

LEGISLATURE OF NEBRASKA  
NINETY-NINTH LEGISLATURE  
FIRST SESSION

LEGISLATIVE BILL 760

Introduced by Chambers, 11

Read first time January 19, 2005

Committee: Judiciary

A BILL

1 FOR AN ACT relating to criminal procedure; to amend sections  
2 23-3406, 24-1106, 25-1140.09, 27-609, 28-104, 29-1822,  
3 29-2005, 29-2006, 29-2020, 29-2282, 29-2407, 29-2801,  
4 29-3205, 29-3928, and 55-480, Reissue Revised Statutes of  
5 Nebraska, and sections 27-803, 28-105, 28-303, 29-1603,  
6 29-2004, 29-2027, 29-2204, 29-2520, 29-2521, 29-2522,  
7 29-2523, 29-3920, 29-3922, 29-3929, 29-3930, 83-1,105.01,  
8 and 83-4,143, Revised Statutes Supplement, 2004; to  
9 change a penalty from death to life imprisonment without  
10 possibility of parole as prescribed; to provide for  
11 restitution; to harmonize provisions; to eliminate  
12 capital punishment provisions; to repeal the original  
13 sections; and to outright repeal sections 24-1105,  
14 29-2521.01, 29-2521.03, 29-2521.04, 29-2524.01,  
15 29-2524.02, 29-2527, 29-2528, 29-2532 to 29-2546,  
16 29-2811, and 83-1,132, Reissue Revised Statutes of  
17 Nebraska, and sections 28-105.01, 29-2519, 29-2521.02,

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1                   29-2524, and 29-2525, Revised Statutes Supplement, 2004.

2   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  
3 being. The state should exercise utmost care to protect its  
4 residents' lives from homicide, accident, and arbitrary taking by  
5 the state;

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

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

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

20           (5) The history of attempts to carry out the death  
21 penalty in Nebraska demonstrates an inordinate burden on the  
22 justice system and on the lives of the innocent families and  
23 associates of both the victims and the convicted parties;

24           (6) A maximum sentence of life imprisonment without  
25 possibility of parole and with order of restitution, subject only  
26 to the constitutional power of the Board of Pardons, and including  
27 a mandatory order of restitution, is preferable to the current  
28 capital punishment scheme. Such a maximum sentence reflects this

1 state's desire to ensure the safety of its citizens, assist  
2 victims' families when possible, and yet preserve this state's  
3 values of human life, uniform fairness, and basic decency;

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

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

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

18 23-3406. (1) The contract negotiated between the county  
19 board and the contracting attorney shall specify the categories of  
20 cases in which the contracting attorney is to provide services.

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

25 (3) The contract between the county board and the  
26 contracting attorney may specify a maximum allowable caseload for  
27 each full-time or part-time attorney who handles cases under the  
28 contract. Caseloads shall allow each lawyer to give every client

1 the time and effort necessary to provide effective representation.

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

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

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

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

14 (5) The contract between the county board and the  
15 contracting attorney shall provide that the contracting attorney  
16 may decline to represent clients with no reduction in compensation  
17 if the contracting attorney is assigned more cases which require an  
18 extraordinary amount of time and preparation than the contracting  
19 attorney can competently handle.

20 (6) The contract between the contracting attorney and the  
21 county board shall provide that the contracting attorney shall  
22 receive at least ten hours of continuing legal education annually  
23 in the area of criminal law. The contract between the county board  
24 and the contracting attorney shall provide funds for the continuing  
25 legal education of the contracting attorney in the area of criminal  
26 law.

27 (7) The contract between the county board and the  
28 contracting attorney shall require that the contracting attorney

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

10 (8) The contract between the county board and the  
11 contracting attorney shall provide for reasonable compensation over  
12 and above the normal contract price for cases which require an  
13 extraordinary amount of time and preparation. ~~including capital~~  
14 ~~cases.~~

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

17 24-1106. (1) In cases which were appealable to the  
18 Supreme Court before September 6, 1991, the appeal, if taken, shall  
19 be to the Court of Appeals except ~~in capital cases,~~ cases in which  
20 life imprisonment without possibility of parole has been imposed,  
21 cases in which life imprisonment has been imposed, and cases  
22 involving the constitutionality of a statute.

23 (2) Any party to a case appealed to the Court of Appeals  
24 may file a petition in the Supreme Court to bypass the review by  
25 the Court of Appeals and for direct review by the Supreme Court.  
26 The procedure and time for filing the petition shall be as provided  
27 by rules of the Supreme Court. In deciding whether to grant the  
28 petition, the Supreme Court may consider one or more of the

1 following factors:

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

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

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

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

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

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

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

28 Sec. 4. Section 25-1140.09, Reissue Revised Statutes of

1 Nebraska, is amended to read:

2           25-1140.09. On the application of the county attorney or  
3 any party to a suit in which a record of the proceedings has been  
4 made, ~~upon receipt of the notice provided in section 29-2525,~~ or  
5 upon the filing of a praecipe for a bill of exceptions by an  
6 appealing party in the office of the clerk of the district court as  
7 provided in section 25-1140, the court reporter shall prepare a  
8 transcribed copy of the proceedings so recorded or any part  
9 thereof. The reporter shall be entitled to receive, in addition to  
10 his or her salary, a fee of two dollars and seventy-five cents per  
11 page for the original copy and fifty cents per page for each other  
12 copy, to be paid by the party requesting the same except as  
13 otherwise provided in this section.

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

26           The procedure for preparation, settlement, signature,  
27 allowance, certification, filing, and amendment of a bill of  
28 exceptions shall be regulated and governed by rules of practice

1 prescribed by the Supreme Court. The fee paid shall be taxed, by  
2 the clerk of the district court, to the party against whom the  
3 judgment or decree is rendered except as otherwise ordered by the  
4 presiding district judge.

