

LEGISLATURE OF NEBRASKA  
ONE HUNDRED FOURTH LEGISLATURE  
FIRST SESSION

**LEGISLATIVE BILL 268**

Introduced by Chambers, 11.

Read first time January 14, 2015

Committee:

1 A BILL FOR AN ACT relating to crimes and offenses; to amend sections  
2 23-3406, 24-1106, 25-1140.09, 28-104, 28-303, 29-1602, 29-1822,  
3 29-2004, 29-2005, 29-2006, 29-2020, 29-2027, 29-2282, 29-2407,  
4 29-2519, 29-2521, 29-2523, 29-2801, 29-3205, 29-3920, 29-3928,  
5 29-3929, 29-3930, 55-480, 83-1,110.02, and 83-4,143, Reissue Revised  
6 Statutes of Nebraska, and sections 28-105, 29-1603, 29-2204,  
7 29-2522, and 29-3922, Revised Statutes Cumulative Supplement, 2014;  
8 to state findings and intent; to change provisions relating to  
9 murder in the first degree; to change a penalty from death to life  
10 imprisonment without possibility of parole; to eliminate a homicide-  
11 case report, provisions on capital punishment, proportionality  
12 review provisions, and obsolete provisions; to provide for  
13 retroactive applicability of a penalty change; to change provisions  
14 relating to restitution; to harmonize provisions; to repeal the  
15 original sections; and to outright repeal sections 24-1105,  
16 29-2521.01, 29-2521.03, 29-2521.04, 29-2524.01, 29-2524.02, 29-2525,  
17 29-2527, 29-2528, 29-2811, 83-1,105.01, 83-1,132, 83-964, 83-965,  
18 83-966, 83-967, 83-968, 83-969, 83-970, 83-971, and 83-972, Reissue  
19 Revised Statutes of Nebraska, and sections 28-105.01, 29-2521.02,  
20 29-2524, 29-2537, 29-2538, 29-2539, 29-2540, 29-2541, 29-2542,  
21 29-2543, and 29-2546, Revised Statutes Cumulative Supplement, 2014.  
22 Be it enacted by the people of the State of Nebraska,

1           Section 1. The Legislature finds that:

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

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

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

14           (4) The history of attempts to carry out the death penalty in  
15 Nebraska demonstrates an inordinate burden on the justice system and on  
16 the lives of the innocent families and associates of both the victims and  
17 the convicted parties;

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

24           (6) The Board of Pardons is established by the Constitution of  
25 Nebraska and has the power to commute sentences. Parole, however, is a  
26 function of the Board of Parole upon which the Legislature can set  
27 limitations, and the changes made by this legislative bill are intended  
28 to prohibit parole for those persons given the maximum sentence for  
29 first-degree murder; and

30           (7) The existing capital punishment scheme is a failure and has  
31 taken an unacceptable toll on the state's reputation for simple fairness,

1 basic decency, and care for the dignity of human life. This state rejects  
2 the concept that by killing it can teach its residents not to kill.

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

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

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

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

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

23 24-1106 (1) In cases which were appealable to the Supreme Court  
24 before September 6, 1991, the appeal, if taken, shall be to the Court of  
25 Appeals except in ~~capital cases~~, cases in which life imprisonment without  
26 possibility of parole has been imposed, and cases involving the  
27 constitutionality of a statute.

28 (2) Any party to a case appealed to the Court of Appeals may file a  
29 petition in the Supreme Court to bypass the review by the Court of  
30 Appeals and for direct review by the Supreme Court. The procedure and  
31 time for filing the petition shall be as provided by rules of the Supreme

1 Court. In deciding whether to grant the petition, the Supreme Court may  
2 consider one or more of the following factors:

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

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

7 (c) Whether the case raises a question of law regarding the validity  
8 of a statute;

9 (d) Whether the case involves issues upon which there is an  
10 inconsistency in the decisions of the Court of Appeals or of the Supreme  
11 Court; and

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

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

15 (3) The Supreme Court shall by rule provide for the removal of a  
16 case from the Court of Appeals to the Supreme Court for decision by the  
17 Supreme Court at any time before a final decision has been made on the  
18 case by the Court of Appeals. The removal may be on the recommendation of  
19 the Court of Appeals or on motion of the Supreme Court. Cases may be  
20 removed from the Court of Appeals for decision by the Supreme Court for  
21 any one or more of the reasons set forth in subsection (2) of this  
22 section or in order to regulate the caseload existing in either the Court  
23 of Appeals or the Supreme Court. The Chief Judge of the Court of Appeals  
24 and the Chief Justice of the Supreme Court shall regularly inform each  
25 other of the number and nature of cases docketed in the respective court.

