

LEGISLATURE OF NEBRASKA
ONE HUNDRED SIXTH LEGISLATURE
FIRST SESSION

LEGISLATIVE BILL 44

Introduced by Chambers, 11.

Read first time January 10, 2019

Committee: Judiciary

1 A BILL FOR AN ACT relating to crimes and offenses; to amend sections
2 28-115, 28-204, 29-742, 29-744, and 29-2204.02, Reissue Revised
3 Statutes of Nebraska, and sections 23-3406, 23-3408, 24-1106,
4 25-1140.09, 28-104, 28-105, 28-201, 28-202, 28-303, 28-1356,
5 29-1602, 29-1603, 29-1816, 29-1822, 29-2004, 29-2005, 29-2006,
6 29-2020, 29-2027, 29-2204, 29-2261, 29-2407, 29-2801, 29-3205,
7 29-3920, 29-3922, 29-3928, 29-3929, 29-3930, 55-480, 83-1,110.02,
8 83-1,122.01, and 83-4,143, Revised Statutes Cumulative Supplement,
9 2018; to eliminate the death penalty; to change and eliminate
10 provisions relating to the death penalty and murder in the first
11 degree and related powers, duties, and procedures of courts, the
12 Commission on Public Advocacy, the Department of Correctional
13 Services, the Director of Correctional Services, the Board of
14 Pardons, and the Governor; to eliminate a homicide-case report; to
15 eliminate obsolete provisions; to harmonize provisions; to repeal
16 the original sections; and to outright repeal sections 24-1105,
17 28-105.01, 29-2519, 29-2520, 29-2521, 29-2521.01, 29-2521.02,
18 29-2521.03, 29-2521.04, 29-2521.05, 29-2522, 29-2523, 29-2524,
19 29-2524.01, 29-2524.02, 29-2525, 29-2527, 29-2528, 29-2537, 29-2538,
20 29-2539, 29-2540, 29-2541, 29-2542, 29-2543, 29-2546, 29-2811,
21 83-1,132, 83-964, 83-965, 83-966, 83-967, 83-968, 83-969, 83-970,
22 83-971, and 83-972, Revised Statutes Cumulative Supplement, 2018.
23 Be it enacted by the people of the State of Nebraska,

1 Section 1. Section 23-3406, Revised Statutes Cumulative Supplement,
2 2018, is amended to read:

3 23-3406 (1) The contract negotiated between the county board and the
4 contracting attorney shall specify the categories of cases in which the
5 contracting attorney is to provide services.

6 (2) The contract negotiated between the county board and the
7 contracting attorney shall be awarded for at least a two-year term.
8 Removal of the contracting attorney short of the agreed term may be for
9 good cause only.

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

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

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

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

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

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

30 (6) The contract between the contracting attorney and the county
31 board shall provide that the contracting attorney shall receive at least

1 ten hours of continuing legal education annually in the area of criminal
2 law. The contract between the county board and the contracting attorney
3 shall provide funds for the continuing legal education of the contracting
4 attorney in the area of criminal law.

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

15 (8) The contract between the county board and the contracting
16 attorney shall provide for reasonable compensation over and above the
17 normal contract price for cases which require an extraordinary amount of
18 time and preparation, ~~including capital cases.~~

19 Sec. 2. Section 23-3408, Revised Statutes Cumulative Supplement,
20 2018, is amended to read:

21 23-3408 In the event that the contracting attorney is appointed to
22 represent an individual charged with a ~~Class I~~ or Class IA felony, the
23 contracting attorney shall immediately apply to the district court for
24 appointment of a second attorney to assist in the case. Upon application
25 from the contracting attorney, the district court shall appoint another
26 attorney with substantial felony trial experience to assist the
27 contracting attorney in the case. Application for fees for the attorney
28 appointed by the district court shall be made to the district court judge
29 who shall allow reasonable fees. Once approved by the court, such fees
30 shall be paid by the county board.

31 Sec. 3. Section 24-1106, Revised Statutes Cumulative Supplement,

1 2018, is amended to read:

2 24-1106 (1) In cases which were appealable to the Supreme Court
3 before September 6, 1991, the appeal, if taken, shall be to the Court of
4 Appeals except in ~~capital cases~~, cases in which life imprisonment has
5 been imposed, and cases involving the constitutionality of a statute.

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

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

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

16 (c) Whether the case raises a question of law regarding the validity
17 of a statute;

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

21 (e) Whether the case is one of significant public interest; and

22 (f) Whether the case involves a question of qualified immunity in
23 any civil action under 42 U.S.C. 1983, as the section existed on August
24 24, 2017.

25 When a petition for direct review is granted, the case shall be
26 docketed for hearing before the Supreme Court.

27 (3) The Supreme Court shall by rule provide for the removal of a
28 case from the Court of Appeals to the Supreme Court for decision by the
29 Supreme Court at any time before a final decision has been made on the
30 case by the Court of Appeals. The removal may be on the recommendation of
31 the Court of Appeals or on motion of the Supreme Court. Cases may be

1 removed from the Court of Appeals for decision by the Supreme Court for
2 any one or more of the reasons set forth in subsection (2) of this
3 section or in order to regulate the caseload existing in either the Court
4 of Appeals or the Supreme Court. The Chief Judge of the Court of Appeals
5 and the Chief Justice of the Supreme Court shall regularly inform each
6 other of the number and nature of cases docketed in the respective court.

7 Sec. 4. Section 25-1140.09, Revised Statutes Cumulative Supplement,
8 2018, is amended to read:

9 25-1140.09 On the application of the county attorney or any party to
10 a suit in which a record of the proceedings has been made, ~~upon receipt~~
11 ~~of the notice provided in section 29-2525,~~ or upon the filing of a
12 praecipe for a bill of exceptions by an appealing party in the office of
13 the clerk of the district court as provided in section 25-1140, the court
14 reporter shall prepare a transcribed copy of the proceedings so recorded
15 or any part thereof. The reporter shall be entitled to receive, in
16 addition to his or her salary, a per-page fee as prescribed by the
17 Supreme Court for the original copy and each additional copy, to be paid
18 by the party requesting the same except as otherwise provided in this
19 section.

20 When the transcribed copy of the proceedings is required by the
21 county attorney, the fee therefor shall be paid by the county in the same
22 manner as other claims are paid. When the defendant in a criminal case,
23 after conviction, makes an affidavit that he or she is unable by reason
24 of his or her poverty to pay for such copy, the court or judge thereof
25 may, by order endorsed on such affidavit, direct delivery of such
26 transcribed copy to such defendant, and the fee shall be paid by the
27 county in the same manner as other claims are allowed and paid. ~~When such~~
28 ~~copy is prepared in any criminal case in which the sentence adjudged is~~
29 ~~capital, the fees therefor shall be paid by the county in the same manner~~
30 ~~as other claims are allowed or paid.~~

31 The fee for preparation of a bill of exceptions and the procedure

1 for preparation, settlement, signature, allowance, certification, filing,
2 and amendment of a bill of exceptions shall be regulated and governed by
3 rules of practice prescribed by the Supreme Court. The fee paid shall be
4 taxed, by the clerk of the district court, to the party against whom the
5 judgment or decree is rendered except as otherwise ordered by the
6 presiding district judge.