5           Sec. 5.     Section 27-609, Reissue Revised Statutes of  
6 Nebraska, is amended to read:

7           27-609. (1) For the purpose of attacking the credibility  
8 of a witness, evidence that he or she has been convicted of a crime  
9 shall be admitted if elicited from him or her or established by  
10 public record during cross-examination, but only if the crime (a)  
11 was punishable by ~~death or~~ imprisonment in excess of one year under  
12 the law under which he or she was convicted or (b) involved  
13 dishonesty or false statement regardless of the punishment.

14           (2) Evidence of a conviction under this rule is not  
15 admissible if a period of more than ten years has elapsed since the  
16 date of such conviction or of the release of the witness from  
17 confinement, whichever is the later date.

18           (3) Evidence of a conviction is not admissible under this  
19 rule if the conviction has been the subject of a pardon, annulment,  
20 or other equivalent procedure which was based on innocence.

21           (4) Evidence of juvenile adjudications is not admissible  
22 under this rule.

23           (5) Pendency of an appeal renders evidence of a  
24 conviction inadmissible.

25           Sec. 6.     Section 27-803, Revised Statutes Supplement,  
26 2004, is amended to read:

27           27-803. Subject to the provisions of section 27-403, the  
28 following are not excluded by the hearsay rule, even though the

1 declarant is available as a witness:

2 (1) A statement relating to a startling event or  
3 condition made while the declarant was under the stress of  
4 excitement caused by the event or condition;

5 (2) A statement of the declarant's then existing state of  
6 mind, emotion, sensation, or physical condition (such as intent,  
7 plan, motive, design, mental feeling, pain, and bodily health), but  
8 not including a statement of memory or belief to prove the fact  
9 remembered or believed unless it relates to the execution,  
10 revocation, identification, or terms of declarant's will;

11 (3) Statements made for purposes of medical diagnosis or  
12 treatment and describing medical history, or past or present  
13 symptoms, pain, or sensations, or the inception or general  
14 character of the cause or external source thereof insofar as  
15 reasonably pertinent to diagnosis or treatment;

16 (4) A memorandum or record concerning a matter about  
17 which a witness once had knowledge but now has insufficient  
18 recollection to enable him or her to testify fully and accurately,  
19 shown to have been made or adopted by the witness when the matter  
20 was fresh in his or her memory and to reflect that knowledge  
21 correctly. If admitted, the memorandum or record may be read into  
22 evidence but may not itself be received as an exhibit unless  
23 offered by an adverse party;

24 (5) A memorandum, report, record, or data compilation, in  
25 any form, of acts, events, or conditions, other than opinions or  
26 diagnoses, made at or near the time of such acts, events, or  
27 conditions, in the course of a regularly conducted activity, if it  
28 was the regular course of such activity to make such memorandum,

1 report, record, or data compilation at the time of such act, event,  
2 or condition, or within a reasonable time thereafter, as shown by  
3 the testimony of the custodian or other qualified witness unless  
4 the source of information or method or circumstances of preparation  
5 indicate lack of trustworthiness. The circumstances of the making  
6 of such memorandum, report, record, or data compilation, including  
7 lack of personal knowledge by the entrant or maker, may be shown to  
8 affect its weight;

9 (6) Evidence that a matter is not included in the  
10 memoranda, reports, records, or data compilations, in any form,  
11 kept in accordance with the provisions of subdivision (5) of this  
12 section to prove the nonoccurrence or nonexistence of the matter,  
13 if the matter was of a kind of which a memorandum, report, record,  
14 or data compilation was regularly made and preserved, unless the  
15 sources of information or other circumstances indicate a lack of  
16 trustworthiness;

17 (7) Upon reasonable notice to the opposing party prior to  
18 trial, records, reports, statements, or data compilations made by a  
19 public official or agency of facts required to be observed and  
20 recorded pursuant to a duty imposed by law, unless the sources of  
21 information or the method or circumstances of the investigation are  
22 shown by the opposing party to indicate a lack of trustworthiness;

23 (8) Records or data compilations, in any form, of births,  
24 fetal deaths, deaths, or marriages, if the report thereof was made  
25 to a public office pursuant to requirements of law;

26 (9) To prove the absence of a record, report, statement,  
27 or data compilation, in any form, or the nonoccurrence or  
28 nonexistence of a matter of which a record, report, statement, or

1 data compilation, in any form, was regularly made and preserved by  
2 a public office or agency, evidence in the form of a certification  
3 in accordance with section 27-902, or testimony, that diligent  
4 search failed to disclose the record, report, statement, or data  
5 compilation or entry;

6 (10) Statements of births, marriages, divorces, deaths,  
7 legitimacy, ancestry, relationship by blood or marriage, or other  
8 similar facts of personal or family history, contained in a  
9 regularly kept record of a religious organization;

10 (11) Statements of fact contained in a certificate that  
11 the maker performed a marriage or other ceremony or administered a  
12 sacrament, made by a member of the clergy, public official, or  
13 other person authorized by the rules or practices of a religious  
14 organization or by law to perform the act certified, and purporting  
15 to have been issued at the time of the act or within a reasonable  
16 time thereafter;

17 (12) Statements of births, marriages, divorces, deaths,  
18 legitimacy, ancestry, relationship by blood or marriage, or other  
19 similar facts of personal or family history contained in family  
20 Bibles, genealogies, charts, engravings on rings, inscriptions on  
21 family portraits, engravings on urns, crypts, or tombstones or the  
22 like;

23 (13) The record of a document purporting to establish or  
24 affect an interest in property, as proof of the content of the  
25 original recorded document and its execution and delivery by each  
26 person by whom it purports to have been executed, if the record is  
27 a record of a public office and an applicable statute authorized  
28 the recording of documents of that kind in that office;

