

AMENDMENTS TO LB268

Introduced by Judiciary.

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

3           Section 1. Section 23-3406, Reissue Revised Statutes of Nebraska, is  
4 amended to read:

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

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

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

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

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

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

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

26           (5) The contract between the county board and the contracting  
27 attorney shall provide that the contracting attorney may decline to

1 represent clients with no reduction in compensation if the contracting  
2 attorney is assigned more cases which require an extraordinary amount of  
3 time and preparation than the contracting attorney can competently  
4 handle.

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

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

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

25 Sec. 2. Section 23-3408, Reissue Revised Statutes of Nebraska, is  
26 amended to read:

27 23-3408 In the event that the contracting attorney is appointed to  
28 represent an individual charged with a ~~Class I~~ or Class IA felony, the  
29 contracting attorney shall immediately apply to the district court for  
30 appointment of a second attorney to assist in the case. Upon application  
31 from the contracting attorney, the district court shall appoint another

1 attorney with substantial felony trial experience to assist the  
2 contracting attorney in the case. Application for fees for the attorney  
3 appointed by the district court shall be made to the district court judge  
4 who shall allow reasonable fees. Once approved by the court, such fees  
5 shall be paid by the county board.

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

8 24-1106 (1) In cases which were appealable to the Supreme Court  
9 before September 6, 1991, the appeal, if taken, shall be to the Court of  
10 Appeals except in ~~capital cases~~, cases in which life imprisonment has  
11 been imposed, and cases involving the constitutionality of a statute.

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

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

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

22 (c) Whether the case raises a question of law regarding the validity  
23 of a statute;

24 (d) Whether the case involves issues upon which there is an  
25 inconsistency in the decisions of the Court of Appeals or of the Supreme  
26 Court; and

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

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

30 (3) The Supreme Court shall by rule provide for the removal of a  
31 case from the Court of Appeals to the Supreme Court for decision by the

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

10 Sec. 4. Section 25-1140.09, Reissue Revised Statutes of Nebraska, is  
11 amended to read:

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

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

1 ~~capital, the fees therefor shall be paid by the county in the same manner~~  
2 ~~as other claims are allowed or paid.~~

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

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

12 28-104 The terms offense and crime are synonymous as used in this  
13 code and mean a violation of, or conduct defined by, any statute for  
14 which a fine, or imprisonment, ~~or death~~ may be imposed.

15 Sec. 6. Section 28-105, Revised Statutes Cumulative Supplement,  
16 2014, is amended to read:

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

21 <del>Class I felony</del>	Death
22 Class IA felony	Life imprisonment
23 Class IB felony	Maximum - life imprisonment
24	Minimum - twenty years imprisonment
25 Class IC felony	Maximum - fifty years imprisonment
26	Mandatory minimum - five years imprisonment
27 Class ID felony	Maximum - fifty years imprisonment
28	Mandatory minimum - three years imprisonment
29 Class II felony	Maximum - fifty years imprisonment
30	Minimum - one year imprisonment

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

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

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

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

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

27 Sec. 7. Section 28-201, Revised Statutes Cumulative Supplement,  
28 2014, is amended to read:

29 28-201 (1) A person shall be guilty of an attempt to commit a crime  
30 if he or she:

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

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

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

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

17 (4) Criminal attempt is:

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

20 (b) A Class III felony when the crime attempted is a Class II  
21 felony;

22 (c) A Class IIIA felony when the crime attempted is sexual assault  
23 in the second degree under section 28-320, a violation of subdivision (2)  
24 (b) of section 28-416, incest under section 28-703, or assault by a  
25 confined person with a deadly or dangerous weapon under section 28-932;

26 (d) A Class IV felony when the crime attempted is a Class III felony  
27 not listed in subdivision (4)(c) of this section;

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

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

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

3 Sec. 8. Section 28-202, Reissue Revised Statutes of Nebraska, is  
4 amended to read:

5 28-202 (1) A person shall be guilty of criminal conspiracy if, with  
6 intent to promote or facilitate the commission of a felony:

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

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

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

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

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

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

26 Sec. 9. Section 28-303, Reissue Revised Statutes of Nebraska, is  
27 amended to read:

28 28-303 (1) A person commits murder in the first degree if he or she  
29 kills another person (a ±) purposely and with deliberate and premeditated  
30 malice, (b) ~~or (2)~~ in the perpetration of or attempt to perpetrate any  
31 sexual assault in the first degree, arson, robbery, kidnapping, hijacking

1 of any public or private means of transportation, or burglary, or (c 3)  
2 by administering poison or causing the same to be done; ~~or if by willful~~  
3 ~~and corrupt perjury or subornation of the same he or she purposely~~  
4 ~~procures the conviction and execution of any innocent person. The~~  
5 ~~determination of whether murder in the first degree shall be punished as~~  
6 ~~a Class I or Class IA felony shall be made pursuant to sections 29-2519~~  
7 ~~to 29-2524.~~

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

9 Sec. 10. Section 28-1356, Revised Statutes Cumulative Supplement,  
10 2014, is amended to read:

11 28-1356 (1) A person who violates section 28-1355 shall be guilty of  
12 a Class III felony; however, such person shall be guilty of a Class IB  
13 felony if the violation is based upon racketeering activity which is  
14 punishable as a Class I, ~~IA,~~ or IB felony.

15 (2) In lieu of the fine authorized by section 28-105, any person  
16 convicted of engaging in conduct in violation of section 28-1355, through  
17 which pecuniary value was derived, or by which personal injury or  
18 property damage or other loss was caused, may be sentenced to pay a fine  
19 that does not exceed three times the gross value gained or three times  
20 the gross loss caused, whichever is greater, plus court costs and the  
21 costs of investigation and prosecution reasonably incurred. Any fine  
22 collected under this subsection shall be remitted to the State Treasurer  
23 for distribution in accordance with Article VII, section 5, of the  
24 Constitution of Nebraska.

25 Sec. 11. Section 29-1602, Reissue Revised Statutes of Nebraska, is  
26 amended to read:

27 29-1602 All informations shall be filed in the court having  
28 jurisdiction of the offense specified in the informations ~~therein~~, by the  
29 prosecuting attorney of the proper county as informant. The prosecuting  
30 attorney shall subscribe his or her name thereto and endorse thereon the  
31 names of the witnesses known to him or her at the time of filing. After

1 the information has been filed, the prosecuting attorney shall endorse on  
2 the information the names of such other witnesses as shall then be known  
3 to him or her as the court in its discretion may prescribe, ~~except that~~  
4 ~~if a notice of aggravation is contained in the information as provided in~~  
5 ~~section 29-1603, the prosecuting attorney may endorse additional~~  
6 ~~witnesses at any time up to and including the thirtieth day prior to the~~  
7 ~~trial of guilt.~~

8 Sec. 12. Section 29-1603, Revised Statutes Cumulative Supplement,  
9 2014, is amended to read:

10 29-1603 (1) All informations shall be in writing and signed by the  
11 county attorney, complainant, or some other person, and the offenses  
12 charged in the informations therein shall be stated with the same  
13 fullness and precision in matters of substance as is required in  
14 indictments in like cases.

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

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

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

28 (2) Different offenses and different degrees of the same offense  
29 may be joined in one information, in all cases in which the same might by  
30 different counts be joined in one indictment; and in all cases a  
31 defendant or defendants shall have the same right, as to proceedings

1 therein, as the defendant or defendants would have if prosecuted for the  
2 same offense upon indictment.

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

5 29-1822 A person who becomes mentally incompetent after the  
6 commission of a crime or misdemeanor shall not be tried for the offense  
7 during the continuance of the incompetency. If, after the verdict of  
8 guilty and before judgment is pronounced, such person becomes mentally  
9 incompetent, then no judgment shall be given while such incompetency  
10 continues shall continue; and if, after judgment and before execution of  
11 the sentence, such person shall become mentally incompetent, then in case  
12 the punishment be capital, the execution thereof shall be stayed until  
13 the recovery of such person from the incompetency.

14 Sec. 14. Section 29-2004, Reissue Revised Statutes of Nebraska, is  
15 amended to read:

16 29-2004 (1) All parties may stipulate that the jury may be selected  
17 up to thirty-one days prior to the date of trial. The stipulation must be  
18 unanimous among all parties and evidenced by a joint stipulation to the  
19 county court.

