

AMENDMENTS TO LB 1063

Introduced by Judiciary.

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

3 Section 1. The Legislature finds that:

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

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

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

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

22 (5) The history of attempts to carry out the death
23 penalty in Nebraska demonstrates an inordinate burden on the

1 justice system and on the lives of the innocent families and
2 associates of both the victims and the convicted parties;

3 (6) A maximum sentence of life imprisonment without
4 possibility of parole, subject only to the constitutional power
5 of the Board of Pardons, is preferable to the current capital
6 punishment scheme. Such a maximum sentence reflects this state's
7 desire to ensure the safety of its citizens, assist victims'
8 families when possible, and yet preserve this state's values of
9 human life, uniform fairness, and basic decency;

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

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

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

24 23-3406 (1) The contract negotiated between the county
25 board and the contracting attorney shall specify the categories of
26 cases in which the contracting attorney is to provide services.

27 (2) The contract negotiated between the county board and

1 the contracting attorney shall be awarded for at least a two-year
2 term. Removal of the contracting attorney short of the agreed term
3 may be for good cause only.

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

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

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

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

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

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

27 (6) The contract between the contracting attorney and

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

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

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

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

25 24-1106 (1) In cases which were appealable to the Supreme
26 Court before September 6, 1991, the appeal, if taken, shall be to
27 the Court of Appeals except in ~~capital cases~~, cases in which life

1 imprisonment without possibility of parole has been imposed, and
2 cases involving the constitutionality of a statute.

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

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

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

14 (c) Whether the case raises a question of law regarding
15 the validity of a statute;

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

19 (e) Whether the case is one of significant public
20 interest.

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

23 (3) The Supreme Court shall by rule provide for the
24 removal of a case from the Court of Appeals to the Supreme Court
25 for decision by the Supreme Court at any time before a final
26 decision has been made on the case by the Court of Appeals. The
27 removal may be on the recommendation of the Court of Appeals or on

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

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

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

23 When the transcribed copy of the proceedings is required
24 by the county attorney, the fee therefor shall be paid by the
25 county in the same manner as other claims are paid. When the
26 defendant in a criminal case, after conviction, makes an affidavit
27 that he or she is unable by reason of his or her poverty to pay

1 for such copy, the court or judge thereof may, by order endorsed
2 on such affidavit, direct delivery of such transcribed copy to such
3 defendant, and the fee shall be paid by the county in the same
4 manner as other claims are allowed and paid. ~~When such copy is~~
5 ~~prepared in any criminal case in which the sentence adjudged is~~
6 ~~capital, the fees therefor shall be paid by the county in the same~~
7 ~~manner as other claims are allowed or paid.~~

8 The fee for preparation of a bill of exceptions and
9 the procedure for preparation, settlement, signature, allowance,
10 certification, filing, and amendment of a bill of exceptions shall
11 be regulated and governed by rules of practice prescribed by the
12 Supreme Court. The fee paid shall be taxed, by the clerk of the
13 district court, to the party against whom the judgment or decree
14 is rendered except as otherwise ordered by the presiding district
15 judge.

16 Sec. 5. Section 28-104, Reissue Revised Statutes of
17 Nebraska, is amended to read:

18 28-104 The terms offense and crime are synonymous as used
19 in this code and mean a violation of, or conduct defined by, any
20 statute for which a fine, or imprisonment, ~~or death~~ may be imposed.

21 Sec. 6. Section 28-105, Revised Statutes Cumulative
22 Supplement, 2006, is amended to read:

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

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

23 ~~(2)~~ (2) (a) All sentences of imprisonment for Class I, IA,
24 IB, IC, ID, II, and III felonies and sentences of one year or
25 more for Class IIIA and IV felonies shall be served in institutions
26 under the jurisdiction of the Department of Correctional Services.

27 (b) Sentences of less than one year shall be served in

1 the county jail except as provided in this subsection. If the
2 department certifies that it has programs and facilities available
3 for persons sentenced to terms of less than one year, the court
4 may order that any sentence of six months or more be served
5 in any institution under the jurisdiction of the department. Any
6 such certification shall be given by the department to the State
7 Court Administrator, who shall forward copies thereof to each judge
8 having jurisdiction to sentence in felony cases.