7 Sec. 5. Section 28-104, Revised Statutes Cumulative Supplement,
8 2018, is amended to read:

9 28-104 The terms offense and crime are synonymous as used in this
10 code and mean a violation of, or conduct defined by, any statute for
11 which a fine, or imprisonment, ~~or death~~ may be imposed.

12 Sec. 6. Section 28-105, Revised Statutes Cumulative Supplement,
13 2018, is amended to read:

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

19	Class I felony	Death
20	Class IA felony	Life imprisonment
21	Class IB felony	Maximum-life imprisonment
22		Minimum-twenty years imprisonment
23	Class IC felony	Maximum-fifty years imprisonment
24		Mandatory minimum-five years imprisonment
25	Class ID felony	Maximum-fifty years imprisonment
26		Mandatory minimum-three years imprisonment
27	Class II felony	Maximum-fifty years imprisonment
28		Minimum-one year imprisonment
29	Class IIA felony	Maximum-twenty years imprisonment
30		Minimum-none
31	Class III felony	Maximum-four years imprisonment and two years

1 post-release supervision or
2 twenty-five thousand dollars fine, or both
3 Minimum—none for imprisonment and nine months
4 post-release supervision if imprisonment is imposed
5 Class IIIA felony Maximum—three years imprisonment
6 and eighteen months post-release supervision or
7 ten thousand dollars fine, or both
8 Minimum—none for imprisonment and nine months
9 post-release supervision if imprisonment is imposed
10 Class IV felony Maximum—two years imprisonment and twelve
11 months post-release supervision or
12 ten thousand dollars fine, or both
13 Minimum—none for imprisonment and nine months
14 post-release supervision if imprisonment is imposed

15 (2) All sentences for maximum terms of imprisonment for one year or
16 more for felonies shall be served in institutions under the jurisdiction
17 of the Department of Correctional Services. All sentences for maximum
18 terms of imprisonment of less than one year shall be served in the county
19 jail.

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

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

25 (5) All sentences of post-release supervision shall be served under
26 the jurisdiction of the Office of Probation Administration and shall be
27 subject to conditions imposed pursuant to section 29-2262 and subject to
28 sanctions authorized pursuant to section 29-2266.02.

29 (6) Any person who is sentenced to imprisonment for a Class ~~I~~—IA,
30 IB, IC, ID, II, or IIA felony and sentenced concurrently or consecutively
31 to imprisonment for a Class III, IIIA, or IV felony shall not be subject

1 to post-release supervision pursuant to subsection (1) of this section.

2 (7) Any person who is sentenced to imprisonment for a Class III,
3 IIIA, or IV felony committed prior to August 30, 2015, and sentenced
4 concurrently or consecutively to imprisonment for a Class III, IIIA, or
5 IV felony committed on or after August 30, 2015, shall not be subject to
6 post-release supervision pursuant to subsection (1) of this section.

7 (8) The changes made to the penalties for Class III, IIIA, and IV
8 felonies by Laws 2015, LB605, do not apply to any offense committed prior
9 to August 30, 2015, as provided in section 28-116.

10 Sec. 7. Section 28-115, Reissue Revised Statutes of Nebraska, is
11 amended to read:

12 28-115 (1) Except as provided in subsection (2) of this section, any
13 person who commits any of the following criminal offenses against a
14 pregnant woman shall be punished by the imposition of the next higher
15 penalty classification than the penalty classification prescribed for the
16 criminal offense:

17 (a) Assault in the first degree, section 28-308;

18 (b) Assault in the second degree, section 28-309;

19 (c) Assault in the third degree, section 28-310;

20 (d) Sexual assault in the first degree, section 28-319;

21 (e) Sexual assault in the second or third degree, section 28-320;

22 (f) Sexual assault of a child in the first degree, section
23 28-319.01;

24 (g) Sexual assault of a child in the second or third degree, section
25 28-320.01;

26 (h) Sexual abuse of an inmate or parolee in the first degree,
27 section 28-322.02;

28 (i) Sexual abuse of an inmate or parolee in the second degree,
29 section 28-322.03;

30 (j) Sexual abuse of a protected individual in the first or second
31 degree, section 28-322.04;

1 (k) Domestic assault in the first, second, or third degree, section
2 28-323;

3 (l) Assault on an officer, an emergency responder, a state
4 correctional employee, a Department of Health and Human Services
5 employee, or a health care professional in the first degree, section
6 28-929;

7 (m) Assault on an officer, an emergency responder, a state
8 correctional employee, a Department of Health and Human Services
9 employee, or a health care professional in the second degree, section
10 28-930;

11 (n) Assault on an officer, an emergency responder, a state
12 correctional employee, a Department of Health and Human Services
13 employee, or a health care professional in the third degree, section
14 28-931;

15 (o) Assault on an officer, an emergency responder, a state
16 correctional employee, a Department of Health and Human Services
17 employee, or a health care professional using a motor vehicle, section
18 28-931.01;

19 (p) Assault by a confined person, section 28-932;

20 (q) Confined person committing offenses against another person,
21 section 28-933; and

22 (r) Proximately causing serious bodily injury while operating a
23 motor vehicle, section 60-6,198.

24 (2) The enhancement in subsection (1) of this section does not apply
25 to any criminal offense listed in subsection (1) of this section that is
26 already punishable as a Class ~~I~~—IA~~7~~ or IB felony. If any criminal
27 offense listed in subsection (1) of this section is punishable as a Class
28 I misdemeanor, the penalty under this section is a Class IIIA felony.

29 (3) The prosecution shall allege and prove beyond a reasonable doubt
30 that the victim was pregnant at the time of the offense.

31 Sec. 8. Section 28-201, Revised Statutes Cumulative Supplement,

1 2018, is amended to read:

2 28-201 (1) A person shall be guilty of an attempt to commit a crime
3 if he or she:

4 (a) Intentionally engages in conduct which would constitute the
5 crime if the attendant circumstances were as he or she believes them to
6 be; or

7 (b) Intentionally engages in conduct which, under the circumstances
8 as he or she believes them to be, constitutes a substantial step in a
9 course of conduct intended to culminate in his or her commission of the
10 crime.

11 (2) When causing a particular result is an element of the crime, a
12 person shall be guilty of an attempt to commit the crime if, acting with
13 the state of mind required to establish liability with respect to the
14 attendant circumstances specified in the definition of the crime, he or
15 she intentionally engages in conduct which is a substantial step in a
16 course of conduct intended or known to cause such a result.

17 (3) Conduct shall not be considered a substantial step under this
18 section unless it is strongly corroborative of the defendant's criminal
19 intent.

20 (4) Criminal attempt is:

21 (a) A Class II felony when the crime attempted is a Class ~~I~~ IA, IB,
22 IC, or ID felony;

23 (b) A Class IIA felony when the crime attempted is a Class II
24 felony;

25 (c) A Class IIIA felony when the crime attempted is a Class IIA
26 felony;

27 (d) A Class IV felony when the crime attempted is a Class III or
28 IIIA felony;

29 (e) A Class I misdemeanor when the crime attempted is a Class IV
30 felony;

31 (f) A Class II misdemeanor when the crime attempted is a Class I

1 misdemeanor; and

2 (g) A Class III misdemeanor when the crime attempted is a Class II
3 misdemeanor.