20 (2) In all cases, except as may be otherwise expressly provided, the  
21 accused shall be tried by a jury drawn, summoned, and impaneled according  
22 to provisions of the code of civil procedure, except that whenever in the  
23 opinion of the court the trial is likely to be a protracted one, the  
24 court may, immediately after the jury is impaneled and sworn, direct the  
25 calling of one or two additional jurors, to be known as alternate jurors.  
26 Such jurors shall be drawn from the same source and in the same manner,  
27 and have the same qualifications as regular jurors, and be subject to  
28 examination and challenge as such jurors, except that each party shall be  
29 allowed one peremptory challenge to each alternate juror. The alternate  
30 jurors shall take the proper oath or affirmation, ~~and~~ shall be seated  
31 near the regular jurors with equal facilities for seeing and hearing the

1 proceedings in the cause, and shall attend at all times upon the trial of  
2 the cause in company with the regular jurors. They shall obey all orders  
3 and admonitions of the court, and if the regular jurors are ordered to be  
4 kept in the custody of an officer during the trial of the cause, the  
5 alternate jurors shall also be kept with the other jurors and, except as  
6 hereinafter provided, shall be discharged upon the final submission of  
7 the cause to the jury. ~~If an information charging a violation of section~~  
8 ~~28-303 and in which the death penalty is sought contains a notice of~~  
9 ~~aggravation, the alternate jurors shall be retained as provided in~~  
10 ~~section 29-2520.~~ If, before the final submission of the cause a regular  
11 juror dies or is discharged, the court shall order the alternate juror,  
12 if there is but one, to take his or her place in the jury box. If there  
13 are two alternate jurors the court shall select one by lot, who shall  
14 then take his or her place in the jury box. After an alternate juror is  
15 in the jury box he or she shall be subject to the same rules as a regular  
16 juror.

17 Sec. 15. Section 29-2005, Reissue Revised Statutes of Nebraska, is  
18 amended to read:

19 29-2005 Every person arraigned for any crime punishable by with  
20 ~~death, or imprisonment for life,~~ shall be admitted on his or her trial to  
21 a peremptory challenge of twelve jurors. Every ~~, and no more;~~ every  
22 person arraigned for any offense that may be punishable by imprisonment  
23 for a term exceeding eighteen months and less than life, shall be  
24 admitted to a peremptory challenge of six jurors. In ~~;~~ ~~and in~~ all other  
25 criminal trials, the defendant shall be allowed a peremptory challenge of  
26 three jurors. The attorney prosecuting on behalf of the state shall be  
27 admitted to a peremptory challenge of twelve jurors in all cases when the  
28 offense is punishable by with ~~death or imprisonment for life,~~ six jurors  
29 when the offense is punishable by imprisonment for a term exceeding  
30 eighteen months and less than life, and three jurors in all other cases.  
31 In each case for which ~~;~~ ~~Provided, that in all cases where~~ alternate

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

4 Sec. 16. Section 29-2006, Reissue Revised Statutes of Nebraska, is  
5 amended to read:

6 29-2006 (1) The following shall be good causes for challenge to any  
7 person called as a juror or alternate juror, on the trial of any  
8 indictment:

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

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

26 ~~(3) in indictments for an offense the punishment whereof is capital,~~  
27 ~~that his opinions are such as to preclude him from finding the accused~~  
28 ~~guilty of an offense punishable with death; (4) that he~~

29 (c) That he or she is a relation within the fifth degree to the  
30 person alleged to be injured or attempted to be injured, or to the person  
31 on whose complaint the prosecution was instituted, or to the defendant;

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

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

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

9            (g) That he or she ~~(8) that he~~ is a habitual drunkard. ~~;(9)~~

10           (2) In addition, the same challenges as are shall be allowed in  
11 ~~criminal prosecutions that are allowed to parties in civil cases shall be~~  
12 allowed in criminal prosecutions.