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

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

14 Sec. 7. Section 28-303, Revised Statutes Cumulative
15 Supplement, 2006, is amended to read:

16 28-303 A person commits murder in the first degree if
17 he or she kills another person (1) purposely and with deliberate
18 and premeditated malice, or (2) in the perpetration of or attempt
19 to perpetrate any sexual assault in the first degree, arson,
20 robbery, kidnapping, hijacking of any public or private means
21 of transportation, or burglary, or (3) by administering poison
22 or causing the same to be done; or if by willful and corrupt
23 perjury or subornation of the same he or she purposely procures the
24 conviction and execution of any innocent person. ~~The determination~~
25 ~~of whether murder in the first degree shall be punished as a Class~~
26 ~~I or Class IA felony shall be made pursuant to sections 29-2519 to~~
27 ~~29-2524.~~ Murder in the first degree is a Class I felony.

1 Sec. 8. Section 29-1602, Revised Statutes Cumulative
2 Supplement, 2006, is amended to read:

3 29-1602 All informations shall be filed in the court
4 having jurisdiction of the offense specified therein, by the
5 prosecuting attorney of the proper county as informant. The
6 prosecuting attorney shall subscribe his or her name thereto
7 and endorse thereon the names of the witnesses known to him or her
8 at the time of filing. After the information has been filed, the
9 prosecuting attorney shall endorse on the information the names of
10 such other witnesses as shall then be known to him or her as the
11 court in its discretion may prescribe, ~~except that if a notice of~~
12 ~~aggravation is contained in the information as provided in section~~
13 ~~29-1603, the prosecuting attorney may endorse additional witnesses~~
14 ~~at any time up to and including the thirtieth day prior to the~~
15 ~~trial of guilt.~~

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

18 29-1603 (1) All informations shall be verified by the
19 oath of the county attorney, complainant, or some other person, and
20 the offenses charged therein shall be stated with the same fullness
21 and precision in matters of substance as is required in indictments
22 in like cases.

23 ~~(2)(a) Any information charging a violation of section~~
24 ~~28-303 and in which the death penalty is sought shall contain~~
25 ~~a notice of aggravation which alleges one or more aggravating~~
26 ~~circumstances, as such aggravating circumstances are provided in~~
27 ~~section 29-2523. The notice of aggravation shall be filed as~~

1 provided in section 29-1602. It shall constitute sufficient notice
2 to describe the alleged aggravating circumstances in the language
3 provided in section 29-2523.

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

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

10 (3) (2) Different offenses and different degrees of the
11 same offense may be joined in one information, in all cases
12 in which the same might by different counts be joined in one
13 indictment; and in all cases a defendant or defendants shall have
14 the same right, as to proceedings therein, as the defendant or
15 defendants would have if prosecuted for the same offense upon
16 indictment.

17 Sec. 10. Section 29-1822, Reissue Revised Statutes of
18 Nebraska, is amended to read:

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

1 ~~incompetency.~~ continues.

2 Sec. 11. Section 29-2004, Revised Statutes Cumulative
3 Supplement, 2006, is amended to read:

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

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

1 of the cause to the jury. If an information charging a violation
2 of section 28-303 and in which the death penalty is sought contains
3 a notice of aggravation, the alternate jurors shall be retained as
4 provided in section 29-2520. If, before the final submission of the
5 cause a regular juror dies or is discharged, the court shall order
6 the alternate juror, if there is but one, to take his or her place
7 in the jury box. If there are two alternate jurors the court shall
8 select one by lot, who shall then take his or her place in the jury
9 box. After an alternate juror is in the jury box he or she shall be
10 subject to the same rules as a regular juror.

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

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

1 ~~+ PROVIDED, that in all cases where~~ alternate jurors are called, as
2 provided in section 29-2004, ~~then in that case~~ both the defendant
3 and the attorney prosecuting for the state shall each be allowed
4 one added peremptory challenge to each alternate juror.

5 Sec. 13. Section 29-2006, Reissue Revised Statutes of
6 Nebraska, is amended to read:

7 29-2006 The following shall be good causes for challenge
8 to any person called as a juror or alternate juror, on the trial of
9 any indictment:

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

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

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

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

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

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

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

18 ~~(9) the~~ (8) The same challenges shall be as are allowed
19 ~~in criminal prosecutions that are allowed to parties in civil~~
20 ~~cases.~~

21 Sec. 14. Section 29-2020, Reissue Revised Statutes of
22 Nebraska, is amended to read:

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

1 shall be governed by the rules established in such matters in civil
2 cases.