4 Sec. 9. Section 28-202, Revised Statutes Cumulative Supplement,
5 2018, is amended to read:

6 28-202 (1) A person shall be guilty of criminal conspiracy if, with
7 intent to promote or facilitate the commission of a felony:

8 (a) He or she agrees with one or more persons that they or one or
9 more of them shall engage in or solicit the conduct or shall cause or
10 solicit the result specified by the definition of the offense; and

11 (b) He or she or another person with whom he or she conspired
12 commits an overt act in pursuance of the conspiracy.

13 (2) If a person knows that one with whom he or she conspires to
14 commit a crime has conspired with another person or persons to commit the
15 same crime, he or she is guilty of conspiring to commit such crime with
16 such other person or persons whether or not he or she knows their
17 identity.

18 (3) If a person conspires to commit a number of crimes, he or she is
19 guilty of only one conspiracy so long as such multiple crimes are the
20 object of the same agreement or continuous conspiratorial relationship.

21 (4) Conspiracy is a crime of the same class as the most serious
22 offense which is an object of the conspiracy, ~~except that conspiracy to~~
23 ~~commit a Class I felony is a Class II felony.~~

24 A person prosecuted for a criminal conspiracy shall be acquitted if
25 such person proves by a preponderance of the evidence that his or her
26 conduct occurred in response to an entrapment.

27 Sec. 10. Section 28-204, Reissue Revised Statutes of Nebraska, is
28 amended to read:

29 28-204 (1) A person is guilty of being an accessory to felony if
30 with intent to interfere with, hinder, delay, or prevent the discovery,
31 apprehension, prosecution, conviction, or punishment of another for an

1 offense, he or she:

2 (a) Harbors or conceals the other;

3 (b) Provides or aids in providing a weapon, transportation,
4 disguise, or other means of effecting escape or avoiding discovery or
5 apprehension;

6 (c) Conceals or destroys evidence of the crime or tampers with a
7 witness, informant, document, or other source of information, regardless
8 of its admissibility in evidence;

9 (d) Warns the other of impending discovery or apprehension other
10 than in connection with an effort to bring another into compliance with
11 the law;

12 (e) Volunteers false information to a peace officer; or

13 (f) By force, intimidation, or deception, obstructs anyone in the
14 performance of any act which might aid in the discovery, detection,
15 apprehension, prosecution, conviction, or punishment of such person.

16 (2)(a) Accessory to felony is a Class IIA felony if the actor
17 violates subdivision (1)(a), (1)(b), or (1)(c) of this section, the actor
18 knows of the conduct of the other, and the conduct of the other
19 constitutes a Class ~~I~~IA, IB, IC, or ID felony.

20 (b) Accessory to felony is a Class IIIA felony if the actor violates
21 subdivision (1)(a), (1)(b), or (1)(c) of this section, the actor knows of
22 the conduct of the other, and the conduct of the other constitutes a
23 Class II or IIA felony.

24 (c) Accessory to felony is a Class IV felony if the actor violates
25 subdivision (1)(a), (1)(b), or (1)(c) of this section, the actor knows of
26 the conduct of the other, and the conduct of the other constitutes a
27 Class III or Class IIIA felony.

28 (d) Accessory to felony is a Class I misdemeanor if the actor
29 violates subdivision (1)(a), (1)(b), or (1)(c) of this section, the actor
30 knows of the conduct of the other, and the conduct of the other
31 constitutes a Class IV felony.

1 (e) Accessory to felony is a Class IV felony if the actor violates
2 subdivision (1)(d), (1)(e), or (1)(f) of this section, the actor knows of
3 the conduct of the other, and the conduct of the other constitutes a
4 felony of any class other than a Class IV felony.

5 (f) Accessory to felony is a Class I misdemeanor if the actor
6 violates subdivision (1)(d), (1)(e), or (1)(f) of this section, the actor
7 knows of the conduct of the other, and the conduct of the other
8 constitutes a Class IV felony.

9 Sec. 11. Section 28-303, Revised Statutes Cumulative Supplement,
10 2018, is amended to read:

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

22 (2) Murder in the first degree is a Class IA felony.

23 Sec. 12. Section 28-1356, Revised Statutes Cumulative Supplement,
24 2018, is amended to read:

25 28-1356 (1) A person who violates section 28-1355 shall be guilty of
26 a Class III felony; however, such person shall be guilty of a Class IB
27 felony if the violation is based upon racketeering activity which is
28 punishable as a Class I, IA, or IB felony.

29 (2) In lieu of the fine authorized by section 28-105, any person
30 convicted of engaging in conduct in violation of section 28-1355, through
31 which pecuniary value was derived, or by which personal injury or

1 property damage or other loss was caused, may be sentenced to pay a fine
2 that does not exceed three times the gross value gained or three times
3 the gross loss caused, whichever is greater, plus court costs and the
4 costs of investigation and prosecution reasonably incurred. Any fine
5 collected under this subsection shall be remitted to the State Treasurer
6 for distribution in accordance with Article VII, section 5, of the
7 Constitution of Nebraska.

8 Sec. 13. Section 29-742, Reissue Revised Statutes of Nebraska, is
9 amended to read:

10 29-742 The arrest of a person may be lawfully made also by any peace
11 officer or a private person, without a warrant upon reasonable
12 information that the accused stands charged in the courts of a state with
13 a crime punishable by ~~death or~~ imprisonment for a term exceeding one
14 year, but when so arrested the accused must be taken before a judge or
15 magistrate with all practicable speed and complaint must be made against
16 him or her under oath setting forth the ground for the arrest as in
17 section 29-741; and thereafter his or her answer shall be heard as if he
18 or she had been arrested on a warrant.

19 Sec. 14. Section 29-744, Reissue Revised Statutes of Nebraska, is
20 amended to read:

21 29-744 Unless the offense with which the prisoner is charged is
22 shown to be an offense punishable by ~~death or~~ life imprisonment under the
23 laws of the state in which it was committed, a judge or magistrate in
24 this state may admit the person arrested to bail by bond, with sufficient
25 sureties, and in such sum as he or she deems proper, conditioned for his
26 or her appearance before him or her at a time specified in such bond, and
27 for his or her surrender, to be arrested upon the warrant of the Governor
28 of this state.

