

E AND R AMENDMENTS TO LB 36

Introduced by Enrollment and Review Committee: Nordquist, 7,  
Chairperson

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

3           Section 1. Section 29-2537, Reissue Revised Statutes of  
4 Nebraska, is amended to read:

5           29-2537 (1) If any ~~convict~~ convicted person under  
6 sentence of death shall appear to be ~~mentally~~ incompetent, the  
7 ~~warden or sheriff having him or her in custody~~ Director of  
8 Correctional Services shall forthwith give notice thereof to a  
9 judge of the district court of the judicial district in which the  
10 ~~convict~~ convicted person was tried and sentenced and such judge  
11 shall at once make such investigation as shall satisfy him or  
12 her as to whether a commission ought to be named to examine such  
13 ~~convict.~~ convicted person.

14           (2) If he ~~or she~~ shall determine the court determines  
15 that there is not sufficient reason for the appointment of a  
16 commission, he ~~or she~~ the court shall so find and refuse to suspend  
17 the execution of the ~~convict.~~ convicted person. If the judge shall  
18 ~~determine~~ court determines that a commission ought to be appointed  
19 to examine such ~~convict,~~ he ~~or she~~ convicted person, the court  
20 shall make a finding to that effect and cause it to be entered  
21 upon the records of the district court in the county in which  
22 such ~~convict~~ convicted person was sentenced, and, if necessary,  
23 the judge court shall suspend the execution and appoint ~~the three~~

1 ~~superintendents of the state centers at Lincoln, Hastings, and~~  
2 ~~Norfolk~~ three licensed mental health professionals employed by  
3 the state as a commission to examine such ~~convict~~, convicted  
4 person. The commission shall examine the ~~convict~~ convicted person  
5 to determine whether he or she is ~~mentally~~ competent or ~~mentally~~  
6 incompetent and shall report its findings in writing to ~~such judge~~  
7 the court within ten days after its appointment. ~~If for any reason~~  
8 ~~any of such superintendents cannot serve in such capacity,~~ the  
9 judge shall appoint in his or her place one of the assistant  
10 superintendents of such center. If two members of the commission  
11 shall find the ~~convict~~ mentally convicted person incompetent,  
12 the judge ~~court~~ shall suspend his or her the convicted person's  
13 execution until further order. ~~Any time thereafter,~~ when it shall  
14 be made to appear to the judge that the ~~convict~~ has become ~~mentally~~  
15 competent, he or she shall appoint a commission in the manner  
16 provided in this section, who shall make another investigation as  
17 to the mental competency of the ~~convict~~, and in case such ~~convict~~  
18 is again declared ~~mentally~~ incompetent his or her execution shall  
19 be suspended by the judge until further order. Such proceedings  
20 may be had at such times as the judge shall order until it  
21 is either determined that the ~~convict~~ is ~~mentally~~ competent or  
22 incurably mentally incompetent. Thereafter, the court shall appoint  
23 a commission annually to review the convicted person's competency.  
24 The results of such review shall be provided to the court. If  
25 the convicted person is subsequently found to be competent by two  
26 members of the commission, the court shall certify that finding  
27 to the Supreme Court which shall then establish a date for the

1 enforcement of the convicted person's sentence.

2 (3) The standard for the determination of competency  
3 under this section shall be the same as the standard for  
4 determining competency to stand trial.

5 Sec. 2. Section 29-2538, Reissue Revised Statutes of  
6 Nebraska, is amended to read:

7 29-2538 If a court has suspended the execution of  
8 the convicted person pending an investigation as to his or her  
9 competency, the date for the enforcement of the convicted person's  
10 sentence has passed, and the convicted person is found to be  
11 competent, the court shall certify that finding to the Supreme  
12 Court which shall appoint a day for the enforcement of the  
13 convicted person's sentence. In case such judge has suspended the  
14 execution of the convict pending an investigation as to his sanity,  
15 and the convict shall be found to be sane, the judge shall appoint  
16 a day for his execution, which shall be carried into effect in the  
17 same manner as provided in the original sentence, a certified copy  
18 of which shall be transmitted by mail to the executioner.

19 Sec. 3. Section 29-2539, Reissue Revised Statutes of  
20 Nebraska, is amended to read:

21 29-2539 The members of such the commission appointed  
22 pursuant to section 29-2537 shall each receive mileage at the  
23 rate authorized in section 81-1176 for state employees for each  
24 mile actually and necessarily traveled in reaching and returning  
25 from the place where the ~~convict~~ convicted person is confined  
26 and examined, and it is hereby made the duty of the commission  
27 to act in this capacity without compensation other than that

1 already provided for them by law. All of the findings and orders  
2 aforesaid shall be entered in the district court records of the  
3 county wherein the ~~convict~~ convicted person was originally tried  
4 and sentenced, and the costs therefor, including those providing  
5 for the mileage of the members of the commission, shall be allowed  
6 and paid in the usual manner by the county in which the ~~convict~~  
7 convicted person was tried and sentenced to death.