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

28 25-1140.09 On the application of the county attorney or any party to  
29 a suit in which a record of the proceedings has been made, ~~upon receipt~~  
30 ~~of the notice provided in section 29-2525,~~ or upon the filing of a  
31 praecipe for a bill of exceptions by an appealing party in the office of

1 the clerk of the district court as provided in section 25-1140, the court  
2 reporter shall prepare a transcribed copy of the proceedings so recorded  
3 or any part thereof. The reporter shall be entitled to receive, in  
4 addition to his or her salary, a per-page fee as prescribed by the  
5 Supreme Court for the original copy and each additional copy, to be paid  
6 by the party requesting the same except as otherwise provided in this  
7 section.

8 When the transcribed copy of the proceedings is required by the  
9 county attorney, the fee therefor shall be paid by the county in the same  
10 manner as other claims are paid. When the defendant in a criminal case,  
11 after conviction, makes an affidavit that he or she is unable by reason  
12 of his or her poverty to pay for such copy, the court or judge thereof  
13 may, by order endorsed on such affidavit, direct delivery of such  
14 transcribed copy to such defendant, and the fee shall be paid by the  
15 county in the same manner as other claims are allowed and paid. ~~When such~~  
16 ~~copy is prepared in any criminal case in which the sentence adjudged is~~  
17 ~~capital, the fees therefor shall be paid by the county in the same manner~~  
18 ~~as other claims are allowed or paid.~~

19 The fee for preparation of a bill of exceptions and the procedure  
20 for preparation, settlement, signature, allowance, certification, filing,  
21 and amendment of a bill of exceptions shall be regulated and governed by  
22 rules of practice prescribed by the Supreme Court. The fee paid shall be  
23 taxed, by the clerk of the district court, to the party against whom the  
24 judgment or decree is rendered except as otherwise ordered by the  
25 presiding district judge.

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

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

31 Sec. 6. Section 28-105, Revised Statutes Cumulative Supplement,

1 2014, is amended to read:

2 28-105 (1) For purposes of the Nebraska Criminal Code and any  
3 statute passed by the Legislature after the date of passage of the code,  
4 felonies are divided into nine classes which are distinguished from one  
5 another by the following penalties which are authorized upon conviction:

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

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

29 (b) Sentences of less than one year shall be served in the county  
30 jail except as provided in this subsection. If the department certifies

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

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

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

12 Sec. 7. Section 28-303, Reissue Revised Statutes of Nebraska, is  
13 amended to read:

14 28-303 A person commits murder in the first degree if he or she  
15 kills another person (1) purposely and with deliberate and premeditated  
16 malice, or (2) in the perpetration of or attempt to perpetrate any sexual  
17 assault in the first degree, arson, robbery, kidnapping, hijacking of any  
18 public or private means of transportation, or burglary, or (3) by  
19 administering poison or causing the same to be done; ~~or if by willful and~~  
20 ~~corrupt perjury or subornation of the same he or she purposely procures~~  
21 ~~the conviction and execution of any innocent person.~~ The determination of  
22 whether murder in the first degree shall be punished as a Class I or  
23 Class IA felony shall be made pursuant to sections 29-2519 to 29-2523  
24 ~~29-2524~~.

25 Sec. 8. 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. 9. 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 life imprisonment without possibility of parole ~~the death penalty~~  
17 is sought shall contain a notice of aggravation which alleges one or more  
18 aggravating circumstances, as such aggravating circumstances are provided  
19 in section 29-2523. The notice of aggravation shall be filed as provided  
20 in section 29-1602. It shall constitute sufficient notice to describe the  
21 alleged aggravating circumstances in the language provided in section  
22 29-2523.

