference to the death penalty from the notice of aggravation provision, which was amended, but not eliminated, in the green copy of the bill.

Section 13 would amend 29-1822 to remove language staying the imposition of the death penalty during a period of mental incompetence from a provision relating to mentally incompetent criminal defendants.

Section 14 would amend 29-2004 to strike reference to the death penalty from a provision relating to jury selection. The green copy of LB268 would have inserted the phrase, "without possibility of parole".

Section 15 would amend 29-2005 to strike reference to the death penalty from a provision regarding the number of preemptory juror challenges allowed in various types of criminal trials. The green copy of the bill would have inserted the phrase "life without the possibility of parole".

Section 16 would amend 29-2006 to strike reference to the death penalty from a provision which lists the basis for good cause challenges of prospective jurors, and to change outdated language.

Section 17 would amend 29-2020 to strike reference to a procedure only used in death penalty cases from a provision relating to requesting a bill of exceptions.

Section 18 would amend 29-2027 to strike reference to the notice of aggravation provisions, which would be outright repealed by this bill. The notice of aggravation provisions were amended, but not eliminated, in the green copy of the bill.

Section 19 would amend 29-2204 to strike references to cases where "a term of life imprisonment is required by law" from the indeterminate sentencing statute, and replace them with references to the Class IA felony classification. This section would also remove outdated language. The green copy of the bill would have referred to the Class I felony classification.

Section 20 would amend 29-2261 to strike reference to the notice of aggravation provisions from a section regarding presentence investigations. This section was not amended by the green copy of LB268.

Section 21 would amend 29-2407 to strike reference to the death penalty from a section which provides that criminal fines and costs are treated like a lien against a defendant.

Section 22 would create a new section to clarify that the changes made by this bill shall not restrict or limit the ability of a court to order restitution or restrict the ability of the Department of Corrections to determine appropriate security considerations for confined offenders.

Section 23 would create a new section to clarify that death sentences issued prior to the effective date of this act which have not been carried out may be changed to life imprisonment. The green copy of the bill did not include the phrase "it is the intent of the legislature that" death sentences should be modified.

Section 24 would amend 29-2801 to strike reference to the death penalty, and make other technical corrections to the procedures for habeas corpus petitions in state court.

Section 25 would amend 29-3205 to strike reference to the death penalty and change the reference to the Uniform Rendition of Prisoners as Witnesses in Criminal Proceedings Act.

Sections 26 to 30 would amend 29-3920; 29-3922; 29-3928; 29-3929; and 29-3930, relating to the Public Advocacy Commission, to replace references to "capital cases" with references to "first degree murder" cases.

Section 31 would amend section 55-480 to strike reference to the death penalty, and to clarify a statutory reference to the Nebraska Code of Military Justice.

Section 32 would amend 83-1,110.02 to strike reference to the death penalty from provisions regarding medical parole. The green copy of the bill would have replaced the death penalty with life imprisonment without possibility of parole.

Section 33 would amend 83-4,143 to strike reference to the death penalty from a provision regarding eligibility for placement at an incarceration work camp. This section would also provide that offenders committed of first degree murder are not eligible to be placed in an incarceration work camp.

Section 34 would repeal the sections amended by this act.

Section 35 would outright repeal other sections relating to the death penalty. This includes four sections from the green copy of the bill, sections 22 to 25.