8           Sec. 4. Section 29-2540, Reissue Revised Statutes of  
9 Nebraska, is amended to read:

10           29-2540 If a female ~~convict~~ convicted person under  
11 sentence of death shall appear to be pregnant, the ~~warden or~~  
12 ~~sheriff~~ Director of Correctional Services shall in like manner  
13 notify the judge of the district court of the county in which she  
14 was sentenced, who shall in all things proceed as in the case of a  
15 ~~mentally an incompetent convict.~~ convicted person.

16           Sec. 5. Section 29-2541, Reissue Revised Statutes of  
17 Nebraska, is amended to read:

18           29-2541 If the commission shall find appointed pursuant  
19 to section 29-2537 finds that the female ~~convict~~ convicted person  
20 is pregnant, the ~~judge~~ court shall suspend the execution of her  
21 sentence. At such time as it shall be determined that such woman  
22 is no longer pregnant, the judge shall appoint a ~~time~~ date for her  
23 execution, ~~which shall be carried into effect in the same manner~~  
24 ~~as provided in the original sentence.~~ and issue a warrant directing  
25 the enforcement of the sentence of death which shall be delivered  
26 to the Director of Correctional Services. The costs and expenses  
27 thereof shall be the same as those provided for in the case of a

1 ~~mentally an incompetent convict~~ convicted person and shall be paid  
2 in the same manner.

3           Sec. 6. Section 29-2542, Reissue Revised Statutes of  
4 Nebraska, is amended to read:

5           29-2542 If any person who has been convicted of a crime  
6 punishable by death, and sentenced to be ~~executed,~~ death, shall  
7 escape, and shall not be retaken before the time fixed for his  
8 or her execution, it shall be lawful for the ~~warden,~~ Director of  
9 Correctional Services, or any sheriff or other officer or person,  
10 to rearrest such person and return him or her to the custody of the  
11 ~~warden of the Nebraska Penal and Correctional Complex,~~ director,  
12 who shall thereupon make return thereof to the Governor of the  
13 state, and the Governor shall thereupon notify the Supreme Court  
14 that such person has been returned to custody. Upon receipt of that  
15 notice, the Supreme Court shall then issue a warrant, fixing and  
16 appointing a day for the execution, a date for the enforcement of  
17 the sentence which shall be delivered to the director. The date  
18 of execution shall be set no later than sixty days following the  
19 issuance of the warrant. carried into effect by the warden in the  
20 same manner as herein provided for the execution of an original  
21 sentence of death.

22           Sec. 7. Section 29-2543, Reissue Revised Statutes of  
23 Nebraska, is amended to read:

24           29-2543 (1) Whenever any person has been tried and  
25 convicted before any district court in this state, of a crime  
26 punishable by death and under the conviction has been sentenced  
27 by the court to suffer death, and has had his or her sentence of

1 death affirmed by the Supreme Court on mandatory direct review,  
2 it shall be the duty of the ~~clerk of the court before which the~~  
3 ~~conviction was had~~ Supreme Court to issue a warrant, under the  
4 seal of the court, reciting therein the conviction and sentence and  
5 establishing a date for the enforcement of the sentence directed to  
6 ~~the warden of the Nebraska Penal and Correctional Complex,~~ Director  
7 of Correctional Services, commanding him or her to proceed at the  
8 time named in the sentence to carry the same into execution by  
9 causing the person so convicted and sentenced to be electrocuted  
10 by the passage of an electric current through the body until dead.  
11 ~~The clerk shall deliver the warrant to the sheriff of the county in~~  
12 ~~which conviction was had and such sheriff shall thereupon forthwith~~  
13 ~~remove such convicted person to a Department of Correctional~~  
14 ~~Services adult correctional facility of the state and there deliver~~  
15 ~~him or her,~~ together with the warrant, into the custody of the  
16 warden who shall receive and safely keep such convict within a  
17 Department of Correctional Services adult correctional facility  
18 until the time of execution or until otherwise ordered by competent  
19 authority. warrant. The date of execution shall be set no later  
20 than sixty days following the issuance of the warrant.