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

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

29 (3) Different offenses and different degrees of the same offense may  
30 be joined in one information, in all cases in which the same might by  
31 different counts be joined in one indictment; and in all cases a

1 defendant or defendants shall have the same right, as to proceedings  
2 therein, as the defendant or defendants would have if prosecuted for the  
3 same offense upon indictment.

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

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

15 Sec. 11. Section 29-2004, Reissue Revised Statutes of Nebraska, is  
16 amended to read:

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

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

1 near the regular jurors with equal facilities for seeing and hearing the  
2 proceedings in the cause, and shall attend at all times upon the trial of  
3 the cause in company with the regular jurors. They shall obey all orders  
4 and admonitions of the court, and if the regular jurors are ordered to be  
5 kept in the custody of an officer during the trial of the cause, the  
6 alternate jurors shall also be kept with the other jurors and, except as  
7 hereinafter provided, shall be discharged upon the final submission of  
8 the cause to the jury. If an information charging a violation of section  
9 28-303 and in which the sentence of life imprisonment without possibility  
10 of parole ~~death penalty~~ is sought contains a notice of aggravation, the  
11 alternate jurors shall be retained as provided in section 29-2520. If,  
12 before the final submission of the cause a regular juror dies or is  
13 discharged, the court shall order the alternate juror, if there is but  
14 one, to take his or her place in the jury box. If there are two alternate  
15 jurors the court shall select one by lot, who shall then take his or her  
16 place in the jury box. After an alternate juror is in the jury box he or  
17 she shall be subject to the same rules as a regular juror.

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

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

1 by imprisonment for a term exceeding eighteen months and less than life,  
2 and three jurors in all other cases. In each case for which ; ~~Provided,~~  
3 ~~that in all cases where~~ alternate jurors are called, as provided in  
4 section 29-2004, ~~then in that case~~ both the defendant and the attorney  
5 prosecuting for the state shall each be allowed one added peremptory  
6 challenge to each alternate juror.

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

9 29-2006 (1) The following shall be good causes for challenge to any  
10 person called as a juror or alternate juror, on the trial of any  
11 indictment:

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

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

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

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

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

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

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

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

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

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

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

24       Sec. 15. Section 29-2027, Reissue Revised Statutes of Nebraska, is  
25 amended to read:

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

1 accordingly or as provided in sections 29-2519 to 29-2523 ~~29-2524~~ for  
2 murder in the first degree.

3 Sec. 16. Section 29-2204, Revised Statutes Cumulative Supplement,  
4 2014, is amended to read:

5 29-2204 (1) Except when the defendant is found guilty of a Class I  
6 or Class IA felony ~~a term of life imprisonment is required by law~~, in  
7 imposing an indeterminate sentence upon an offender the court shall:

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

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

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

24 (ii B) Impose a definite term of years, in which event the maximum  
25 term of the sentence shall be the term imposed by the court and the  
26 minimum term shall be the minimum sentence provided by law;

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

31 (c) Advise the offender on the record the time the offender will

1 serve on his or her maximum term before attaining mandatory release  
2 assuming that no good time for which the offender will be eligible is  
3 lost.

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

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

1 (b) In order to encourage the use of this procedure in appropriate  
2 cases, all costs incurred during the period the defendant is held in a  
3 state institution under this subsection shall be a responsibility of the  
4 state and the county shall be liable only for the cost of delivering the  
5 defendant to the institution and the cost of returning him or her to the  
6 appropriate court for sentencing or such other disposition as the court  
7 may then deem appropriate.