29 Sec. 15. Section 29-1602, Revised Statutes Cumulative Supplement,
30 2018, is amended to read:

31 29-1602 All informations shall be filed in the court having

1 jurisdiction of the offense specified in the informations therein, by the
2 prosecuting attorney of the proper county as informant. The prosecuting
3 attorney shall subscribe his or her name thereto and endorse thereon the
4 names of the witnesses known to him or her at the time of filing. After
5 the information has been filed, the prosecuting attorney shall endorse on
6 the information the names of such other witnesses as shall then be known
7 to him or her as the court in its discretion may prescribe, ~~except that~~
8 ~~if a notice of aggravation is contained in the information as provided in~~
9 ~~section 29-1603, the prosecuting attorney may endorse additional~~
10 ~~witnesses at any time up to and including the thirtieth day prior to the~~
11 ~~trial of guilt.~~

12 Sec. 16. Section 29-1603, Revised Statutes Cumulative Supplement,
13 2018, is amended to read:

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

19 ~~(2)(a) Any information charging a violation of section 28-303 and in~~
20 ~~which the death penalty is sought shall contain a notice of aggravation~~
21 ~~which alleges one or more aggravating circumstances, as such aggravating~~
22 ~~circumstances are provided in section 29-2523. The notice of aggravation~~
23 ~~shall be filed as provided in section 29-1602. It shall constitute~~
24 ~~sufficient notice to describe the alleged aggravating circumstances in~~
25 ~~the language provided in section 29-2523.~~

26 ~~(b) The state shall be permitted to add to or amend a notice of~~
27 ~~aggravation at any time up to and including the thirtieth day prior to~~
28 ~~the trial of guilt.~~

29 ~~(c) The existence or contents of a notice of aggravation shall not~~
30 ~~be disclosed to the jury until after the verdict is rendered in the trial~~
31 ~~of guilt.~~

1 (2) ~~(3)~~ Different offenses and different degrees of the same offense
2 may be joined in one information, in all cases in which the same might by
3 different counts be joined in one indictment; and in all cases a
4 defendant or defendants shall have the same right, as to proceedings
5 therein, as the defendant or defendants would have if prosecuted for the
6 same offense upon indictment.

7 Sec. 17. Section 29-1816, Revised Statutes Cumulative Supplement,
8 2018, is amended to read:

9 29-1816 (1)(a) The accused may be arraigned in county court or
10 district court:

11 (i) If the accused was eighteen years of age or older when the
12 alleged offense was committed;

13 (ii) If the accused was younger than eighteen years of age and was
14 fourteen years of age or older when an alleged offense punishable as a
15 Class ~~I~~—IA, IB, IC, ID, II, or IIA felony was committed;

16 (iii) If the alleged offense is a traffic offense as defined in
17 section 43-245; or

18 (iv) Until January 1, 2017, if the accused was seventeen years of
19 age when an alleged offense described in subdivision (1) of section
20 43-247 was committed.

21 (b) Arraignment in county court or district court shall be by
22 reading to the accused the complaint or information, unless the reading
23 is waived by the accused when the nature of the charge is made known to
24 him or her. The accused shall then be asked whether he or she is guilty
25 or not guilty of the offense charged. If the accused appears in person
26 and by counsel and goes to trial before a jury regularly impaneled and
27 sworn, he or she shall be deemed to have waived arraignment and a plea of
28 not guilty shall be deemed to have been made.

29 (2) At the time of the arraignment, the county court or district
30 court shall advise the accused, if the accused was younger than eighteen
31 years of age at the time the alleged offense was committed, that the

1 accused may move the county court or district court at any time not later
2 than thirty days after arraignment, unless otherwise permitted by the
3 court for good cause shown, to waive jurisdiction in such case to the
4 juvenile court for further proceedings under the Nebraska Juvenile Code.
5 This subsection does not apply if the case was transferred to county
6 court or district court from juvenile court.

7 (3) For motions to transfer a case from the county court or district
8 court to juvenile court:

9 (a) The county court or district court shall schedule a hearing on
10 such motion within fifteen days. The customary rules of evidence shall
11 not be followed at such hearing. The accused shall be represented by an
12 attorney. The criteria set forth in section 43-276 shall be considered at
13 such hearing. After considering all the evidence and reasons presented by
14 both parties, the case shall be transferred to juvenile court unless a
15 sound basis exists for retaining the case in county court or district
16 court; and

17 (b) The county court or district court shall set forth findings for
18 the reason for its decision. If the county court or district court
19 determines that the accused should be transferred to the juvenile court,
20 the complete file in the county court or district court shall be
21 transferred to the juvenile court and the complaint, indictment, or
22 information may be used in place of a petition therein. The county court
23 or district court making a transfer shall order the accused to be taken
24 forthwith to the juvenile court and designate where the juvenile shall be
25 kept pending determination by the juvenile court. The juvenile court
26 shall then proceed as provided in the Nebraska Juvenile Code.

27 (c) An order granting or denying transfer of the case from county or
28 district court to juvenile court shall be considered a final order for
29 the purposes of appeal. Upon entry of an order, any party may appeal to
30 the Court of Appeals within ten days. Such review shall be advanced on
31 the court docket without an extension of time granted to any party except

1 upon a showing of exceptional cause. Appeals shall be submitted,
2 assigned, and scheduled for oral argument as soon as the appellee's brief
3 is due to be filed. The Court of Appeals shall conduct its review in an
4 expedited manner and shall render the judgment and opinion, if any, as
5 speedily as possible. During the pendency of an appeal from an order
6 transferring the case to juvenile court, the juvenile court may enter
7 temporary orders in the best interests of the juvenile.

8 (4) When the accused was younger than eighteen years of age when an
9 alleged offense was committed, the county attorney or city attorney shall
10 proceed under section 43-274.

11 Sec. 18. Section 29-1822, Revised Statutes Cumulative Supplement,
12 2018, is amended to read:

13 29-1822 A person who becomes mentally incompetent after the
14 commission of a crime or misdemeanor shall not be tried for the offense
15 during the continuance of the incompetency. If, after the verdict of
16 guilty and before judgment is pronounced, such person becomes mentally
17 incompetent, then no judgment shall be given while such incompetency
18 continues ~~shall continue; and if, after judgment and before execution of~~
19 ~~the sentence, such person shall become mentally incompetent, then in case~~
20 ~~the punishment be capital, the execution thereof shall be stayed until~~
21 ~~the recovery of such person from the incompetency.~~

22 Sec. 19. Section 29-2004, Revised Statutes Cumulative Supplement,
23 2018, is amended to read:

24 29-2004 (1) All parties may stipulate that the jury may be selected
25 up to thirty-one days prior to the date of trial. The stipulation must be
26 unanimous among all parties and evidenced by a joint stipulation to the
27 county court.

28 (2) In all cases, except as may be otherwise expressly provided, the
29 accused shall be tried by a jury drawn, summoned, and impaneled according
30 to provisions of the code of civil procedure, except that whenever in the
31 opinion of the court the trial is likely to be a protracted one, the

1 court may, immediately after the jury is impaneled and sworn, direct the
2 calling of one or two additional jurors, to be known as alternate jurors.
3 Such jurors shall be drawn from the same source and in the same manner,
4 and have the same qualifications as regular jurors, and be subject to
5 examination and challenge as such jurors, except that each party shall be
6 allowed one peremptory challenge to each alternate juror. The alternate
7 jurors shall take the proper oath or affirmation and shall be seated near
8 the regular jurors with equal facilities for seeing and hearing the
9 proceedings in the cause, and shall attend at all times upon the trial of
10 the cause in company with the regular jurors. They shall obey all orders
11 and admonitions of the court, and if the regular jurors are ordered to be
12 kept in the custody of an officer during the trial of the cause, the
13 alternate jurors shall also be kept with the other jurors and, ~~except as~~
14 ~~hereinafter provided,~~ shall be discharged upon the final submission of
15 the cause to the jury. ~~If an information charging a violation of section~~
16 ~~28-303 and in which the death penalty is sought contains a notice of~~
17 ~~aggravation, the alternate jurors shall be retained as provided in~~
18 ~~section 29-2520.~~ If, before the final submission of the cause a regular
19 juror dies or is discharged, the court shall order the alternate juror,
20 if there is but one, to take his or her place in the jury box. If there
21 are two alternate jurors the court shall select one by lot, who shall
22 then take his or her place in the jury box. After an alternate juror is
23 in the jury box he or she shall be subject to the same rules as a regular
24 juror.