21 (2) Thereafter, if the initial execution date has been  
22 stayed and the original execution date has expired, the Supreme  
23 Court shall establish a new date for enforcement of the sentence  
24 upon receipt of notice from the Attorney General that the stay  
25 of execution is no longer in effect and issue its warrant to the  
26 director. The date of execution shall be set no later than sixty  
27 days following the issuance of the warrant.

1           Sec. 8. Section 29-2546, Reissue Revised Statutes of  
2 Nebraska, is amended to read:

3           29-2546 Whenever the Supreme Court reverses the judgment  
4 of conviction in accordance with which any ~~convict~~ convicted person  
5 has been sentenced to death and is confined in a Department  
6 of Correctional Services adult correctional facility as herein  
7 provided, it shall be the duty of the ~~warden,~~ Director of  
8 Correctional Services, upon receipt of a copy of such judgment  
9 of reversal, duly certified by the clerk of the court and under  
10 the seal thereof, to forthwith deliver such ~~convict~~ convicted  
11 person into the custody of the sheriff of the county in which the  
12 conviction was had to be held in the jail of the county awaiting  
13 the further judgment and order of the court in the case.

14           Sec. 9. Section 29-2532, Reissue Revised Statutes of  
15 Nebraska, is amended to read:

16           29-2532 A sentence of death shall be enforced by the  
17 intravenous injection of a substance or substances in a quantity  
18 sufficient to cause death. The lethal substance or substances shall  
19 be administered in compliance with an execution protocol created  
20 and maintained by the Department of Correctional Services. The  
21 mode of inflicting the punishment of death, in all cases, shall  
22 be by causing to pass through the body of the convicted person  
23 a current of electricity of sufficient intensity to cause death,  
24 and the application of such current shall be continued until  
25 such convicted person is dead. The warden of the Nebraska Penal  
26 and Correctional Complex, and in case of his death, sickness,  
27 absence or inability to act, then the deputy warden, shall be

1 ~~the executioner; PROVIDED, the warden may in writing specially~~  
2 ~~designate and appoint a suitable and competent person to act for~~  
3 ~~him, and under his direction, as executioner in any particular~~  
4 ~~case. A crime punishable by death must be punished according to the~~  
5 ~~provisions herein made and not otherwise.~~

6           Sec. 10. (1) A sentence of death shall be enforced  
7 by the Director of Correctional Services. Upon receipt of an  
8 execution warrant, the director shall proceed at the time named  
9 in the warrant to enforce the sentence, unless the director is  
10 informed that enforcement of the sentence has been stayed by  
11 competent judicial authority, the sentence has been commuted, or  
12 the conviction has been pardoned.

13           (2) The director shall create, modify, and maintain a  
14 written execution protocol describing the process and procedures  
15 by which an execution will be carried out consistent with  
16 this section. The director shall (a) select the substance or  
17 substances to be employed in an execution by lethal injection,  
18 (b) create a documented process for obtaining the necessary  
19 substances, (c) designate an execution team composed of one or  
20 more executioners and any other personnel deemed necessary to  
21 effectively and securely conduct an execution, (d) describe the  
22 respective responsibilities of each member of the execution team,  
23 (e) describe the training required of each member of the execution  
24 team, and (f) perform or authorize any other details deemed  
25 necessary and appropriate by the director.

26           (3) The execution protocol shall require that the  
27 first or only substance injected be capable of rendering the



1 convicted person unconscious and that a determination sufficient to  
2 reasonably verify that the convicted person is unconscious be made  
3 before the administration of any additional substances, if any.

4 Sec. 11. Notwithstanding any other provision of law:

5 (1) Any prescription, preparation, compounding,  
6 dispensing, obtaining, or administration of the substances deemed  
7 necessary to perform a lethal injection shall not constitute  
8 the practice of medicine or any other profession relating to  
9 health care which is subject by law to regulation, licensure, or  
10 certification;

11 (2) A pharmacist or pharmaceutical supplier may dispense  
12 the designated substances, without a prescription, to the Director  
13 of Correctional Services or the director's designee upon production  
14 of a written request from the director for the designated  
15 substances necessary to conduct an execution;

16 (3) Obtaining, preparing, compounding, dispensing,  
17 and administering the substance or substances designated by  
18 the execution protocol does not violate the Uniform Controlled  
19 Substances Act or sections 71-2501 to 71-2512; and

20 (4) If a person who is a member of the execution team  
21 is licensed by a board or department, the licensing board or  
22 department shall not censure, reprimand, suspend, revoke, or take  
23 any other disciplinary action against that person's license as a  
24 result of that person's participation in a court-ordered execution.

25 Sec. 12. (1) The Director of Correctional Services may  
26 designate any person qualified under the terms of the execution  
27 protocol to administer to the convicted person the substances

1 necessary to comply with the execution protocol.