13           Sec. 17. Section 29-2020, Reissue Revised Statutes of Nebraska, is  
14 amended to read:

15           29-2020 In Except as provided in section 29-2525 for cases when the  
16 ~~punishment is capital,~~ in all criminal cases when a defendant feels  
17 aggrieved by any opinion or decision of the court, he or she may order a  
18 bill of exceptions. The ordering, preparing, signing, filing, correcting,  
19 and amending of the bill of exceptions shall be governed by the rules  
20 established in such matters in civil cases.

21           Sec. 18. Section 29-2027, Reissue Revised Statutes of Nebraska, is  
22 amended to read:

23           29-2027 In all trials for murder the jury before whom such trial is  
24 had, if they find the prisoner guilty thereof, shall ascertain in their  
25 verdict whether it is murder in the first or second degree or  
26 manslaughter. If ~~;~~ ~~and if~~ such person is convicted by confession in open  
27 court, the court shall proceed by examination of witnesses in open court,  
28 to determine the degree of the crime, and shall pronounce sentence  
29 accordingly ~~or as provided in sections 29-2519 to 29-2524 for murder in~~  
30 ~~the first degree.~~

31           Sec. 19. Section 29-2204, Revised Statutes Cumulative Supplement,

1 2014, is amended to read:

2 29-2204 (1) Except when the defendant is found guilty of a Class IA  
3 felony a term of life imprisonment is required by law, in imposing an  
4 indeterminate sentence upon an offender the court shall:

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

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

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

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

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

28 (c) Advise the offender on the record the time the offender will  
29 serve on his or her maximum term before attaining mandatory release  
30 assuming that no good time for which the offender will be eligible is  
31 lost.

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

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

29           (b) In order to encourage the use of this procedure in appropriate  
30 cases, all costs incurred during the period the defendant is held in a  
31 state institution under this subsection shall be a responsibility of the

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

5 (3) Except when the defendant is found guilty of a Class IA felony a  
6 ~~term of life is required by law~~, whenever the defendant was under  
7 eighteen years of age at the time he or she committed the crime for which  
8 he or she was convicted, the court may, in its discretion, instead of  
9 imposing the penalty provided for the crime, make such disposition of the  
10 defendant as the court deems proper under the Nebraska Juvenile Code.  
11 Until October 1, 2013, prior to making a disposition which commits the  
12 juvenile to the Office of Juvenile Services, the court shall order the  
13 juvenile to be evaluated by the office if the juvenile has not had an  
14 evaluation within the past twelve months.

15 Sec. 20. Section 29-2261, Revised Statutes Cumulative Supplement,  
16 2014, is amended to read:

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

31 (2) A court may order a presentence investigation in any case,

1 except in cases in which an offender has been convicted of a Class IIIA  
2 misdemeanor, a Class IV misdemeanor, a Class V misdemeanor, a traffic  
3 infraction, or any corresponding city or village ordinance.

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

15 Such investigation shall also include:

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

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

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

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

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

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

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

1 to any available clinic or mental hospital, or the court may appoint a  
2 qualified psychiatrist to make the examination. The report of the  
3 examination shall be submitted to the court.

4 (6) Any presentence report or psychiatric examination shall be  
5 privileged and shall not be disclosed directly or indirectly to anyone  
6 other than a judge, probation officers to whom an offender's file is duly  
7 transferred, the probation administrator or his or her designee, or  
8 others entitled by law to receive such information, including personnel  
9 and mental health professionals for the Nebraska State Patrol  
10 specifically assigned to sex offender registration and community  
11 notification for the sole purpose of using such report or examination for  
12 assessing risk and for community notification of registered sex  
13 offenders. For purposes of this subsection, mental health professional  
14 means (a) a practicing physician licensed to practice medicine in this  
15 state under the Medicine and Surgery Practice Act, (b) a practicing  
16 psychologist licensed to engage in the practice of psychology in this  
17 state as provided in section 38-3111, or (c) a practicing mental health  
18 professional licensed or certified in this state as provided in the  
19 Mental Health Practice Act. The court may permit inspection of the report  
20 or examination of parts thereof by the offender or his or her attorney,  
21 or other person having a proper interest therein, whenever the court  
22 finds it is in the best interest of a particular offender. The court may  
23 allow fair opportunity for an offender to provide additional information  
24 for the court's consideration.