1           (14) A statement contained in a document purporting to  
2 establish or affect an interest in property if the matter stated  
3 was relevant to the purpose of the document, unless dealings with  
4 the property since the document was made have been inconsistent  
5 with the truth of the statement or the purport of the document;

6           (15) Statements in a document in existence thirty years  
7 or more whose authenticity is established;

8           (16) Market quotations, tabulations, lists, directories,  
9 or other published compilations, generally used and relied upon by  
10 the public or by persons in particular occupations;

11           (17) Statements contained in published treatises,  
12 periodicals, or pamphlets on a subject of history, medicine, or  
13 other science or art, established as a reliable authority by the  
14 testimony or admission of the witness or by other expert testimony  
15 or by judicial notice, to the extent called to the attention of an  
16 expert witness upon cross-examination or relied upon by the expert  
17 witness in direct examination. If admitted, the statements may be  
18 read into evidence but may not be received as exhibits;

19           (18) Reputation among members of his or her family by  
20 blood, adoption, or marriage, or among his or her associates, or in  
21 the community, concerning a person's birth, adoption, marriage,  
22 divorce, death, legitimacy, relationship by blood, adoption, or  
23 marriage, ancestry, or other similar fact of his or her personal or  
24 family history;

25           (19) Reputation in a community, arising before the  
26 controversy, as to boundaries of or customs affecting lands in the  
27 community, and reputation as to events of general history important  
28 to the community or state or nation in which located;

1           (20) Reputation of a person's character among his or her  
2 associates or in the community;

3           (21) Evidence of a final judgment, entered after a trial  
4 or upon a plea of guilty (but not upon a plea of nolo contendere),  
5 adjudging a person guilty of a crime punishable by ~~death or~~  
6 imprisonment in excess of one year, to prove any fact essential to  
7 sustain the judgment, but not including, when offered by the  
8 government in a criminal prosecution for purposes other than  
9 impeachment, judgments against a person other than the accused.  
10 The pendency of an appeal may be shown but does not affect  
11 admissibility;

12           (22) Judgments as proof of matters of personal, family,  
13 or general history, or boundaries, essential to the judgment, if  
14 the same would be provable by evidence of reputation; and

15           (23) A statement not specifically covered by any of the  
16 foregoing exceptions but having equivalent circumstantial  
17 guarantees of trustworthiness, if the court determines that (a) the  
18 statement is offered as evidence of a material fact, (b) the  
19 statement is more probative on the point for which it is offered  
20 than any other evidence which the proponent can procure through  
21 reasonable efforts, and (c) the general purposes of these rules and  
22 the interests of justice will best be served by admission of the  
23 statement into evidence. A statement may not be admitted under  
24 this exception unless the proponent of it makes known to the  
25 adverse party, sufficiently in advance of the trial or hearing to  
26 provide the adverse party with a fair opportunity to prepare to  
27 meet it, his or her intention to offer the statement and the  
28 particulars of it, including the name and address of the declarant.

1           Sec. 7.   Section 28-104, Reissue Revised Statutes of  
2 Nebraska, is amended to read:

3           28-104.   The terms offense and crime are synonymous as  
4 used in this code and mean a violation of, or conduct defined by,  
5 any statute for which a fine, or imprisonment, ~~or death~~ may be  
6 imposed.

7           Sec. 8.   Section 28-105, Revised Statutes Supplement,  
8 2004, is amended to read:

9           28-105.   (1) For purposes of the Nebraska Criminal Code  
10 and any statute passed by the Legislature after the date of passage  
11 of the code, felonies are divided into nine classes which are  
12 distinguished from one another by the following penalties which are  
13 authorized upon conviction:

14 ~~Class I felony ..... Death~~

15 ~~Class IA felony ..... Life imprisonment without parole~~

16 Class I felony ..... Maximum -- life imprisonment without  
17 possibility of parole and with  
18 order of restitution

19 Minimum -- life imprisonment

20 Class IA felony ..... Life imprisonment

21 Class IB felony ..... Maximum -- life imprisonment

22 Minimum -- twenty years imprisonment

23 Class IC felony ..... Maximum -- fifty years imprisonment

24 Mandatory minimum -- five years imprisonment

25 Class ID felony ..... Maximum -- fifty years imprisonment

26 Mandatory minimum -- three years  
27 imprisonment

28 Class II felony ..... Maximum -- fifty years imprisonment

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

11                   (2) All sentences of imprisonment for Class I, IA, IB,  
12 IC, ID, II, and III felonies and sentences of one year or more for  
13 Class IIIA and IV felonies shall be served in institutions under  
14 the jurisdiction of the Department of Correctional Services.  
15 Sentences of less than one year shall be served in the county jail  
16 except as provided in this subsection. If the department certifies  
17 that it has programs and facilities available for persons sentenced  
18 to terms of less than one year, the court may order that any  
19 sentence of six months or more be served in any institution under  
20 the jurisdiction of the department. Any such certification shall  
21 be given by the department to the State Court Administrator, who  
22 shall forward copies thereof to each judge having jurisdiction to  
23 sentence in felony cases.

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

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

1           Sec. 9. Section 28-303, Revised Statutes Supplement,  
2 2004, is amended to read:

3           28-303. A person commits murder in the first degree if  
4 he or she kills another person (1) purposely and with deliberate  
5 and premeditated malice, or (2) in the perpetration of or attempt  
6 to perpetrate any sexual assault in the first degree, arson,  
7 robbery, kidnapping, hijacking of any public or private means of  
8 transportation, or burglary, or (3) by administering poison or  
9 causing the same to be done; or if by willful and corrupt perjury  
10 or subornation of the same he or she purposely procures the  
11 conviction and execution of any innocent person. Murder in the  
12 first degree is a Class I felony. The determination of whether  
13 murder in the first degree shall be punished by a sentence of life  
14 imprisonment without possibility of parole or by a sentence of life  
15 imprisonment as a Class I or Class IA felony shall be made pursuant  
16 to sections ~~29-2519~~ 29-2520 to ~~29-2524~~ 29-2523.