25 Sec. 20. Section 29-2005, Revised Statutes Cumulative Supplement,
26 2018, is amended to read:

27 29-2005 Every person arraigned for any crime punishable by with
28 ~~death, or imprisonment for life,~~ shall be admitted on his or her trial to
29 a peremptory challenge of twelve jurors. Every , ~~and no more;~~ every
30 person arraigned for any offense that may be punishable by imprisonment
31 for a term exceeding eighteen months and less than life, shall be

1 admitted to a peremptory challenge of six jurors. ~~In ; and in~~ all other
2 criminal trials, the defendant shall be allowed a peremptory challenge of
3 three jurors. The attorney prosecuting on behalf of the state shall be
4 admitted to a peremptory challenge of twelve jurors in all cases when the
5 offense is punishable by ~~with death or~~ imprisonment for life, six jurors
6 when the offense is punishable by imprisonment for a term exceeding
7 eighteen months and less than life, and three jurors in all other cases.
8 In each case for which ; ~~Provided, that in all cases where~~ alternate
9 jurors are called, as provided in section 29-2004, ~~then in that case~~ both
10 the defendant and the attorney prosecuting for the state shall each be
11 allowed one added peremptory challenge to each alternate juror.

12 Sec. 21. Section 29-2006, Revised Statutes Cumulative Supplement,
13 2018, is amended to read:

14 29-2006 (1) The following shall be good causes for challenge to any
15 person called as a juror or alternate juror, on the trial of any
16 indictment:

17 (a) ~~(1)~~ That he or she was a member of the grand jury which found
18 the indictment;

19 (b) That he or she ~~(2)~~ ~~that~~ he has formed or expressed an opinion as
20 to the guilt or innocence of the accused. ~~However, ; Provided,~~ if a juror
21 or alternate juror states ~~shall state~~ that he or she has formed or
22 expressed an opinion as to the guilt or innocence of the accused, the
23 court shall thereupon proceed to examine, on oath, such juror or
24 alternate juror as to the ground of such opinion; and if it appears ~~shall~~
25 ~~appear~~ to have been founded upon reading newspaper statements,
26 communications, comments or reports, or upon rumor or hearsay, and not
27 upon conversations with witnesses of the transactions or reading reports
28 of their testimony or hearing them testify, and the juror or alternate
29 juror says ~~shall say~~ on oath that he or she feels able, notwithstanding
30 such opinion, to render an impartial verdict upon the law and the
31 evidence, the court, if satisfied that such juror or alternate juror is

1 impartial and will render such verdict, may, in its discretion, admit
2 such juror or alternate juror as competent to serve in such case;

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

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

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

15 ~~(f) That he or she (7) that he has been in good faith subpoenaed as~~
16 a witness in the case; or

17 ~~(g) That he or she (8) that he is a habitual drunkard.~~

18 ~~(2) In addition, ; (9) the same challenges as are shall be allowed~~
19 ~~in criminal prosecutions that are allowed to parties in civil cases shall~~
20 ~~be allowed in criminal prosecutions.~~

21 Sec. 22. Section 29-2020, Revised Statutes Cumulative Supplement,
22 2018, is amended to read:

23 ~~29-2020 In Except as provided in section 29-2525 for cases when the~~
24 ~~punishment is capital, in all criminal cases when a defendant feels~~
25 aggrieved by any opinion or decision of the court, he or she may order a
26 bill of exceptions. The ordering, preparing, signing, filing, correcting,
27 and amending of the bill of exceptions shall be governed by the rules
28 established in such matters in civil cases.

29 Sec. 23. Section 29-2027, Revised Statutes Cumulative Supplement,
30 2018, is amended to read:

31 29-2027 In all trials for murder the jury before whom such trial is

1 had, if they find the prisoner guilty thereof, shall ascertain in their
2 verdict whether it is murder in the first or second degree or
3 manslaughter. ~~If ; and if~~ such person is convicted by confession in open
4 court, the court shall proceed by examination of witnesses in open court,
5 to determine the degree of the crime, and shall pronounce sentence
6 accordingly ~~or as provided in sections 29-2519 to 29-2524 for murder in~~
7 ~~the first degree.~~

8 Sec. 24. Section 29-2204, Revised Statutes Cumulative Supplement,
9 2018, is amended to read:

10 29-2204 (1) Except when the defendant is found guilty of a Class IA
11 felony ~~a term of life imprisonment is required by law~~, in imposing a
12 sentence upon an offender for any class of felony other than a Class III,
13 IIIA, or IV felony, the court shall fix the minimum and the maximum terms
14 of the sentence to be served within the limits provided by law. The
15 maximum term shall not be greater than the maximum limit provided by law,
16 and:

17 (a) The minimum term fixed by the court shall be any term of years
18 less than the maximum term imposed by the court; or

19 (b) The minimum term shall be the minimum limit provided by law.

20 (2) When a maximum term of life is imposed by the court for a Class
21 IB felony, the minimum term fixed by the court shall be:

22 (a) Any term of years not less than the minimum limit provided by
23 law; or

24 (b) A term of life imprisonment.

25 (3) When a maximum term of life is imposed by the court for a Class
26 IA felony, the minimum term fixed by the court shall be:

27 (a) A term of life imprisonment; or

28 (b) Any term of years not less than the minimum limit provided by
29 law after consideration of the mitigating factors in section 28-105.02,
30 if the defendant was under eighteen years of age at the time he or she
31 committed the crime for which he or she was convicted.

1 (4) When the court is of the opinion that imprisonment may be
2 appropriate but desires more detailed information as a basis for
3 determining the sentence to be imposed than has been provided by the
4 presentence report required by section 29-2261, the court may commit an
5 offender to the Department of Correctional Services. During that time,
6 the department shall conduct a complete study of the offender as provided
7 in section 29-2204.03.

8 (5) Except when the defendant is found guilty of a Class IA felony a
9 ~~term of life is required by law~~, whenever the defendant was under
10 eighteen years of age at the time he or she committed the crime for which
11 he or she was convicted, the court may, in its discretion, instead of
12 imposing the penalty provided for the crime, make such disposition of the
13 defendant as the court deems proper under the Nebraska Juvenile Code.

14 (6)(a) When imposing an indeterminate sentence upon an offender
15 under this section, the court shall:

16 (i) Advise the offender on the record the time the offender will
17 serve on his or her minimum term before attaining parole eligibility
18 assuming that no good time for which the offender will be eligible is
19 lost; and

20 (ii) Advise the offender on the record the time the offender will
21 serve on his or her maximum term before attaining mandatory release
22 assuming that no good time for which the offender will be eligible is
23 lost.