2 (2) The identity of all members of the execution team,  
3 and any information reasonably calculated to lead to the identity  
4 of such members, shall be confidential and exempt from disclosure  
5 pursuant to sections 84-712 to 84-712.09 and shall not be subject  
6 to discovery or introduction as evidence in any civil proceeding  
7 unless extraordinary good cause is shown and a protective order  
8 is issued by a district court limiting dissemination of such  
9 information.

10 Sec. 13. No death sentence shall be voided or reduced  
11 as a result of a determination that a method of execution was  
12 declared unconstitutional under the Constitution of Nebraska or  
13 the Constitution of the United States. In any case in which an  
14 execution method is declared unconstitutional, the death sentence  
15 shall remain in force until the sentence can be lawfully executed  
16 by any valid method of execution.

17 Sec. 14. Section 29-2533, Reissue Revised Statutes of  
18 Nebraska, is amended to read:

19 ~~29-2533~~ When any convicted person shall be is sentenced  
20 to be ~~electrocuted,~~ death, such punishment shall be inflicted  
21 within the walls of the Department of Correctional Services adult  
22 correctional facility, ~~or within the yard or enclosure adjacent~~  
23 ~~thereto,~~ at a Department of Correctional Services facility under  
24 the supervision of the ~~warden~~ Director of Correctional Services and  
25 in such a manner as to exclude the view of all persons ~~save~~ except  
26 those permitted to be present as provided in sections ~~29-2534 and~~  
27 ~~29-2535.~~ 15 and 16 of this act.

1           Sec. 15. Section 29-2534, Reissue Revised Statutes of  
2 Nebraska, is amended to read:

3           ~~29-2534~~ Besides the ~~warden~~, the ~~deputy warden~~, the  
4 ~~executioner~~, in case one shall have been appointed by the ~~warden~~,  
5 and his ~~assistants~~, Director of Correctional Services and those  
6 persons required to be present under the execution protocol, the  
7 following persons, and no others, except as provided in section  
8 ~~29-2535~~, 16 of this act, may be present at the execution: (1) The  
9 clergyman member of the clergy in attendance upon the prisoner,  
10 such other persons, not exceeding three in number as the prisoner  
11 may designate, convicted person; (2) no more than three persons  
12 selected by the convicted person; (3) no more than three persons  
13 representing the victim or victims of the crime; and (4) such other  
14 persons, not exceeding six in number, as the warden director may  
15 designate. At least two persons designated by the director shall be  
16 professional members of the Nebraska news media.

17           Sec. 16. Section 29-2535, Reissue Revised Statutes of  
18 Nebraska, is amended to read:

19           ~~29-2535~~ Whenever the ~~warden~~ Director of Correctional  
20 Services shall deem the presence of a military force necessary to  
21 carry into effect the provisions of sections ~~29-2532 and 29-2533~~,  
22 9 and 14 of this act, he or she shall make the fact known to the  
23 Governor of the state, who is hereby authorized to call out so much  
24 of the military force of the state as in his or her judgment may  
25 be necessary for the purpose.

26           Sec. 17. Section 29-2536, Reissue Revised Statutes of  
27 Nebraska, is amended to read:

1                   ~~29-2536~~ Whenever the ~~warden~~ Director of Correctional  
2 Services shall inflict the punishment of death upon a ~~convict,~~  
3 convicted person, in obedience to the command of the court, he or  
4 she shall make return of his or her proceedings as soon as may  
5 be to the clerk of the court where the conviction was had, and  
6 the clerk shall subjoin the return to the record of conviction and  
7 sentence.

8                   Sec. 18. The Revisor of Statutes shall assign sections 9  
9 and 14 to 17 of this act to Chapter 83, article 9.

10                  Sec. 19. If any section in this act or any part of any  
11 section is declared invalid or unconstitutional, the declaration  
12 shall not affect the validity or constitutionality of the remaining  
13 portions.

14                  Sec. 20. Original sections 29-2532, 29-2533, 29-2534,  
15 29-2535, 29-2536, 29-2537, 29-2538, 29-2539, 29-2540, 29-2541,  
16 29-2542, 29-2543, and 29-2546, Reissue Revised Statutes of  
17 Nebraska, are repealed.

18                  Sec. 21. The following sections are outright repealed:  
19 Sections 29-2544 and 29-2545, Reissue Revised Statutes of Nebraska.

20                  2. On page 1, line 6, after "provide" insert ", change,  
21 and eliminate certain"; and in line 8 after the first semicolon  
22 insert "to change certain duties of the Supreme Court;".