17           Sec. 10. Section 29-1603, Revised Statutes Supplement,  
18 2004, is amended to read:

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

24           (2) (a) Any information charging a violation of section  
25 28-303 and in which life imprisonment without possibility of parole  
26 ~~the death penalty~~ is sought shall contain a notice of aggravation  
27 which alleges one or more aggravating circumstances, as such  
28 aggravating circumstances are provided in section 29-2523. The

1 notice of aggravation shall be filed as provided in section  
2 29-1602. It shall constitute sufficient notice to describe the  
3 alleged aggravating circumstances in the language provided in  
4 section 29-2523.

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

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

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

17 Sec. 11. Section 29-1822, Reissue Revised Statutes of  
18 Nebraska, is amended to read:

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

1                   Sec. 12. Section 29-2004, Revised Statutes Supplement,  
2 2004, is amended to read:

3                   29-2004. (1) All parties may stipulate that the jury may  
4 be selected up to thirty-one days prior to the date of trial. The  
5 stipulation must be unanimous among all parties and evidenced by a  
6 joint stipulation to the county court.

7                   (2) In all cases, except as may be otherwise expressly  
8 provided, the accused shall be tried by a jury drawn, summoned, and  
9 impaneled according to provisions of the code of civil procedure,  
10 except that whenever in the opinion of the court the trial is  
11 likely to be a protracted one, the court may, immediately after the  
12 jury is impaneled and sworn, direct the calling of one or two  
13 additional jurors, to be known as alternate jurors. Such jurors  
14 shall be drawn from the same source and in the same manner, and  
15 have the same qualifications as regular jurors, and be subject to  
16 examination and challenge as such jurors, except that each party  
17 shall be allowed one peremptory challenge to each alternate juror.  
18 The alternate jurors shall take the proper oath or affirmation and  
19 shall be seated near the regular jurors with equal facilities for  
20 seeing and hearing the proceedings in the cause, and shall attend  
21 at all times upon the trial of the cause in company with the  
22 regular jurors. They shall obey all orders and admonitions of the  
23 court, and if the regular jurors are ordered to be kept in the  
24 custody of an officer during the trial of the cause, the alternate  
25 jurors shall also be kept with the other jurors and, except as  
26 hereinafter provided, shall be discharged upon the final submission  
27 of the cause to the jury. If an information charging a violation  
28 of section 28-303 and in which ~~the death penalty~~ life imprisonment

1 without possibility of parole is sought contains a notice of  
 2 aggravation, the alternate jurors shall be retained as provided in  
 3 section 29-2520. If, before the final submission of the cause a  
 4 regular juror dies or is discharged, the court shall order the  
 5 alternate juror, if there is but one, to take his or her place in  
 6 the jury box. If there are two alternate jurors the court shall  
 7 select one by lot, who shall then take his or her place in the jury  
 8 box. After an alternate juror is in the jury box he or she shall  
 9 be subject to the same rules as a regular juror.

10           Sec. 13.       Section 29-2005, Reissue Revised Statutes of  
 11 Nebraska, is amended to read:

12           29-2005. Every person arraigned for any crime punishable  
 13 with ~~death, or~~ imprisonment for life, shall be admitted on his or  
 14 her trial to a peremptory challenge of twelve jurors. Every ~~and~~  
 15 ~~no more,~~ every person arraigned for any offense that may be  
 16 punishable by imprisonment for a term exceeding eighteen months and  
 17 less than life, shall be admitted to a peremptory challenge of six  
 18 jurors. In ~~and in~~ all other criminal trials, the defendant shall  
 19 be allowed a peremptory challenge of three jurors. The attorney  
 20 prosecuting on behalf of the state shall be admitted to a  
 21 peremptory challenge of twelve jurors in all cases when the offense  
 22 is punishable with ~~death or~~ imprisonment for life, six jurors when  
 23 the offense is punishable by imprisonment for a term exceeding  
 24 eighteen months and less than life, and three jurors in all other  
 25 cases. In each case for which ~~PROVIDED, that in all cases where~~  
 26 alternate jurors are called, as provided in section 29-2004, ~~then~~  
 27 ~~in that case~~ both the defendant and the attorney prosecuting for  
 28 the state shall each be allowed one added peremptory challenge to

1 each alternate juror.

2           Sec. 14.     Section 29-2006, Reissue Revised Statutes of  
3 Nebraska, is amended to read:

4           29-2006.     The following shall be good causes for  
5 challenge to any person called as a juror or alternate juror, on  
6 the trial of any indictment:

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

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

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

1 ~~that he~~ 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  
 3 person on whose complaint the prosecution was instituted, or to the  
 4 defendant;

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

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

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

13 (7) That he or she ~~(8) that he~~ is a habitual drunkard;

14 (8) The ~~(9) the~~ same challenges ~~shall be allowed in~~  
 15 ~~criminal prosecutions~~ that are allowed to parties in civil cases.

16 Sec. 15. Section 29-2020, Reissue Revised Statutes of  
 17 Nebraska, is amended to read:

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

25 Sec. 16. Section 29-2027, Revised Statutes Supplement,  
 26 2004, is amended to read:

27 29-2027. In all trials for murder the jury before whom  
 28 such trial is had, if they find the prisoner guilty thereof, shall

1 ascertain in their verdict whether it is murder in the first or  
 2 second degree or manslaughter; and if such person is convicted by  
 3 confession in open court, the court shall proceed by examination of  
 4 witnesses in open court, to determine the degree of the crime, and  
 5 shall pronounce sentence accordingly or as provided in sections  
 6 ~~29-2519 to 29-2524~~ 29-2520 to 29-2523 for murder in the first  
 7 degree.