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

18 Sec. 17. Section 29-2282, Reissue Revised Statutes of Nebraska, is  
19 amended to read:

20 29-2282 In determining restitution, if the offense results in  
21 damage, destruction, or loss of property, the court may require: (1)  
22 Return of the property to the victim, if possible; (2) payment of the  
23 reasonable value of repairing the property, including property returned  
24 by the defendant; or (3) payment of the reasonable replacement value of  
25 the property, if return or repair is impossible, impractical, or  
26 inadequate. If the offense results in bodily injury, the court may  
27 require payment of necessary medical care, including, but not limited to,  
28 physical or psychological treatment and therapy, and payment for income  
29 lost due to such bodily injury. If the offense results in the death of  
30 the victim, the court may require payment to be made to the estate of the  
31 victim for any pain and suffering of the victim caused by the offense,



1 for the cost of any medical care prior to death, and for funeral and  
2 burial expenses.

3 Sec. 18. Section 29-2407, Reissue Revised Statutes of Nebraska, is  
4 amended to read:

5 29-2407 Judgments for fines and costs in criminal cases shall be a  
6 lien upon all the property of the defendant within the county from the  
7 time of docketing the case by the clerk of the proper court, and  
8 judgments upon forfeited recognizance shall be a like lien from the time  
9 of forfeiture. No property of any convict shall be exempt from execution  
10 issued upon any such judgment as set out in this section against such  
11 convict except in cases when the convict is sentenced to a Department of  
12 Correctional Services adult correctional facility for a period of more  
13 than two years ~~or to suffer death~~, in which cases there shall be the same  
14 exemptions as at the time may be provided by law for civil cases. The  
15 lien on real estate of any such judgment for costs shall terminate as  
16 provided in section 25-1716.

17 Sec. 19. A sentence of life imprisonment without possibility of  
18 parole imposed for a Class I felony means that, subject only to the  
19 constitutional power of the Board of Pardons in Article IV, section 13,  
20 of the Constitution of Nebraska to modify such sentence by commutation, a  
21 person so sentenced shall not under any circumstances whatsoever be  
22 paroled. A sentence of life imprisonment imposed for a Class IA felony  
23 means that a person so sentenced shall be eligible for consideration of  
24 parole only under the conditions prescribed by sections 83-192 and  
25 83-1,106 to 83-1,125.

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

1           Sec. 21. In any criminal proceeding in which the death penalty has  
2 been imposed but not carried out prior to the effective date of this act,  
3 such penalty shall be changed to life imprisonment without possibility of  
4 parole.

5           Sec. 22. Section 29-2519, Reissue Revised Statutes of Nebraska, is  
6 amended to read:

7           29-2519 ~~(1)~~ The Legislature hereby finds that it is reasonable and  
8 necessary to establish mandatory standards for the imposition of the  
9 sentence of life imprisonment without possibility of parole ~~death~~; that  
10 the imposition of life imprisonment without possibility of parole ~~the~~  
11 ~~death penalty~~ in every instance of the commission of the crimes specified  
12 in section 28-303 fails to allow for mitigating factors which may dictate  
13 against the penalty of life imprisonment without possibility of parole  
14 ~~death~~; and that the rational imposition of the ~~death~~ sentence of life  
15 imprisonment without possibility of parole requires the establishment of  
16 specific legislative guidelines to be applied in individual cases by the  
17 court. The Legislature therefor determines that the sentence of life  
18 imprisonment without possibility of parole ~~death penalty~~ should be  
19 imposed only for the crimes set forth in section 28-303 and, in addition,  
20 that it shall only be imposed in those instances when the aggravating  
21 circumstances existing in connection with the crime outweigh the  
22 mitigating circumstances, as set forth in sections 29-2520 to 29-2523  
23 ~~29-2524~~.

24           ~~(2) The Legislature hereby finds and declares that:~~

25           ~~(a) The decision of the United States Supreme Court in Ring v.~~  
26 ~~Arizona (2002) requires that Nebraska revise its sentencing process in~~  
27 ~~order to ensure that rights of persons accused of murder in the first~~  
28 ~~degree, as required under the Sixth and Fourteenth Amendments of the~~  
29 ~~United States Constitution, are protected;~~

30           ~~(b) The changes made by Laws 2002, LB 1, Ninety-seventh Legislature,~~  
31 ~~Third Special Session, are intended to be procedural only in nature and~~

1 ~~ameliorative of the state's prior procedures for determination of~~  
2 ~~aggravating circumstances in the sentencing process for murder in the~~  
3 ~~first degree;~~