25 (7) If an offender is sentenced to imprisonment, a copy of the  
26 report of any presentence investigation or psychiatric examination shall  
27 be transmitted immediately to the Department of Correctional Services.  
28 Upon request, the Board of Parole or the Office of Parole Administration  
29 may receive a copy of the report from the department.

30 (8) Notwithstanding subsection (6) of this section, the Supreme  
31 Court or an agent of the Supreme Court acting under the direction and

1 supervision of the Chief Justice shall have access to psychiatric  
2 examinations and presentence investigations and reports for research  
3 purposes. The Supreme Court and its agent shall treat such information as  
4 confidential, and nothing identifying any individual shall be released.

5 Sec. 21. Section 29-2407, Reissue Revised Statutes of Nebraska, is  
6 amended to read:

7 29-2407 Judgments for fines and costs in criminal cases shall be a  
8 lien upon all the property of the defendant within the county from the  
9 time of docketing the case by the clerk of the proper court, and  
10 judgments upon forfeited recognizance shall be a like lien from the time  
11 of forfeiture. No property of any convict shall be exempt from execution  
12 issued upon any such judgment as set out in this section against such  
13 convict except in cases when the convict is sentenced to a Department of  
14 Correctional Services adult correctional facility for a period of more  
15 than two years ~~or to suffer death~~, in which cases there shall be the same  
16 exemptions as at the time may be provided by law for civil cases. The  
17 lien on real estate of any such judgment for costs shall terminate as  
18 provided in section 25-1716.

19 Sec. 22. The changes made by this legislative bill shall not (1)  
20 limit the discretionary authority of the sentencing court to order  
21 restitution as part of any sentence or (2) alter the discretion and  
22 authority of the Department of Correctional Services to determine the  
23 appropriate security measures and conditions during the confinement of  
24 any committed offender.

25 Sec. 23. It is the intent of the Legislature that in any criminal  
26 proceeding in which the death penalty has been imposed but not carried  
27 out prior to the effective date of this act, such penalty shall be  
28 changed to life imprisonment.

29 Sec. 24. Section 29-2801, Reissue Revised Statutes of Nebraska, is  
30 amended to read:

31 29-2801 If any person, except persons convicted of some crime or

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

17 Sec. 25. Section 29-3205, Reissue Revised Statutes of Nebraska, is  
18 amended to read:

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

22 Sec. 26. Section 29-3920, Reissue Revised Statutes of Nebraska, is  
23 amended to read:

24 29-3920 The Legislature finds that:

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

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

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

6 (4) Property tax relief in the form of state assistance to the  
7 counties of Nebraska in providing for indigent defense services will also  
8 improve inconsistent and inadequate funding of indigent defense services  
9 by the counties;

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

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

20 Sec. 27. Section 29-3922, Revised Statutes Cumulative Supplement,  
21 2014, is amended to read:

22 29-3922 For purposes of the County Revenue Assistance Act:

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

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

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

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

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

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

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

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

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

17 Sec. 28. Section 29-3928, Reissue Revised Statutes of Nebraska, is  
18 amended to read:

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

30 Sec. 29. Section 29-3929, Reissue Revised Statutes of Nebraska, is  
31 amended to read:

1           29-3929 The primary duties of the chief counsel shall be to provide  
2 direct legal services to indigent defendants, and the chief counsel  
3 shall:

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

7           (2) Prepare a budget and disburse funds for the operations of the  
8 commission;

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

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

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

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

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

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

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

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

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

30           Sec. 30. Section 29-3930, Reissue Revised Statutes of Nebraska, is  
31 amended to read:

1           29-3930 The following divisions are established within the  
2 commission:

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

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

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

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

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

19           Sec. 31. Section 55-480, Reissue Revised Statutes of Nebraska, is  
20 amended to read:

21           55-480 Though not specifically mentioned in the Nebraska Code of  
22 Military Justice ~~this code~~, all disorders and neglects to the prejudice  
23 of good order and discipline in the armed forces, all conduct of a nature  
24 to bring discredit upon the armed forces, and all crimes and offenses ~~not~~  
25 ~~capital~~, of which persons subject to the ~~this~~ code may be guilty, shall  
26 be taken cognizance of by a court-martial, according to the nature and  
27 degree of the offense, and shall be punished at the discretion of that  
28 court.