8           Sec. 17. Section 29-2204, Revised Statutes Supplement,  
 9 2004, is amended to read:

10           29-2204. (1) Except when a term of life imprisonment  
 11 without possibility of parole is required by law, in imposing an  
 12 indeterminate sentence upon an offender the court shall:

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

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

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

1 provided by law; or

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

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

10 (c) Advise the offender on the record the time the  
11 offender will serve on his or her maximum term before attaining  
12 mandatory release assuming that no good time for which the offender  
13 will be eligible is lost.

14 If any discrepancy exists between the statement of the  
15 minimum limit of the sentence and the statement of parole  
16 eligibility or between the statement of the maximum limit of the  
17 sentence and the statement of mandatory release, the statements of  
18 the minimum limit and the maximum limit shall control the  
19 calculation of the offender's term. If the court imposes more than  
20 one sentence upon an offender or imposes a sentence upon an  
21 offender who is at that time serving another sentence, the court  
22 shall state whether the sentences are to be concurrent or  
23 consecutive.

24 (2) (a) When the court is of the opinion that imprisonment  
25 may be appropriate but desires more detailed information as a basis  
26 for determining the sentence to be imposed than has been provided  
27 by the presentence report required by section 29-2261, the court  
28 shall commit an offender to the Department of Correctional Services

1 for a period not exceeding ninety days. The department shall  
2 conduct a complete study of the offender during that time,  
3 inquiring into such matters as his or her previous delinquency or  
4 criminal experience, social background, capabilities, and mental,  
5 emotional, and physical health and the rehabilitative resources or  
6 programs which may be available to suit his or her needs. By the  
7 expiration of the period of commitment or by the expiration of such  
8 additional time as the court shall grant, not exceeding a further  
9 period of ninety days, the offender shall be returned to the court  
10 for sentencing and the court shall be provided with a written  
11 report of the results of the study, including whatever  
12 recommendations the department believes will be helpful to a proper  
13 resolution of the case. After receiving the report and the  
14 recommendations, the court shall proceed to sentence the offender  
15 in accordance with subsection (1) of this section. The term of the  
16 sentence shall run from the date of original commitment under this  
17 subsection.

18 (b) In order to encourage the use of this procedure in  
19 appropriate cases, all costs incurred during the period the  
20 defendant is held in a state institution under this subsection  
21 shall be a responsibility of the state and the county shall be  
22 liable only for the cost of delivering the defendant to the  
23 institution and the cost of returning him or her to the appropriate  
24 court for sentencing or such other disposition as the court may  
25 then deem appropriate.

26 (3) Except when a term of life imprisonment or life  
27 imprisonment without possibility of parole is required by law,  
28 whenever the defendant was under eighteen years of age at the time

1 he or she committed the crime for which he or she was convicted,  
2 the court may, in its discretion, instead of imposing the penalty  
3 provided for the crime, make such disposition of the defendant as  
4 the court deems proper under the Nebraska Juvenile Code. Prior to  
5 making a disposition which commits the juvenile to the Office of  
6 Juvenile Services, the court shall order the juvenile to be  
7 evaluated by the office if the juvenile has not had an evaluation  
8 within the past twelve months.

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

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

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

28           29-2407.   Judgments for fines and costs in criminal cases

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

13           Sec. 20. Section 29-2520, Revised Statutes Supplement,  
 14 2004, is amended to read:

15           29-2520. (1) Whenever any person is found guilty of a  
 16 violation of section 28-303 and the information contains a notice  
 17 of aggravation as provided in section 29-1603, the district court  
 18 shall, as soon as practicable, fix a date for an aggravation  
 19 hearing to determine the alleged aggravating circumstances. If no  
 20 notice of aggravation has been filed, the district court shall  
 21 enter a sentence of life imprisonment. ~~without parole.~~

22           (2) Unless the defendant waives his or her right to a  
 23 jury determination of the alleged aggravating circumstances, such  
 24 determination shall be made by:

25           (a) The jury which determined the defendant's guilt; or

26           (b) A jury impaneled for purposes of the determination of  
 27 the alleged aggravating circumstances if:

28           (i) The defendant waived his or her right to a jury at

1 the trial of guilt and either was convicted before a judge or was  
2 convicted on a plea of guilty or nolo contendere; or

3 (ii) The jury which determined the defendant's guilt has  
4 been discharged.

5 A jury required by subdivision (2)(b) of this section  
6 shall be impaneled in the manner provided in sections 29-2004 to  
7 29-2010.

8 (3) The defendant may waive his or her right to a jury  
9 determination of the alleged aggravating circumstances. The court  
10 shall accept the waiver after determining that it is made freely,  
11 voluntarily, and knowingly. If the defendant waives his or her  
12 right to a jury determination of the alleged aggravating  
13 circumstances, such determination shall be made by a panel of  
14 judges as a part of the sentencing determination proceeding as  
15 provided in section 29-2521.

16 (4)(a) At an aggravation hearing before a jury for the  
17 determination of the alleged aggravating circumstances, the state  
18 may present evidence as to the existence of the aggravating  
19 circumstances alleged in the information. The Nebraska Evidence  
20 Rules shall apply at the aggravation hearing.

21 (b) Alternate jurors who would otherwise be discharged  
22 upon final submission of the cause to the jury shall be retained  
23 during the deliberation of the defendant's guilt but shall not  
24 participate in such deliberations. Such alternate jurors shall  
25 serve during the aggravation hearing as provided in section 29-2004  
26 but shall not participate in the jury's deliberations under this  
27 subsection.

28 (c) If the jury serving at the aggravation hearing is the

1 jury which determined the defendant's guilt, the jury may consider  
2 evidence received at the trial of guilt for purposes of reaching  
3 its verdict as to the existence or nonexistence of aggravating  
4 circumstances in addition to the evidence received at the  
5 aggravation hearing.

6 (d) After the presentation and receipt of evidence at the  
7 aggravation hearing, the state and the defendant or his or her  
8 counsel may present arguments before the jury as to the existence  
9 or nonexistence of the alleged aggravating circumstances.