4 ~~(c) The changes made by Laws 2002, LB 1, Ninety-seventh Legislature,~~  
5 ~~Third Special Session, are not intended to alter the substantive~~  
6 ~~provisions of sections 28-303 and 29-2520 to 29-2524;~~

7 ~~(d) The aggravating circumstances defined in section 29-2523 have~~  
8 ~~been determined by the United States Supreme Court to be "functional~~  
9 ~~equivalents of elements of a greater offense" for purposes of the~~  
10 ~~defendant's Sixth Amendment right, as applied to the states under the~~  
11 ~~Fourteenth Amendment, to a jury determination of such aggravating~~  
12 ~~circumstances, but the aggravating circumstances are not intended to~~  
13 ~~constitute elements of the crime generally unless subsequently so~~  
14 ~~required by the state or federal constitution; and~~

15 ~~(e) To the extent that such can be applied in accordance with state~~  
16 ~~and federal constitutional requirements, it is the intent of the~~  
17 ~~Legislature that the changes to the murder in the first degree sentencing~~  
18 ~~process made by Laws 2002, LB 1, Ninety-seventh Legislature, Third~~  
19 ~~Special Session, shall apply to any murder in the first degree sentencing~~  
20 ~~proceeding commencing on or after November 23, 2002.~~

21 Sec. 23. Section 29-2521, Reissue Revised Statutes of Nebraska, is  
22 amended to read:

23 29-2521 (1) When a person has been found guilty of murder in the  
24 first degree and (a) a jury renders a verdict finding the existence of  
25 one or more aggravating circumstances as provided in section 29-2520 or  
26 (b)(i) the information contains a notice of aggravation as provided in  
27 section 29-1603 and (ii) such person waives his or her right to a jury  
28 determination of the alleged aggravating circumstances, the sentence of  
29 such person shall be determined by:

30 (a) A panel of three judges, including the judge who presided at the  
31 trial of guilt or who accepted the plea and two additional active

1 district court judges named at random by the Chief Justice of the Supreme  
2 Court. The judge who presided at the trial of guilt or who accepted the  
3 plea shall act as the presiding judge for the sentencing determination  
4 proceeding under this section; or

5 (b) If the Chief Justice of the Supreme Court has determined that  
6 the judge who presided at the trial of guilt or who accepted the plea is  
7 disabled or disqualified after receiving a suggestion of such disability  
8 or disqualification from the clerk of the court in which the finding of  
9 guilty was entered, a panel of three active district court judges named  
10 at random by the Chief Justice of the Supreme Court. The Chief Justice of  
11 the Supreme Court shall name one member of the panel at random to act as  
12 the presiding judge for the sentencing determination proceeding under  
13 this section.

14 (2) In the sentencing determination proceeding before a panel of  
15 judges when the right to a jury determination of the alleged aggravating  
16 circumstances has been waived, the panel shall, as soon as practicable  
17 after receipt of the written report resulting from the presentence  
18 investigation ordered as provided in section 29-2261, hold a hearing. At  
19 such hearing, evidence may be presented as to any matter that the  
20 presiding judge deems relevant to sentence and shall include matters  
21 relating to the aggravating circumstances alleged in the information, to  
22 any of the mitigating circumstances set forth in section 29-2523, and to  
23 sentence excessiveness or disproportionality. The Nebraska Evidence Rules  
24 shall apply to evidence relating to aggravating circumstances. Each  
25 aggravating circumstance shall be proved beyond a reasonable doubt. Any  
26 evidence at the sentencing determination proceeding which the presiding  
27 judge deems to have probative value may be received. The state and the  
28 defendant or his or her counsel shall be permitted to present argument  
29 for or against the sentence of life imprisonment without possibility of  
30 parole ~~death~~. The presiding judge shall set forth the general order of  
31 procedure at the outset of the sentencing determination proceeding. The

1 panel shall make written findings of fact based upon the trial of guilt  
2 and the sentencing determination proceeding, identifying which, if any,  
3 of the alleged aggravating circumstances have been proven to exist beyond  
4 a reasonable doubt. Each finding of fact with respect to each alleged  
5 aggravating circumstance shall be unanimous. If the panel is unable to  
6 reach a unanimous finding of fact with respect to an aggravating  
7 circumstance, such aggravating circumstance shall not be weighed in the  
8 sentencing determination proceeding. After the presentation and receipt  
9 of evidence and argument, the panel shall determine an appropriate  
10 sentence as provided in section 29-2522.