3 Sec. 15. Section 29-2027, Revised Statutes Cumulative
4 Supplement, 2006, is amended to read:

5 29-2027 In all trials for murder the jury before whom
6 such trial is had, if they find the prisoner guilty thereof, shall
7 ascertain in their verdict whether it is murder in the first or
8 second degree or manslaughter; and if such person is convicted by
9 confession in open court, the court shall proceed by examination of
10 witnesses in open court, to determine the degree of the crime, and
11 shall pronounce sentence accordingly_ ~~or as provided in sections~~
12 ~~29-2519 to 29-2524 for murder in the first degree.~~

13 Sec. 16. Section 29-2204, Revised Statutes Cumulative
14 Supplement, 2006, is amended to read:

15 29-2204 (1) Except when a term of life imprisonment
16 without possibility of parole is required by law, in imposing an
17 indeterminate sentence upon an offender the court shall:

18 ~~(a)(i) Until July 1, 1998, fix the minimum and maximum~~
19 ~~limits of the sentence to be served within the limits provided by~~
20 ~~law, except that when a maximum limit of life is imposed by the~~
21 ~~court for a Class IB felony, the minimum limit may be any term of~~
22 ~~years not less than the statutory mandatory minimum; and~~

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

24 ~~(A) (a)(i) Fix the minimum and maximum limits of the~~
25 ~~sentence to be served within the limits provided by law for any~~
26 ~~class of felony other than a Class IV felony, except that when~~
27 ~~a maximum limit of life is imposed by the court for a Class IB~~

1 felony, the minimum limit may be any term of years not less than
2 the statutory mandatory minimum. If the criminal offense is a Class
3 IV felony, the court shall fix the minimum and maximum limits of
4 the sentence, but the minimum limit fixed by the court shall not be
5 less than the minimum provided by law nor more than one-third of
6 the maximum term and the maximum limit shall not be greater than
7 the maximum provided by law; or

8 ~~(B)~~ (ii) Impose a definite term of years, in which event
9 the maximum term of the sentence shall be the term imposed by the
10 court and the minimum term shall be the minimum sentence provided
11 by law;

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

16 (c) Advise the offender on the record the time the
17 offender will serve on his or her maximum term before attaining
18 mandatory release assuming that no good time for which the offender
19 will be eligible is lost.

20 If any discrepancy exists between the statement of
21 the minimum limit of the sentence and the statement of parole
22 eligibility or between the statement of the maximum limit of the
23 sentence and the statement of mandatory release, the statements
24 of the minimum limit and the maximum limit shall control the
25 calculation of the offender's term. If the court imposes more
26 than one sentence upon an offender or imposes a sentence upon
27 an offender who is at that time serving another sentence, the

1 court shall state whether the sentences are to be concurrent or
2 consecutive.

3 (2) (a) When the court is of the opinion that imprisonment
4 may be appropriate but desires more detailed information as a
5 basis for determining the sentence to be imposed than has been
6 provided by the presentence report required by section 29-2261, the
7 court shall commit an offender to the Department of Correctional
8 Services for a period not exceeding ninety days. The department
9 shall conduct a complete study of the offender during that time,
10 inquiring into such matters as his or her previous delinquency or
11 criminal experience, social background, capabilities, and mental,
12 emotional, and physical health and the rehabilitative resources
13 or programs which may be available to suit his or her needs. By
14 the expiration of the period of commitment or by the expiration
15 of such additional time as the court shall grant, not exceeding
16 a further period of ninety days, the offender shall be returned
17 to the court for sentencing and the court shall be provided
18 with a written report of the results of the study, including
19 whatever recommendations the department believes will be helpful to
20 a proper resolution of the case. After receiving the report and the
21 recommendations, the court shall proceed to sentence the offender
22 in accordance with subsection (1) of this section. The term of the
23 sentence shall run from the date of original commitment under this
24 subsection.

25 (b) In order to encourage the use of this procedure
26 in appropriate cases, all costs incurred during the period the
27 defendant is held in a state institution under this subsection

1 shall be a responsibility of the state and the county shall
2 be liable only for the cost of delivering the defendant to the
3 institution and the cost of returning him or her to the appropriate
4 court for sentencing or such other disposition as the court may
5 then deem appropriate.