10 (e) The court shall instruct the members of the jury as  
11 to their duty as jurors, the definitions of the aggravating  
12 circumstances alleged in the information, and the state's burden to  
13 prove the existence of each aggravating circumstance alleged in the  
14 information beyond a reasonable doubt.

15 (f) The jury at the aggravation hearing shall deliberate  
16 and return a verdict as to the existence or nonexistence of each  
17 alleged aggravating circumstance. Each aggravating circumstance  
18 shall be proved beyond a reasonable doubt. Each verdict with  
19 respect to each alleged aggravating circumstance shall be  
20 unanimous. If the jury is unable to reach a unanimous verdict with  
21 respect to an aggravating circumstance, such aggravating  
22 circumstance shall not be weighed in the sentencing determination  
23 proceeding as provided in section 29-2521.

24 (g) Upon rendering its verdict as to the determination of  
25 the aggravating circumstances, the jury shall be discharged.

26 (h) If no aggravating circumstance is found to exist, the  
27 court shall enter a sentence of life imprisonment. ~~without parole.~~  
28 If one or more aggravating circumstances are found to exist, the

1 court shall convene a panel of three judges to hold a hearing to  
2 receive evidence of mitigation and sentence excessiveness or  
3 disproportionality as provided in subsection (3) of section  
4 29-2521.

5 Sec. 21. Section 29-2521, Revised Statutes Supplement,  
6 2004, is amended to read:

7 29-2521. (1) When a person has been found guilty of  
8 murder in the first degree and (a) a jury renders a verdict finding  
9 the existence of one or more aggravating circumstances as provided  
10 in section 29-2520 or (b) (i) the information contains a notice of  
11 aggravation as provided in section 29-1603 and (ii) such person  
12 waives his or her right to a jury determination of the alleged  
13 aggravating circumstances, the sentence of such person shall be  
14 determined by:

15 (a) A panel of three judges, including the judge who  
16 presided at the trial of guilt or who accepted the plea and two  
17 additional active district court judges named at random by the  
18 Chief Justice of the Supreme Court. The judge who presided at the  
19 trial of guilt or who accepted the plea shall act as the presiding  
20 judge for the sentencing determination proceeding under this  
21 section; or

22 (b) If the Chief Justice of the Supreme Court has  
23 determined that the judge who presided at the trial of guilt or who  
24 accepted the plea is disabled or disqualified after receiving a  
25 suggestion of such disability or disqualification from the clerk of  
26 the court in which the finding of guilty was entered, a panel of  
27 three active district court judges named at random by the Chief  
28 Justice of the Supreme Court. The Chief Justice of the Supreme

1 Court shall name one member of the panel at random to act as the  
2 presiding judge for the sentencing determination proceeding under  
3 this section.

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

1 the panel is unable to reach a unanimous finding of fact with  
2 respect to an aggravating circumstance, such aggravating  
3 circumstance shall not be weighed in the sentencing determination  
4 proceeding. After the presentation and receipt of evidence and  
5 argument, the panel shall determine an appropriate sentence as  
6 provided in section 29-2522.

7 (3) When a jury renders a verdict finding the existence  
8 of one or more aggravating circumstances as provided in section  
9 29-2520, the panel of judges shall, as soon as practicable after  
10 receipt of the written report resulting from the presentence  
11 investigation ordered as provided in section 29-2261, hold a  
12 hearing to receive evidence of mitigation and sentence  
13 excessiveness or disproportionality. Evidence may be presented as  
14 to any matter that the presiding judge deems relevant to (a)  
15 mitigation, including, but not limited to, the mitigating  
16 circumstances set forth in section 29-2523, and (b) sentence  
17 excessiveness or disproportionality as provided in subdivision (3)  
18 of section 29-2522. Any such evidence which the presiding judge  
19 deems to have probative value may be received. The state and the  
20 defendant and his or her counsel shall be permitted to present  
21 argument for or against the sentence of ~~death~~ life imprisonment  
22 without possibility of parole. The presiding judge shall set forth  
23 the general order of procedure at the outset of the sentencing  
24 determination proceeding. After the presentation and receipt of  
25 evidence and argument, the panel shall determine an appropriate  
26 sentence as provided in section 29-2522.

27 Sec. 22. Section 29-2522, Revised Statutes Supplement,  
28 2004, is amended to read:

1           29-2522.     The panel of judges for the sentencing  
2 determination proceeding shall either unanimously fix the sentence  
3 at ~~death~~ life imprisonment without parole or, if the sentence of  
4 ~~death~~ life imprisonment without parole was not unanimously agreed  
5 upon by the panel, fix the sentence at life imprisonment. ~~without~~  
6 ~~parole.~~ Such sentence determination shall be based upon the  
7 following considerations:

8           (1) Whether the aggravating circumstances as determined  
9 to exist justify imposition of a sentence of ~~death~~ life  
10 imprisonment without parole;

11           (2) Whether sufficient mitigating circumstances exist  
12 which approach or exceed the weight given to the aggravating  
13 circumstances; or

14           (3) Whether the sentence of ~~death~~ life imprisonment  
15 without parole is excessive or disproportionate to the penalty  
16 imposed in similar cases, considering both the crime and the  
17 defendant.

18           In each case, the determination of the panel of judges  
19 shall be in writing and refer to the aggravating and mitigating  
20 circumstances weighed in the determination of the panel.