11 (3) When a jury renders a verdict finding the existence of one or  
12 more aggravating circumstances as provided in section 29-2520, the panel  
13 of judges shall, as soon as practicable after receipt of the written  
14 report resulting from the presentence investigation ordered as provided  
15 in section 29-2261, hold a hearing to receive evidence of mitigation and  
16 sentence excessiveness or disproportionality. Evidence may be presented  
17 as to any matter that the presiding judge deems relevant to (a)  
18 mitigation, including, but not limited to, the mitigating circumstances  
19 set forth in section 29-2523, and (b) sentence excessiveness or  
20 disproportionality as provided in subdivision (3) of section 29-2522. Any  
21 such evidence which the presiding judge deems to have probative value may  
22 be received. The state and the defendant and his or her counsel shall be  
23 permitted to present argument for or against the sentence of life  
24 imprisonment without possibility of parole death. The presiding judge  
25 shall set forth the general order of procedure at the outset of the  
26 sentencing determination proceeding. After the presentation and receipt  
27 of evidence and argument, the panel shall determine an appropriate  
28 sentence as provided in section 29-2522.

29 Sec. 24. Section 29-2522, Revised Statutes Cumulative Supplement,  
30 2014, is amended to read:

31 29-2522 The panel of judges for the sentencing determination

1 proceeding shall either unanimously fix the sentence at life imprisonment  
2 without possibility of parole death or, if the sentence of life  
3 imprisonment without possibility of parole death was not unanimously  
4 agreed upon by the panel, fix the sentence at life imprisonment. Such  
5 sentence determination shall be based upon the following considerations:

6 (1) Whether the aggravating circumstances as determined to exist  
7 justify imposition of a sentence of life imprisonment without possibility  
8 of parole death;

9 (2) Whether sufficient mitigating circumstances exist which approach  
10 or exceed the weight given to the aggravating circumstances; or

11 (3) Whether the sentence of life imprisonment without possibility of  
12 parole death is excessive or disproportionate to the penalty imposed in  
13 similar cases, considering both the crime and the defendant.

14 In each case, the determination of the panel of judges shall be in  
15 writing and refer to the aggravating and mitigating circumstances weighed  
16 in the determination of the panel.

17 ~~If an order is entered sentencing the defendant to death, a date for~~  
18 ~~execution shall not be fixed until after the conclusion of the appeal~~  
19 ~~provided for by section 29-2525.~~

20 Sec. 25. Section 29-2523, Reissue Revised Statutes of Nebraska, is  
21 amended to read:

22 29-2523 The aggravating and mitigating circumstances referred to in  
23 sections 29-2519 to 29-2523 ~~29-2524~~ shall be as follows:

24 (1) Aggravating Circumstances:

25 (a) The offender was previously convicted of another murder or a  
26 crime involving the use or threat of violence to the person, or has a  
27 substantial prior history of serious assaultive or terrorizing criminal  
28 activity;

29 (b) The murder was committed in an effort to conceal the commission  
30 of a crime, or to conceal the identity of the perpetrator of such crime;

31 (c) The murder was committed for hire, or for pecuniary gain, or the

1 defendant hired another to commit the murder for the defendant;

2 (d) The murder was especially heinous, atrocious, cruel, or  
3 manifested exceptional depravity by ordinary standards of morality and  
4 intelligence;

5 (e) At the time the murder was committed, the offender also  
6 committed another murder;

7 (f) The offender knowingly created a great risk of death to at least  
8 several persons;

9 (g) The victim was a public servant having lawful custody of the  
10 offender or another in the lawful performance of his or her official  
11 duties and the offender knew or should have known that the victim was a  
12 public servant performing his or her official duties;

13 (h) The murder was committed knowingly to disrupt or hinder the  
14 lawful exercise of any governmental function or the enforcement of the  
15 laws; or

16 (i) The victim was a law enforcement officer engaged in the lawful  
17 performance of his or her official duties as a law enforcement officer  
18 and the offender knew or reasonably should have known that the victim was  
19 a law enforcement officer.