24 (b) If any discrepancy exists between the statement of the minimum
25 limit of the sentence and the statement of parole eligibility or between
26 the statement of the maximum limit of the sentence and the statement of
27 mandatory release, the statements of the minimum limit and the maximum
28 limit shall control the calculation of the offender's term.

29 (c) If the court imposes more than one sentence upon an offender or
30 imposes a sentence upon an offender who is at that time serving another
31 sentence, the court shall state whether the sentences are to be

1 concurrent or consecutive.

2 Sec. 25. Section 29-2204.02, Reissue Revised Statutes of Nebraska,
3 is amended to read:

4 29-2204.02 (1) Except when a term of probation is required by law as
5 provided in subsection (2) of this section or except as otherwise
6 provided in subsection (4) of this section, in imposing a sentence upon
7 an offender for a Class III, IIIA, or IV felony, the court shall:

8 (a) Impose a determinate sentence of imprisonment within the
9 applicable range in section 28-105; and

10 (b) Impose a sentence of post-release supervision, under the
11 jurisdiction of the Office of Probation Administration, within the
12 applicable range in section 28-105.

13 (2) If the criminal offense is a Class IV felony, the court shall
14 impose a sentence of probation unless:

15 (a) The defendant is concurrently or consecutively sentenced to
16 imprisonment for any felony other than another Class IV felony;

17 (b) The defendant has been deemed a habitual criminal pursuant to
18 section 29-2221; or

19 (c) There are substantial and compelling reasons why the defendant
20 cannot effectively and safely be supervised in the community, including,
21 but not limited to, the criteria in subsections (2) and (3) of section
22 29-2260. Unless other reasons are found to be present, that the offender
23 has not previously succeeded on probation is not, standing alone, a
24 substantial and compelling reason.

25 (3) If a sentence of probation is not imposed, the court shall state
26 its reasoning on the record, advise the defendant of his or her right to
27 appeal the sentence, and impose a sentence as provided in subsection (1)
28 of this section.

29 (4) For any sentence of imprisonment for a Class III, IIIA, or IV
30 felony for an offense committed on or after August 30, 2015, imposed
31 consecutively or concurrently with (a) a sentence for a Class III, IIIA,

1 or IV felony for an offense committed prior to August 30, 2015, or (b) a
2 sentence of imprisonment for a Class ~~I~~—IA, IB, IC, ID, II, or IIA
3 felony, the court shall impose an indeterminate sentence within the
4 applicable range in section 28-105 that does not include a period of
5 post-release supervision, in accordance with the process set forth in
6 section 29-2204.

7 (5) For any sentence of imprisonment for a misdemeanor imposed
8 consecutively or concurrently with a sentence of imprisonment for a Class
9 III, IIIA, or IV felony for an offense committed on or after August 30,
10 2015, the court shall impose a determinate sentence within the applicable
11 range in section 28-106 unless the person is also committed to the
12 Department of Correctional Services in accordance with section 29-2204
13 for (a) a sentence of imprisonment for a Class III, IIIA, or IV felony
14 committed prior to August 30, 2015, or (b) a sentence of imprisonment for
15 a Class ~~I~~—IA, IB, IC, ID, II, or IIA felony.

16 (6) If the defendant was under eighteen years of age at the time he
17 or she committed the crime for which he or she was convicted, the court
18 may, in its discretion, instead of imposing the penalty provided for the
19 crime, make such disposition of the defendant as the court deems proper
20 under the Nebraska Juvenile Code.

21 (7)(a) When imposing a determinate sentence upon an offender under
22 this section, the court shall:

23 (i) Advise the offender on the record the time the offender will
24 serve on his or her term of imprisonment before his or her term of post-
25 release supervision assuming that no good time for which the offender
26 will be eligible is lost;

27 (ii) Advise the offender on the record the time the offender will
28 serve on his or her term of post-release supervision; and

29 (iii) When imposing a sentence following revocation of post-release
30 supervision, advise the offender on the record the time the offender will
31 serve on his or her term of imprisonment, including credit for time

1 served, assuming that no good time for which the offender will be
2 eligible is lost.

3 (b) If a period of post-release supervision is required but not
4 imposed by the sentencing court, the term of post-release supervision
5 shall be the minimum provided by law.

6 (c) If the court imposes more than one sentence upon an offender or
7 imposes a sentence upon an offender who is at that time serving another
8 sentence, the court shall state whether the sentences are to be
9 concurrent or consecutive.

10 (d) If the offender has been sentenced to two or more determinate
11 sentences and one or more terms of post-release supervision, the offender
12 shall serve all determinate sentences before being released on post-
13 release supervision.

14 Sec. 26. Section 29-2261, Revised Statutes Cumulative Supplement,
15 2018, is amended to read:

16 29-2261 (1) Unless it is impractical to do so, when an offender has
17 been convicted of a felony ~~other than murder in the first degree~~, the
18 court shall not impose sentence without first ordering a presentence
19 investigation of the offender and according due consideration to a
20 written report of such investigation. ~~When an offender has been convicted~~
21 ~~of murder in the first degree and (a) a jury renders a verdict finding~~
22 ~~the existence of one or more aggravating circumstances as provided in~~
23 ~~section 29-2520 or (b)(i) the information contains a notice of~~
24 ~~aggravation as provided in section 29-1603 and (ii) the offender waives~~
25 ~~his or her right to a jury determination of the alleged aggravating~~
26 ~~circumstances, the court shall not commence the sentencing determination~~
27 ~~proceeding as provided in section 29-2521 without first ordering a~~
28 ~~presentence investigation of the offender and according due consideration~~
29 ~~to a written report of such investigation.~~

30 (2) A court may order a presentence investigation in any case,
31 except in cases in which an offender has been convicted of a Class IIIA

1 misdemeanor, a Class IV misdemeanor, a Class V misdemeanor, a traffic
2 infraction, or any corresponding city or village ordinance.

3 (3) The presentence investigation and report shall include, when
4 available, an analysis of the circumstances attending the commission of
5 the crime, the offender's history of delinquency or criminality, physical
6 and mental condition, family situation and background, economic status,
7 education, occupation, and personal habits, and any other matters that
8 the probation officer deems relevant or the court directs to be included.
9 All local and state police agencies and Department of Correctional
10 Services adult correctional facilities shall furnish to the probation
11 officer copies of such criminal records, in any such case referred to the
12 probation officer by the court of proper jurisdiction, as the probation
13 officer shall require without cost to the court or the probation officer.

14 Such investigation shall also include:

15 (a) Any written statements submitted to the county attorney by a
16 victim; and

17 (b) Any written statements submitted to the probation officer by a
18 victim.

19 (4) If there are no written statements submitted to the probation
20 officer, he or she shall certify to the court that:

21 (a) He or she has attempted to contact the victim; and

22 (b) If he or she has contacted the victim, such officer offered to
23 accept the written statements of the victim or to reduce such victim's
24 oral statements to writing.