6 (3) Except when a ~~term of life is required by law,~~ the
7 defendant is found guilty of a Class I or Class IA felony, whenever
8 the defendant was under eighteen years of age at the time he or she
9 committed the crime for which he or she was convicted, the court
10 may, in its discretion, instead of imposing the penalty provided
11 for the crime, make such disposition of the defendant as the court
12 deems proper under the Nebraska Juvenile Code. Prior to making a
13 disposition which commits the juvenile to the Office of Juvenile
14 Services, the court shall order the juvenile to be evaluated by the
15 office if the juvenile has not had an evaluation within the past
16 twelve months.

17 Sec. 17. Section 29-2261, Revised Statutes Supplement,
18 2007, is amended to read:

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

1 ~~section 29-1603 and (ii) the offender waives his or her right to~~
2 ~~a jury determination of the alleged aggravating circumstances, the~~
3 ~~court shall not commence the sentencing determination proceeding as~~
4 ~~provided in section 29-2521 without first ordering a presentence~~
5 ~~investigation of the offender and according due consideration to a~~
6 ~~written report of such investigation.~~

7 (2) A court may order a presentence investigation in any
8 case, except in cases in which an offender has been convicted
9 of a Class IIIA misdemeanor, a Class IV misdemeanor, a Class V
10 misdemeanor, a traffic infraction, or any corresponding city or
11 village ordinance.

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

25 Such investigation shall also include:

26 (a) Any written statements submitted to the county
27 attorney by a victim; and

1 (b) Any written statements submitted to the probation
2 officer by a victim.

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

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

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

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

11 (5) Before imposing sentence, the court may order the
12 offender to submit to psychiatric observation and examination for
13 a period of not exceeding sixty days or such longer period as the
14 court determines to be necessary for that purpose. The offender
15 may be remanded for this purpose to any available clinic or mental
16 hospital, or the court may appoint a qualified psychiatrist to make
17 the examination. The report of the examination shall be submitted
18 to the court.

19 (6) Any presentence report or psychiatric examination
20 shall be privileged and shall not be disclosed directly or
21 indirectly to anyone other than a judge, probation officers to whom
22 an offender's file is duly transferred, the probation administrator
23 or his or her designee, or others entitled by law to receive such
24 information, including personnel and mental health professionals
25 for the Nebraska State Patrol specifically assigned to sex offender
26 registration and community notification for the sole purpose of
27 using such report or examination for assessing risk and for

1 community notification of registered sex offenders. For purposes of
2 this subsection, mental health professional means (a) a practicing
3 physician licensed to practice medicine in this state under the
4 Medicine and Surgery Practice Act, (b) a practicing psychologist
5 licensed to engage in the practice of psychology in this state
6 as provided in section 38-3111, or (c) a practicing mental health
7 professional licensed or certified in this state as provided in
8 the Mental Health Practice Act. The court may permit inspection of
9 the report or examination of parts thereof by the offender or his
10 or her attorney, or other person having a proper interest therein,
11 whenever the court finds it is in the best interest of a particular
12 offender. The court may allow fair opportunity for an offender to
13 provide additional information for the court's consideration.

14 (7) If an offender is sentenced to imprisonment, a copy
15 of the report of any presentence investigation or psychiatric
16 examination shall be transmitted immediately to the Department of
17 Correctional Services. Upon request, the Board of Parole or the
18 Office of Parole Administration may receive a copy of the report
19 from the department.

20 (8) Notwithstanding subsection (6) of this section, the
21 Nebraska Commission on Law Enforcement and Criminal Justice under
22 the direction and supervision of the Chief Justice of the Supreme
23 Court shall have access to presentence investigations and reports
24 for the sole purpose of carrying out the study required under
25 subdivision (7) of section 81-1425. The commission shall treat such
26 information as confidential, and nothing identifying any individual
27 shall be released by the commission.

1 (9) Notwithstanding subsection (6) of this section, the
2 Supreme Court or an agent of the Supreme Court acting under the
3 direction and supervision of the Chief Justice shall have access to
4 psychiatric examinations and presentence investigations and reports
5 for research purposes. The Supreme Court and its agent shall
6 treat such information as confidential and nothing identifying any
7 individual shall be released.

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

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

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

27 29-2407 Judgments for fines and costs in criminal cases

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

13 Sec. 20. A sentence of life imprisonment without
14 possibility of parole imposed for a Class I felony means that
15 subject only to the constitutional power of the Board of Pardons in
16 Article IV, section 13, of the Constitution of Nebraska to modify
17 such sentence by commutation, a person so sentenced shall not
18 under any circumstances whatsoever be paroled. A sentence of life
19 imprisonment means that the person so sentenced shall be eligible
20 for consideration of parole only under the conditions prescribed by
21 sections 83-192 and 83-1,100 to 83-1,125.