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

24           Sec. 23. Section 29-2523, Revised Statutes Supplement,  
25 2004, is amended to read:

26           29-2523.     The aggravating and mitigating circumstances  
27 referred to in sections ~~29-2519 to 29-2524~~ 29-2520 to 29-2523 shall  
28 be as follows:

1 (1) Aggravating Circumstances:

2 (a) The offender was previously convicted of another  
3 murder or a crime involving the use or threat of violence to the  
4 person, or has a substantial prior history of serious assaultive or  
5 terrorizing criminal activity;

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

9 (c) The murder was committed for hire, or for pecuniary  
10 gain, or the defendant hired another to commit the murder for the  
11 defendant;

12 (d) The murder was especially heinous, atrocious, cruel,  
13 or manifested exceptional depravity by ordinary standards of  
14 morality and intelligence;

15 (e) At the time the murder was committed, the offender  
16 also committed another murder;

17 (f) The offender knowingly created a great risk of death  
18 to ~~at least several persons~~ more than one other person;

19 (g) The victim was a public servant having lawful custody  
20 of the offender or another in the lawful performance of his or her  
21 official duties and the offender knew or should have known that the  
22 victim was a public servant performing his or her official duties;

23 (h) The murder was committed knowingly to disrupt or  
24 hinder the lawful exercise of any governmental function or the  
25 enforcement of the laws; or

26 (i) The victim was a law enforcement officer engaged in  
27 the lawful performance of his or her official duties as a law  
28 enforcement officer and the offender knew or reasonably should have

1 known that the victim was a law enforcement officer.

2 (2) Mitigating Circumstances:

3 (a) The offender has no significant history of prior  
4 criminal activity;

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

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

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

10 (e) The ~~offender~~ defendant was an accomplice in the crime  
11 committed by another person and his or her participation was  
12 relatively minor;

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

15 (g) At the time of the crime, the capacity of the  
16 defendant to appreciate the wrongfulness of his or her conduct or  
17 to conform his or her conduct to the requirements of law was  
18 impaired as a result of mental illness, mental defect, or  
19 intoxication.

20 Sec. 24. A sentence of life imprisonment without  
21 possibility of parole imposed pursuant to sections 29-2520 to  
22 29-2523 means that subject only to the constitutional power of the  
23 Board of Pardons in Article IV, section 13, of the Constitution of  
24 Nebraska, a person so sentenced shall not under any circumstances  
25 whatsoever be paroled.

26 Sec. 25. A person sentenced pursuant to sections 29-2520  
27 to 29-2523 to life imprisonment without possibility of parole and  
28 with order of restitution shall be ordered, pursuant to sections

1 29-2280 to 29-2289, to make compensatory payment to the estate of  
 2 the victim of the crime for any pain and suffering of the victim  
 3 caused or contributed to by the defendant, for the cost of any  
 4 medical care prior to death necessitated by the crime, and for  
 5 funeral and burial expenses.

6           Sec. 26. The changes made by this legislative bill shall  
 7 not (1) limit the discretionary authority of the sentencing court  
 8 to order restitution as part of any sentence other than life  
 9 imprisonment without possibility of parole or (2) alter the  
 10 discretion and authority of the Department of Correctional Services  
 11 to determine the appropriate security measures and conditions  
 12 during the confinement of any convict.

13           Sec. 27. In any criminal proceeding in which the death  
 14 penalty has been imposed but not carried out prior to the effective  
 15 date of this act, it is the intention, will, and sense of the  
 16 Legislature that such penalty shall be changed to life imprisonment  
 17 without possibility of parole and with order of restitution.

18           Sec. 28. Section 29-2801, Reissue Revised Statutes of  
 19 Nebraska, is amended to read:

20           29-2801. If any person, except persons convicted of some  
 21 crime or offense for which they stand committed, ~~or persons~~  
 22 ~~committed for treason or felony, the punishment whereof is capital,~~  
 23 ~~plainly and specially expressed in the warrant of commitment,~~ now  
 24 or in the future is ~~or shall be~~ confined in any jail of this state,  
 25 or ~~shall be~~ is unlawfully deprived of his or her liberty, and ~~shall~~  
 26 ~~make~~ makes application, either by ~~him~~ himself or herself or by any  
 27 person on his or her behalf, to any one of the judges of the  
 28 district court, or to any county judge, and does at the same time

1 produce to such judge a copy of the commitment or cause of  
 2 detention of such person, or if the person so imprisoned or  
 3 detained is imprisoned or detained without any legal authority,  
 4 upon making the same appear to such judge, by oath or affirmation,  
 5 ~~it shall be his duty~~ is the duty of the judge forthwith to allow a  
 6 writ of habeas corpus, which writ shall be issued forthwith by the  
 7 clerk of the district court, or by the county judge, as the case  
 8 may require, under the seal of the court whereof the person  
 9 allowing such writ is a judge, directed to the proper officer,  
 10 person, or persons who ~~detains~~ detain such prisoner.

11           Sec. 29.     Section 29-3205, Reissue Revised Statutes of  
 12 Nebraska, is amended to read:

13           29-3205.   ~~Sections 29-3201 to 29-3210 do~~ The Uniform  
 14 Rendition of Prisoners as Witnesses in Criminal Proceedings Act  
 15 shall not apply to any person in this state confined as mentally  
 16 ill. or under sentence of death.

17           Sec. 30.     Section 29-3920, Revised Statutes Supplement,  
 18 2004, is amended to read:

19           29-3920.   The Legislature finds that:

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

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

28           (3) Property tax relief in the form of state assistance

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

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

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

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

22 Sec. 31. Section 29-3922, Revised Statutes Supplement,  
23 2004, is amended to read:

24 29-3922. For purposes of the County Revenue Assistance  
25 Act:

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

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

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

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

8 (5) Council means the Indigent Defense Standards Advisory  
9 Council;

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

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

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

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

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

27 Sec. 32. Section 29-3928, Reissue Revised Statutes of  
28 Nebraska, is amended to read:

1                   29-3928.     The commission shall appoint a chief counsel.  
2     The responsibilities and duties of the chief counsel shall be  
3     defined by the commission and shall include the overall supervision  
4     of the workings of the various divisions of the commission.     The  
5     chief counsel shall be qualified for his or her position, shall  
6     have been licensed to practice law in the State of Nebraska for at  
7     least five years prior to the effective date of the appointment,  
8     and shall be experienced in the practice of criminal defense,  
9     including the defense of ~~capital~~ first-degree murder cases.     The  
10    chief counsel shall serve at the pleasure of the commission.     The  
11    salary of the chief counsel shall be set by the commission.