25 For purposes of subsections (3) and (4) of this section, the term
26 victim shall be as defined in section 29-119.

27 (5) Before imposing sentence, the court may order the offender to
28 submit to psychiatric observation and examination for a period of not
29 exceeding sixty days or such longer period as the court determines to be
30 necessary for that purpose. The offender may be remanded for this purpose
31 to any available clinic or mental hospital, or the court may appoint a

1 qualified psychiatrist to make the examination. The report of the
2 examination shall be submitted to the court.

3 (6)(a) Any presentence report, substance abuse evaluation, or
4 psychiatric examination shall be privileged and shall not be disclosed
5 directly or indirectly to anyone other than a judge; probation officers
6 to whom an offender's file is duly transferred; the probation
7 administrator or his or her designee; alcohol and drug counselors, mental
8 health practitioners, psychiatrists, and psychologists licensed or
9 certified under the Uniform Credentialing Act to conduct substance abuse
10 evaluations and treatment; or others entitled by law to receive such
11 information, including personnel and mental health professionals for the
12 Nebraska State Patrol specifically assigned to sex offender registration
13 and community notification for the sole purpose of using such report,
14 evaluation, or examination for assessing risk and for community
15 notification of registered sex offenders.

16 (b) For purposes of this subsection, mental health professional
17 means (i) a practicing physician licensed to practice medicine in this
18 state under the Medicine and Surgery Practice Act, (ii) a practicing
19 psychologist licensed to engage in the practice of psychology in this
20 state as provided in section 38-3111 or as provided under similar
21 provisions of the Psychology Interjurisdictional Compact, or (iii) a
22 practicing mental health professional licensed or certified in this state
23 as provided in the Mental Health Practice Act.

24 (7) The court shall permit inspection of the presentence report,
25 substance abuse evaluation, or psychiatric examination or parts of the
26 report, evaluation, or examination, as determined by the court, by the
27 prosecuting attorney and defense counsel. Beginning July 1, 2016, such
28 inspection shall be by electronic access only unless the court determines
29 such access is not available to the prosecuting attorney or defense
30 counsel. The State Court Administrator shall determine and develop the
31 means of electronic access to such presentence reports, evaluations, and

1 examinations. Upon application by the prosecuting attorney or defense
2 counsel, the court may order that addresses, telephone numbers, and other
3 contact information for victims or witnesses named in the report,
4 evaluation, or examination be redacted upon a showing by a preponderance
5 of the evidence that such redaction is warranted in the interests of
6 public safety. The court may permit inspection of the presentence report,
7 substance abuse evaluation, or psychiatric examination or examination of
8 parts of the report, evaluation, or examination by any other person
9 having a proper interest therein whenever the court finds it is in the
10 best interest of a particular offender. The court may allow fair
11 opportunity for an offender to provide additional information for the
12 court's consideration.

13 (8) If an offender is sentenced to imprisonment, a copy of the
14 report of any presentence investigation, substance abuse evaluation, or
15 psychiatric examination shall be transmitted immediately to the
16 Department of Correctional Services. Upon request, the Board of Parole or
17 the Division of Parole Supervision may receive a copy of the report from
18 the department.

19 (9) Notwithstanding subsections (6) and (7) of this section, the
20 Supreme Court or an agent of the Supreme Court acting under the direction
21 and supervision of the Chief Justice shall have access to psychiatric
22 examinations, substance abuse evaluations, and presentence investigations
23 and reports for research purposes. The Supreme Court and its agent shall
24 treat such information as confidential, and nothing identifying any
25 individual shall be released.

26 Sec. 27. Section 29-2407, Revised Statutes Cumulative Supplement,
27 2018, is amended to read:

28 29-2407 Judgments for fines and costs in criminal cases shall be a
29 lien upon all the property of the defendant within the county from the
30 time of filing the case by the clerk of the proper court, and judgments
31 upon forfeited recognizance shall be a like lien from the time of

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

9 Sec. 28. The changes made by this legislative bill shall not (1)
10 limit the discretionary authority of the sentencing court to order
11 restitution as part of any sentence or (2) alter the discretion and
12 authority of the Department of Correctional Services to determine the
13 appropriate security measures and conditions during the confinement of
14 any committed offender.

15 Sec. 29. It is the intent of the Legislature that in any criminal
16 proceeding in which the death penalty has been imposed but not carried
17 out prior to the effective date of this act, such penalty shall be
18 changed to life imprisonment.

19 Sec. 30. Section 29-2801, Revised Statutes Cumulative Supplement,
20 2018, is amended to read:

21 29-2801 If any person, except persons convicted of some crime or
22 offense for which they stand committed, ~~or persons committed for treason~~
23 ~~or felony, the punishment whereof is capital, plainly and specially~~
24 ~~expressed in the warrant of commitment,~~ now or in the future, is or shall
25 be confined in any jail of this state, or is shall be unlawfully deprived
26 of his or her liberty, and ~~makes shall make~~ application, either by
27 himself ~~him~~ or herself or by any person on his or her behalf, to any one
28 of the judges of the district court, or to any county judge, and does at
29 the same time produce to such judge a copy of the commitment or cause of
30 detention of such person, or if the person so imprisoned or detained is
31 imprisoned or detained without any legal authority, upon making the same

1 appear to such judge, by oath or affirmation, it is the duty of the judge
2 ~~shall be his duty~~ forthwith to allow a writ of habeas corpus, which writ
3 shall be issued forthwith by the clerk of the district court, or by the
4 county judge, as the case may require, under the seal of the court
5 whereof the person allowing such writ is a judge, directed to the proper
6 officer, person, or persons who detain ~~detains~~ such prisoner.

7 Sec. 31. Section 29-3205, Revised Statutes Cumulative Supplement,
8 2018, is amended to read:

9 29-3205 The Uniform Rendition of Prisoners as Witnesses in Criminal
10 Proceedings Act shall ~~Sections 29-3201 to 29-3210 do~~ not apply to any
11 person in this state confined as mentally ill ~~or under sentence of death~~.

12 Sec. 32. Section 29-3920, Revised Statutes Cumulative Supplement,
13 2018, is amended to read:

14 29-3920 The Legislature finds that:

15 (1) County property owners should be given some relief from the
16 obligation of providing mandated indigent defense services which in most
17 instances are required because of state laws establishing crimes and
18 penalties;

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

22 (3) Property tax relief in the form of state assistance to the
23 counties of Nebraska in providing for indigent defense services will also
24 increase accountability because the state, which is the governmental
25 entity responsible for passing criminal statutes, will likewise be
26 responsible for paying some of the costs;

27 (4) Property tax relief in the form of state assistance to the
28 counties of Nebraska in providing for indigent defense services will also
29 improve inconsistent and inadequate funding of indigent defense services
30 by the counties;

31 (5) Property tax relief in the form of state assistance to the

1 counties of Nebraska in providing for indigent defense services will also
2 lessen the impact on county property taxpayers of the cost of a high
3 profile first-degree murder ~~death-penalty~~ case which can significantly
4 affect the finances of the counties; and

5 (6) To accomplish property tax relief in the form of the state
6 assisting the counties of Nebraska in providing for indigent defense
7 services, the Commission on Public Advocacy Operations Cash Fund should
8 be established to fund the operation of the Commission on Public Advocacy
9 and to fund reimbursement requests as determined by section 29-3933.