20 (2) Mitigating Circumstances:

21 (a) The offender has no significant history of prior criminal  
22 activity;

23 (b) The offender acted under unusual pressures or influences or  
24 under the domination of another person;

25 (c) The crime was committed while the offender was under the  
26 influence of extreme mental or emotional disturbance;

27 (d) The age of the defendant at the time of the crime;

28 (e) The offender was an accomplice in the crime committed by another  
29 person and his or her participation was relatively minor;

30 (f) The victim was a participant in the defendant's conduct or  
31 consented to the act; or

1 (g) At the time of the crime, the capacity of the defendant to  
2 appreciate the wrongfulness of his or her conduct or to conform his or  
3 her conduct to the requirements of law was impaired as a result of mental  
4 illness, mental defect, or intoxication.

5 Sec. 26. Section 29-2801, Reissue Revised Statutes of Nebraska, is  
6 amended to read:

7 29-2801 If any person, except persons convicted of some crime or  
8 offense for which they stand committed, ~~or persons committed for treason~~  
9 ~~or felony, the punishment whereof is capital, plainly and specially~~  
10 ~~expressed in the warrant of commitment, now or in the future, is or shall~~  
11 ~~be confined in any jail of this state, or is shall be unlawfully deprived~~  
12 ~~of his or her liberty, and makes shall make application, either by~~  
13 ~~himself him or herself or by any person on his or her behalf, to any one~~  
14 ~~of the judges of the district court, or to any county judge, and does at~~  
15 ~~the same time produce to such judge a copy of the commitment or cause of~~  
16 ~~detention of such person, or if the person so imprisoned or detained is~~  
17 ~~imprisoned or detained without any legal authority, upon making the same~~  
18 ~~appear to such judge, by oath or affirmation, it is the duty of the judge~~  
19 ~~shall be his duty forthwith to allow a writ of habeas corpus, which writ~~  
20 ~~shall be issued forthwith by the clerk of the district court, or by the~~  
21 ~~county judge, as the case may require, under the seal of the court~~  
22 ~~whereof the person allowing such writ is a judge, directed to the proper~~  
23 ~~officer, person, or persons who detain detains such prisoner.~~

24 Sec. 27. Section 29-3205, Reissue Revised Statutes of Nebraska, is  
25 amended to read:

26 29-3205 The Uniform Rendition of Prisoners as Witnesses in Criminal  
27 Proceedings Act shall ~~Sections 29-3201 to 29-3210 do not apply to any~~  
28 ~~person in this state confined as mentally ill or under sentence of death.~~

29 Sec. 28. Section 29-3920, Reissue Revised Statutes of Nebraska, is  
30 amended to read:

31 29-3920 The Legislature finds that:



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

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

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

13 (4) Property tax relief in the form of state assistance to the  
14 counties of Nebraska in providing for indigent defense services will also  
15 improve inconsistent and inadequate funding of indigent defense services  
16 by the counties;

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

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

27 Sec. 29. Section 29-3922, Revised Statutes Cumulative Supplement,  
28 2014, is amended to read:

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

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

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

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

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

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

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

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

19 (8) Indigent person means a person who is indigent and unable to  
20 obtain legal counsel as determined pursuant to subdivision (3) of section  
21 29-3901; and

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

24 Sec. 30. Section 29-3928, Reissue Revised Statutes of Nebraska, is  
25 amended to read:

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

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

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

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

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

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

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

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

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

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

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

27 (8) Adopt and promulgate rules and regulations for the management  
28 and administration of policies of the commission and the conduct of  
29 employees of the commission;

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

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

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

6 Sec. 32. Section 29-3930, Reissue Revised Statutes of Nebraska, is  
7 amended to read:

8 29-3930 The following divisions are established within the  
9 commission:

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

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

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

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

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

26 Sec. 33. Section 55-480, Reissue Revised Statutes of Nebraska, is  
27 amended to read:

28 55-480 Though not specifically mentioned in the Nebraska Code of  
29 Military Justice ~~this code~~, all disorders and neglects to the prejudice  
30 of good order and discipline in the armed forces, all conduct of a nature  
31 to bring discredit upon the armed forces, and all crimes and offenses ~~not~~

1 ~~capital~~, of which persons subject to ~~the~~ this code may be guilty, shall  
2 be taken cognizance of by a court-martial, according to the nature and  
3 degree of the offense, and shall be punished at the discretion of that  
4 court.