22 Sec. 21. The changes made by this legislative bill
23 shall not (1) limit the discretionary authority of the sentencing
24 court to order restitution as part of any sentence other than
25 life imprisonment without possibility of parole or (2) alter the
26 discretion and authority of the Department of Correctional Services
27 to determine the appropriate security measures and conditions

1 during the confinement of any committed offender.

2 Sec. 22. In any criminal proceeding in which the death
3 penalty has been imposed but not carried out prior to the effective
4 date of this act, it is the intention, will, and sense of the
5 Legislature that such penalty shall be changed to life imprisonment
6 without possibility of parole.

7 Sec. 23. Section 29-2801, Reissue Revised Statutes of
8 Nebraska, is amended to read:

9 29-2801 If any person, except persons convicted of some
10 crime or offense for which they stand committed, ~~or persons~~
11 ~~committed for treason or felony, the punishment whereof is capital,~~
12 ~~plainly and specially expressed in the warrant of commitment, now~~
13 ~~or in the future, is or shall be~~ confined in any jail of this
14 state, ~~or shall be~~ is unlawfully deprived of his or her liberty,
15 and ~~shall make~~ makes application, either by ~~him~~ himself or herself
16 or by any person on his or her behalf, to any one of the judges
17 of the district court, or to any county judge, and does at the
18 same time produce to such judge a copy of the commitment or cause
19 of detention of such person, or if the person so imprisoned or
20 detained is imprisoned or detained without any legal authority,
21 upon making the same appear to such judge, by oath or affirmation,
22 ~~it shall be his duty~~ is the duty of the judge forthwith to allow
23 a writ of habeas corpus, which writ shall be issued forthwith by
24 the clerk of the district court, or by the county judge, as the
25 case may require, under the seal of the court whereof the person
26 allowing such writ is a judge, directed to the proper officer,
27 person, ~~or persons who detains~~ detain such prisoner.

1 Sec. 24. Section 29-3205, Reissue Revised Statutes of
2 Nebraska, is amended to read:

3 29-3205 ~~Sections 29-3201 to 29-3210~~ de The Uniform
4 Rendition of Prisoners as Witnesses in Criminal Proceedings Act
5 shall not apply to any person in this state confined as mentally
6 ill, ~~or under sentence of death.~~

7 Sec. 25. Section 29-3920, Revised Statutes Cumulative
8 Supplement, 2006, is amended to read:

9 29-3920 The Legislature finds that:

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

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

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

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

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

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

13 Sec. 26. Section 29-3922, Revised Statutes Cumulative
14 Supplement, 2006, is amended to read:

15 29-3922 For purposes of the County Revenue Assistance
16 Act:

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

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

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

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

27 (5) Council means the Indigent Defense Standards Advisory

1 Council;

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

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

10 (8) Indigent defense system means a system of providing
11 services, including any services necessary for litigating a case,
12 by a contracting attorney, court-appointed attorney, or public
13 defender;

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

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

19 Sec. 27. Section 29-3928, Reissue Revised Statutes of
20 Nebraska, is amended to read:

21 29-3928 The commission shall appoint a chief counsel. The
22 responsibilities and duties of the chief counsel shall be defined
23 by the commission and shall include the overall supervision of
24 the workings of the various divisions of the commission. The chief
25 counsel shall be qualified for his or her position, shall have been
26 licensed to practice law in the State of Nebraska for at least five
27 years prior to the effective date of the appointment, and shall

1 be experienced in the practice of criminal defense, including the
2 defense of ~~capital~~ first-degree murder cases. The chief counsel
3 shall serve at the pleasure of the commission. The salary of the
4 chief counsel shall be set by the commission.

5 Sec. 28. Section 29-3929, Revised Statutes Cumulative
6 Supplement, 2006, is amended to read:

7 29-3929 The primary duties of the chief counsel shall be
8 to provide direct legal services to indigent defendants, and the
9 chief counsel shall:

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

13 (2) Prepare a budget and disburse funds for the
14 operations of the commission;

15 (3) Present to the commission an annual report on the
16 operations of the commission, including an accounting of all funds
17 received and disbursed, an evaluation of the cost-effectiveness of
18 the commission, and recommendations for improvement;

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

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

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

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

26 (8) Adopt and promulgate rules and regulations for the
27 management and administration of policies of the commission and the