10 Sec. 33. Section 29-3922, Revised Statutes Cumulative Supplement,
11 2018, is amended to read:

12 29-3922 For purposes of the County Revenue Assistance Act:

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

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

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

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

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

25 (6) Indigent defense services means legal services provided to
26 indigent persons by an indigent defense system in first-degree murder
27 ~~capital~~ cases, felony cases, misdemeanor cases, juvenile cases, mental
28 health commitment cases, child support enforcement cases, and paternity
29 establishment cases;

30 (7) Indigent defense system means a system of providing services,
31 including any services necessary for litigating a case, by a contracting

1 attorney, court-appointed attorney, or public defender;

2 (8) Indigent person means a person who is indigent and unable to
3 obtain legal counsel as determined pursuant to subdivision (3) of section
4 29-3901; and

5 (9) Public defender means an attorney appointed or elected pursuant
6 to sections 23-3401 to 23-3403.

7 Sec. 34. Section 29-3928, Revised Statutes Cumulative Supplement,
8 2018, is amended to read:

9 29-3928 The commission shall appoint a chief counsel. The
10 responsibilities and duties of the chief counsel shall be defined by the
11 commission and shall include the overall supervision of the workings of
12 the various divisions of the commission. The chief counsel shall be
13 qualified for his or her position, shall have been licensed to practice
14 law in the State of Nebraska for at least five years prior to the
15 effective date of the appointment, and shall be experienced in the
16 practice of criminal defense, including the defense of first-degree
17 murder ~~capital~~ cases. The chief counsel shall serve at the pleasure of
18 the commission. The salary of the chief counsel shall be set by the
19 commission.

20 Sec. 35. Section 29-3929, Revised Statutes Cumulative Supplement,
21 2018, is amended to read:

22 29-3929 The primary duties of the chief counsel shall be to provide
23 direct legal services to indigent defendants, and the chief counsel
24 shall:

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

28 (2) Prepare a budget and disburse funds for the operations of the
29 commission;

30 (3) Present to the commission an annual report on the operations of
31 the commission, including an accounting of all funds received and

1 disbursed, an evaluation of the cost-effectiveness of the commission, and
2 recommendations for improvement;

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

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

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

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

10 (8) Adopt and promulgate rules and regulations for the management
11 and administration of policies of the commission and the conduct of
12 employees of the commission;

13 (9) Transmit monthly to the commission a report of the operations of
14 the commission for the preceding calendar month;

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

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

20 Sec. 36. Section 29-3930, Revised Statutes Cumulative Supplement,
21 2018, is amended to read:

22 29-3930 The following divisions are established within the
23 commission:

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

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

30 (3) The violent crime and drug defense division shall be available
31 to assist in the defense of certain violent and drug crimes as defined by

1 the commission, subject to the caseload standards of the commission;

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

5 (5) The major case resource center shall be available to assist
6 public defenders, contracting attorneys, or court-appointed attorneys
7 with the defense of a felony offense, subject to caseload standards of
8 the commission.

9 Sec. 37. Section 55-480, Revised Statutes Cumulative Supplement,
10 2018, is amended to read:

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

19 Sec. 38. Section 83-1,110.02, Revised Statutes Cumulative
20 Supplement, 2018, is amended to read:

21 83-1,110.02 (1) A committed offender who is not under sentence of
22 ~~death or~~ life imprisonment and who because of an existing medical or
23 physical condition is determined by the department to be terminally ill
24 or permanently incapacitated may be considered for medical parole by the
25 board. A committed offender may be eligible for medical parole in
26 addition to any other parole. The department shall identify committed
27 offenders who may be eligible for medical parole based upon their medical
28 records.

29 (2) The board shall decide to grant medical parole only after a
30 review of the medical, institutional, and criminal records of the
31 committed offender and such additional medical evidence from board-

1 ordered examinations or investigations as the board in its discretion
2 determines to be necessary. The decision to grant medical parole and to
3 establish conditions of release on medical parole in addition to the
4 conditions stated in subsection (3) of this section is within the sole
5 discretion of the board.

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

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

15 Sec. 39. Section 83-1,122.01, Revised Statutes Cumulative
16 Supplement, 2018, is amended to read:

17 83-1,122.01 (1) Except as provided in subsection (3) of this
18 section, the board does not have jurisdiction over a person who is
19 committed to the department in accordance with section 29-2204.02 for a
20 Class III, IIIA, or IV felony committed on or after August 30, 2015,
21 unless the person is also committed to the department in accordance with
22 section 29-2204 for (a) a sentence of imprisonment for a Class III, IIIA,
23 or IV felony committed prior to August 30, 2015, or (b) a sentence of
24 imprisonment for a Class ~~I~~—IA, IB, IC, ID, II, or IIA felony.

25 (2) Except as provided in subsection (3) of this section, the board
26 does not have jurisdiction over a person committed to the department for
27 a misdemeanor sentence imposed consecutively or concurrently with a Class
28 III, IIIA, or IV felony sentence for an offense committed on or after
29 August 30, 2015, unless the person is also committed to the department in
30 accordance with section 29-2204 for (a) a sentence of imprisonment for a
31 Class III, IIIA, or IV felony committed prior to August 30, 2015, or (b)

1 a sentence of imprisonment for a Class ~~I~~, IA, IB, IC, ID, II, or IIA
2 felony.

3 (3) This section does not apply to medical parole under section
4 83-1,110.02.

5 Sec. 40. Section 83-4,143, Revised Statutes Cumulative Supplement,
6 2018, is amended to read:

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

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

29 (3) It is also the intent of the Legislature that the Board of
30 Parole may recommend placement of felony offenders at the incarceration
31 work camp. The offenders recommended by the board shall be offenders

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

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

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

24 Sec. 41. Original sections 28-115, 28-204, 29-742, 29-744, and
25 29-2204.02, Reissue Revised Statutes of Nebraska, and sections 23-3406,
26 23-3408, 24-1106, 25-1140.09, 28-104, 28-105, 28-201, 28-202, 28-303,
27 28-1356, 29-1602, 29-1603, 29-1816, 29-1822, 29-2004, 29-2005, 29-2006,
28 29-2020, 29-2027, 29-2204, 29-2261, 29-2407, 29-2801, 29-3205, 29-3920,
29 29-3922, 29-3928, 29-3929, 29-3930, 55-480, 83-1,110.02, 83-1,122.01, and
30 83-4,143, Revised Statutes Cumulative Supplement, 2018, are repealed.

31 Sec. 42. The following sections are outright repealed: Sections

1 24-1105, 28-105.01, 29-2519, 29-2520, 29-2521, 29-2521.01, 29-2521.02,
2 29-2521.03, 29-2521.04, 29-2521.05, 29-2522, 29-2523, 29-2524,
3 29-2524.01, 29-2524.02, 29-2525, 29-2527, 29-2528, 29-2537, 29-2538,
4 29-2539, 29-2540, 29-2541, 29-2542, 29-2543, 29-2546, 29-2811, 83-1,132,
5 83-964, 83-965, 83-966, 83-967, 83-968, 83-969, 83-970, 83-971, and
6 83-972, Revised Statutes Cumulative Supplement, 2018.