12                   Sec. 33.     Section 29-3929, Revised Statutes Supplement,  
13    2004, is amended to read:

14                   29-3929.     The primary duties of the chief counsel shall  
15    be to provide direct legal services to indigent defendants, and the  
16    chief counsel shall:

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

20                   (2)     Prepare a budget and disburse funds for the  
21    operations of the commission;

22                   (3)     Present to the commission an annual report on the  
23    operations of the commission, including an accounting of all funds  
24    received and disbursed, an evaluation of the cost-effectiveness of  
25    the commission, and recommendations for improvement;

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

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

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

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

5           (8) Adopt and promulgate rules and regulations for the  
6 management and administration of policies of the commission and the  
7 conduct of employees of the commission;

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

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

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

15          Sec. 34. Section 29-3930, Revised Statutes Supplement,  
16 2004, is amended to read:

17          29-3930. The following divisions are established within  
18 the commission:

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

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

26           (3) The violent crime and drug defense division shall be  
27 available to assist in the defense of certain violent and drug  
28 crimes as defined by the commission, subject to the caseload

1 standards of the commission;

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

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

9 Sec. 35. Section 55-480, Reissue Revised Statutes of  
10 Nebraska, is amended to read:

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

19 Sec. 36. Section 83-1,105.01, Revised Statutes  
20 Supplement, 2004, is amended to read:

21 83-1,105.01. Except when a term of life imprisonment  
22 without possibility of parole is required by law, in imposing an  
23 indeterminate sentence upon an offender the court shall:

24 (1) Fix the minimum and maximum limits of the sentence to  
25 be served within the limits provided by law for any class of felony  
26 other than a Class IV felony, except that when a maximum limit of  
27 life is imposed by the court for a Class IB felony, the minimum  
28 limit may be any term of years not less than the statutory

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

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

11 (3) (a) When the court is of the opinion that imprisonment  
12 may be appropriate but desires more detailed information as a basis  
13 for determining the sentence to be imposed than has been provided  
14 by the presentence report required by section 29-2261, the court  
15 shall commit an offender to the Department of Correctional Services  
16 for a period not exceeding ninety days. The department shall  
17 conduct a complete study of the offender during that time,  
18 inquiring into such matters as his or her previous delinquency or  
19 criminal experience, social background, capabilities, and mental,  
20 emotional, and physical health and the rehabilitative resources or  
21 programs which may be available to suit his or her needs. By the  
22 expiration of the period of commitment or by the expiration of such  
23 additional time as the court shall grant, not exceeding a further  
24 period of ninety days, the offender shall be returned to the court  
25 for sentencing and the court shall be provided with a written  
26 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

1 recommendations, the court shall proceed to sentence the offender  
2 in accordance with any applicable provision of law. The term of  
3 the sentence shall run from the date of original commitment under  
4 this subdivision.

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

13 Sec. 37. Section 83-4,143, Revised Statutes Supplement,  
14 2004, is amended to read:

15 83-4,143. (1) It is the intent of the Legislature that  
16 the court target the felony offender (a) who is experiencing his or  
17 her first prison sentence, (b) for whom the court finds that other  
18 conditions of a sentence of probation, in and of themselves, are  
19 not suitable, and (c) who, without the existence of an  
20 incarceration work camp, would, in all likelihood, be sentenced to  
21 prison. It is the further intent of the Legislature that prior  
22 offenders who were incarcerated for minor nonviolent offenses are  
23 not automatically ineligible to be placed in an incarceration work  
24 camp as a condition of a sentence of probation.

25 (2) When the court is of the opinion that imprisonment is  
26 appropriate, but that a brief and intensive period of incarceration  
27 may better serve the interests of society, the court may place an  
28 offender in an incarceration work camp for a period not to exceed

1 one hundred eighty days as a condition of a sentence of probation.  
2 The court may consider such placement if the offender (a) is a male  
3 or female offender who is convicted as an adult, (b) is medically  
4 and mentally fit to participate, with allowances given for  
5 reasonable accommodation as determined by medical and mental health  
6 professionals, (c) has not previously been incarcerated for a  
7 violent felony crime, and (d) has not demonstrated chronic violent  
8 behavior. Offenders convicted of a crime under sections 28-319 to  
9 28-321 ~~or of any capital crime~~ are not eligible to be placed in an  
10 incarceration work camp.

11           Sec. 38. Original sections 23-3406, 24-1106, 25-1140.09,  
12 27-609, 28-104, 29-1822, 29-2005, 29-2006, 29-2020, 29-2282,  
13 29-2407, 29-2801, 29-3205, 29-3928, and 55-480, Reissue Revised  
14 Statutes of Nebraska, and sections 27-803, 28-105, 28-303, 29-1603,  
15 29-2004, 29-2027, 29-2204, 29-2520, 29-2521, 29-2522, 29-2523,  
16 29-3920, 29-3922, 29-3929, 29-3930, 83-1,105.01, and 83-4,143,  
17 Revised Statutes Supplement, 2004, are repealed.

18           Sec. 39. The following sections are outright repealed:  
19 Sections 24-1105, 29-2521.01, 29-2521.03, 29-2521.04, 29-2524.01,  
20 29-2524.02, 29-2527, 29-2528, 29-2532 to 29-2546, 29-2811, and  
21 83-1,132, Reissue Revised Statutes of Nebraska, and sections  
22 28-105.01, 29-2519, 29-2521.02, 29-2524, and 29-2525, Revised  
23 Statutes Supplement, 2004.