1 conduct of employees of the commission;

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

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

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

9 Sec. 29. Section 29-3930, Revised Statutes Cumulative
10 Supplement, 2006, is amended to read:

11 29-3930 The following divisions are established within
12 the commission:

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

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

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

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

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

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

4 Sec. 30. Section 55-480, Reissue Revised Statutes of
5 Nebraska, is amended to read:

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

14 Sec. 31. Section 83-1,110.02, Revised Statutes Cumulative
15 Supplement, 2006, is amended to read:

16 83-1,110.02 (1) A committed offender who is otherwise
17 eligible for parole, who is not under sentence of death life
18 imprisonment without possibility of parole or of life imprisonment,
19 and who because of an existing medical or physical condition is
20 determined by the department to be terminally ill or permanently
21 incapacitated may be considered for medical parole by the board. A
22 committed offender may be eligible for medical parole in addition
23 to any other parole. The department shall identify committed
24 offenders who may be eligible for medical parole based upon their
25 medical records.

26 (2) The board shall decide to grant medical parole only
27 after a review of the medical, institutional, and criminal records

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

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

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

18 Sec. 32. Section 83-4,143, Revised Statutes Supplement,
19 2007, is amended to read:

20 83-4,143 (1) It is the intent of the Legislature that
21 the court target the felony offender (a) who is eligible and
22 by virtue of his or her criminogenic needs is suitable to be
23 sentenced to intensive supervision probation with placement at the
24 incarceration work camp, (b) for whom the court finds that other
25 conditions of a sentence of intensive supervision probation, in
26 and of themselves, are not suitable, and (c) who, without the
27 existence of an incarceration work camp, would, in all likelihood,

1 be sentenced to prison.

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

17 (3) It is also the intent of the Legislature that the
18 Board of Parole may recommend placement of felony offenders at
19 the incarceration work camp. The offenders recommended by the
20 board shall be offenders currently housed at other Department
21 of Correctional Services adult correctional facilities and shall
22 complete the incarceration work camp programming prior to release
23 on parole.

24 (4) When the Board of Parole is of the opinion that
25 a felony offender currently incarcerated in a Department of
26 Correctional Services adult correctional facility may benefit
27 from a brief and intensive period of regimented, structured, and

1 disciplined programming immediately prior to release on parole, the
2 board may direct placement of such an offender in an incarceration
3 work camp for a period not to exceed one hundred eighty days as
4 a condition of release on parole. The board may consider such
5 placement if the felony offender (a) is medically and mentally fit
6 to participate, with allowances given for reasonable accommodation
7 as determined by medical and mental health professionals, and (b)
8 has not previously been incarcerated for a violent felony crime.
9 Offenders convicted of a crime under section 28-303 or sections
10 28-319 to 28-321 ~~or of any capital crime~~ are not eligible to be
11 placed in an incarceration work camp.

12 Sec. 33. Original sections 23-3406, 24-1106, 28-104,
13 29-1822, 29-2005, 29-2006, 29-2020, 29-2282, 29-2407, 29-2801,
14 29-3205, 29-3928, and 55-480, Reissue Revised Statutes of
15 Nebraska, sections 25-1140.09, 28-105, 28-303, 29-1602, 29-1603,
16 29-2004, 29-2027, 29-2204, 29-3920, 29-3922, 29-3929, 29-3930, and
17 83-1,110.02, Revised Statutes Cumulative Supplement, 2006, and
18 sections 29-2261 and 83-4,143, Revised Statutes Supplement, 2007,
19 are repealed.

20 Sec. 34. The following sections are outright repealed:
21 Sections 24-1105, 29-2520, 29-2521, 29-2521.01, 29-2521.03,
22 29-2521.04, 29-2521.05, 29-2522, 29-2523, 29-2524.01, 29-2524.02,
23 29-2527, 29-2528, 29-2532, 29-2533, 29-2534, 29-2535, 29-2536,
24 29-2537, 29-2538, 29-2539, 29-2540, 29-2541, 29-2542, 29-2543,
25 29-2544, 29-2545, 29-2546, 29-2811, and 8301,132, Reissue Revised
26 Statutes of Nebraska, and sections 28-105.01, 29-2519, 29-2521.02,
27 29-2524, 29-2525, and 83-1,105.01, Revised Statutes Cumulative

AM1841
LB1063
NPN-02/11/2008

AM1841
LB1063
NPN-02/11/2008

1 Supplement, 2006.