5       Sec. 34. Section 83-1,110.02, Reissue Revised Statutes of Nebraska,  
6 is amended to read:

7       83-1,110.02 (1) A committed offender who is otherwise eligible for  
8 parole, who is not under sentence of life imprisonment without  
9 possibility of parole ~~death~~ or of life imprisonment, and who because of  
10 an existing medical or physical condition is determined by the department  
11 to be terminally ill or permanently incapacitated may be considered for  
12 medical parole by the board. A committed offender may be eligible for  
13 medical parole in addition to any other parole. The department shall  
14 identify committed offenders who may be eligible for medical parole based  
15 upon their medical records.

16       (2) The board shall decide to grant medical parole only after a  
17 review of the medical, institutional, and criminal records of the  
18 committed offender and such additional medical evidence from board-  
19 ordered examinations or investigations as the board in its discretion  
20 determines to be necessary. The decision to grant medical parole and to  
21 establish conditions of release on medical parole in addition to the  
22 conditions stated in subsection (3) of this section is within the sole  
23 discretion of the board.

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

30       (4) The parole term of a medical parolee shall be for the remainder  
31 of his or her sentence as reduced by any adjustment for good conduct

1 pursuant to the Nebraska Treatment and Corrections Act.

2 Sec. 35. Section 83-4,143, Reissue Revised Statutes of Nebraska, is  
3 amended to read:

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

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

26 (3) It is also the intent of the Legislature that the Board of  
27 Parole may recommend placement of felony offenders at the incarceration  
28 work camp. The offenders recommended by the board shall be offenders  
29 currently housed at other Department of Correctional Services adult  
30 correctional facilities and shall complete the incarceration work camp  
31 programming prior to release on parole.

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

15 (5) The Director of Correctional Services may assign a felony  
16 offender to an incarceration work camp if he or she believes it is in the  
17 best interests of the felony offender and of society, except that  
18 offenders convicted of a crime under section 28-303 or sections 28-319 to  
19 28-322.04 ~~28-321 or of any capital crime~~ are not eligible to be assigned  
20 to an incarceration work camp pursuant to this subsection.

21 Sec. 36. Original sections 23-3406, 24-1106, 25-1140.09, 28-104,  
22 28-303, 29-1602, 29-1822, 29-2004, 29-2005, 29-2006, 29-2020, 29-2027,  
23 29-2282, 29-2407, 29-2519, 29-2521, 29-2523, 29-2801, 29-3205, 29-3920,  
24 29-3928, 29-3929, 29-3930, 55-480, 83-1,110.02, and 83-4,143, Reissue  
25 Revised Statutes of Nebraska, and sections 28-105, 29-1603, 29-2204,  
26 29-2522, and 29-3922, Revised Statutes Cumulative Supplement, 2014, are  
27 repealed.

28 Sec. 37. The following sections are outright repealed: Sections  
29 24-1105, 29-2521.01, 29-2521.03, 29-2521.04, 29-2524.01, 29-2524.02,  
30 29-2525, 29-2527, 29-2528, 29-2811, 83-1,105.01, 83-1,132, 83-964,  
31 83-965, 83-966, 83-967, 83-968, 83-969, 83-970, 83-971, and 83-972,

1 Reissue Revised Statutes of Nebraska, and sections 28-105.01, 29-2521.02,  
2 29-2524, 29-2537, 29-2538, 29-2539, 29-2540, 29-2541, 29-2542, 29-2543,  
3 and 29-2546, Revised Statutes Cumulative Supplement, 2014.