29           Sec. 32. Section 83-1,110.02, Reissue Revised Statutes of Nebraska,  
30 is amended to read:

31           83-1,110.02 (1) A committed offender who is otherwise eligible for

1 parole, who is not under sentence of ~~death or of~~ life imprisonment, and  
2 who because of an existing medical or physical condition is determined by  
3 the department to be terminally ill or permanently incapacitated may be  
4 considered for medical parole by the board. A committed offender may be  
5 eligible for medical parole in addition to any other parole. The  
6 department shall identify committed offenders who may be eligible for  
7 medical parole based upon their medical records.

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

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

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

25 Sec. 33. Section 83-4,143, Reissue Revised Statutes of Nebraska, is  
26 amended to read:

27 83-4,143 (1) It is the intent of the Legislature that the court  
28 target the felony offender (a) who is eligible and by virtue of his or  
29 her criminogenic needs is suitable to be sentenced to intensive  
30 supervision probation with placement at the incarceration work camp, (b)  
31 for whom the court finds that other conditions of a sentence of intensive

1 supervision probation, in and of themselves, are not suitable, and (c)  
2 who, without the existence of an incarceration work camp, would, in all  
3 likelihood, be sentenced to prison.

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

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

24 (4) When the Board of Parole is of the opinion that a felony  
25 offender currently incarcerated in a Department of Correctional Services  
26 adult correctional facility may benefit from a brief and intensive period  
27 of regimented, structured, and disciplined programming immediately prior  
28 to release on parole, the board may direct placement of such an offender  
29 in an incarceration work camp for a period not to exceed one hundred  
30 eighty days as a condition of release on parole. The board may consider  
31 such placement if the felony offender (a) is medically and mentally fit

1 to participate, with allowances given for reasonable accommodation as  
2 determined by medical and mental health professionals, and (b) has not  
3 previously been incarcerated for a violent felony crime. Offenders  
4 convicted of a crime under section 28-303 or sections 28-319 to 28-322.04  
5 ~~or of any capital crime~~ are not eligible to be placed in an incarceration  
6 work camp.

7 (5) The Director of Correctional Services may assign a felony  
8 offender to an incarceration work camp if he or she believes it is in the  
9 best interests of the felony offender and of society, except that  
10 offenders convicted of a crime under section 28-303 or sections 28-319 to  
11 28-322.04 ~~28-321 or of any capital crime~~ are not eligible to be assigned  
12 to an incarceration work camp pursuant to this subsection.

13 Sec. 34. Original sections 23-3406, 23-3408, 24-1106, 25-1140.09,  
14 28-104, 28-202, 28-303, 29-1602, 29-1822, 29-2004, 29-2005, 29-2006,  
15 29-2020, 29-2027, 29-2407, 29-2801, 29-3205, 29-3920, 29-3928, 29-3929,  
16 29-3930, 55-480, 83-1,110.02, and 83-4,143, Reissue Revised Statutes of  
17 Nebraska, and sections 28-105, 28-201, 28-1356, 29-1603, 29-2204,  
18 29-2261, and 29-3922, Revised Statutes Cumulative Supplement, 2014, are  
19 repealed.

20 Sec. 35. The following sections are outright repealed: Sections  
21 24-1105, 29-2519, 29-2521, 29-2521.01, 29-2521.03, 29-2521.04,  
22 29-2521.05, 29-2523, 29-2524.01, 29-2524.02, 29-2525, 29-2527, 29-2528,  
23 29-2811, 83-1,105.01, 83-1,132, 83-964, 83-965, 83-966, 83-967, 83-968,  
24 83-969, 83-970, 83-971, and 83-972, Reissue Revised Statutes of Nebraska,  
25 and sections 28-105.01, 29-2520, 29-2521.02, 29-2522, 29-2524, 29-2537,  
26 29-2538, 29-2539, 29-2540, 29-2541, 29-2542, 29-2543, and 29-2546,  
27 Revised Statutes Cumulative Supplement, 2014.