

LEGISLATURE OF NEBRASKA

ONE HUNDRED FIRST LEGISLATURE

FIRST SESSION

LEGISLATIVE BILL 306

Introduced by Council, 11.

Read first time January 15, 2009

Committee: Judiciary

A BILL

1 FOR AN ACT relating to crimes and offenses; to amend sections
2 23-3406, 24-1106, 25-1140.09, 28-104, 28-105, 28-303,
3 29-1602, 29-1603, 29-1822, 29-2004, 29-2005, 29-2006,
4 29-2020, 29-2027, 29-2204, 29-2261, 29-2282, 29-2407,
5 29-2801, 29-3205, 29-3920, 29-3922, 29-3928, 29-3929,
6 29-3930, 55-480, 83-1,110.02, and 83-4,143, Reissue
7 Revised Statutes of Nebraska; to change a penalty
8 from death to life imprisonment without possibility
9 of parole as prescribed; to eliminate capital
10 punishment provisions; to provide for retroactive
11 applicability of such penalty change; to change
12 provisions relating to restitution; to harmonize
13 provisions; to repeal the original sections; and to
14 outright repeal sections 24-1105, 28-105.01, 29-2519,

LB 306

LB 306

1 29-2520, 29-2521, 29-2521.01, 29-2521.02, 29-2521.03,
2 29-2521.04, 29-2521.05, 29-2522, 29-2523, 29-2524,
3 29-2524.01, 29-2524.02, 29-2525, 29-2527, 29-2528,
4 29-2532, 29-2533, 29-2534, 29-2535, 29-2536, 29-2537,
5 29-2538, 29-2539, 29-2540, 29-2541, 29-2542, 29-2543,
6 29-2544, 29-2545, 29-2546, 29-2811, 83-1,105.01, and
7 83-1,132, Reissue Revised Statutes of Nebraska.
8 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, subject only to the constitutional power

1 of the Board of Pardons, is preferable to the current capital
2 punishment scheme. Such a maximum sentence reflects this state's
3 desire to ensure the safety of its citizens, assist victims'
4 families when possible, and yet preserve this state's values of
5 human life, uniform fairness, and basic decency;

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

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

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

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

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

1 may be for good cause only.

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

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

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

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

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

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

25 (6) The contract between the contracting attorney and

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

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

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

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

25 24-1106 (1) In cases which were appealable to the Supreme

1 Court before September 6, 1991, the appeal, if taken, shall be to
2 the Court of Appeals except in ~~capital cases~~ cases in which life
3 imprisonment without possibility of parole has been imposed, and
4 cases involving the constitutionality of a statute.

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

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

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

16 (c) Whether the case raises a question of law regarding
17 the validity of a statute;

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

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

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

25 (3) The Supreme Court shall by rule provide for the

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

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

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

1 section.

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

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

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

24 28-104 The terms offense and crime are synonymous as used
25 in this code and mean a violation of, or conduct defined by, any

1 statute for which a fine, or imprisonment, ~~or death~~ may be imposed.

2 Sec. 6. Section 28-105, Reissue Revised Statutes of
3 Nebraska, is amended to read:

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

9	Class I felony	Death
10	<u>Class I felony</u>	<u>Life imprisonment</u>
11		<u>without possibility of parole</u>
12	Class IA felony	Life imprisonment without parole
13	<u>Class IA felony</u>	<u>Life imprisonment</u>
14	Class IB felony	Maximum - life imprisonment
15		Minimum - twenty years imprisonment
16	Class IC felony	Maximum - fifty years imprisonment
17		Mandatory minimum - five years imprisonment
18	Class ID felony	Maximum - fifty years imprisonment
19		Mandatory minimum - three years imprisonment
20	Class II felony	Maximum - fifty years imprisonment
21		Minimum - one year imprisonment
22	Class III felony	Maximum - twenty years imprisonment, or
23		twenty-five thousand dollars fine, or both
24		Minimum - one year imprisonment
25	Class IIIA felony	Maximum - five years imprisonment, or

1 ten thousand dollars fine, or both
 2 Minimum - none
 3 Class IV felony Maximum - five years imprisonment, or
 4 ten thousand dollars fine, or both
 5 Minimum - none

6 ~~(2)~~ (2)(a) All sentences of imprisonment for Class I, IA,
 7 IB, IC, ID, II, and III felonies and sentences of one year or
 8 more for Class IIIA and IV felonies shall be served in institutions
 9 under the jurisdiction of the Department of Correctional Services.

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

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

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

24 Sec. 7. Section 28-303, Reissue Revised Statutes of

1 Nebraska, is amended to read:

2 28-303 A person commits murder in the first degree if
3 he or she kills another person (1) purposely and with deliberate
4 and premeditated malice, or (2) in the perpetration of or attempt
5 to perpetrate any sexual assault in the first degree, arson,
6 robbery, kidnapping, hijacking of any public or private means
7 of transportation, or burglary, or (3) by administering poison
8 or causing the same to be done; or if by willful and corrupt
9 perjury or subornation of the same he or she purposely procures the
10 conviction and execution of any innocent person. ~~The determination~~
11 ~~of whether murder in the first degree shall be punished as a Class~~
12 ~~I or Class IA felony shall be made pursuant to sections 29-2519 to~~
13 ~~29-2524. Murder in the first degree is a Class I felony.~~

14 Sec. 8. Section 29-1602, Reissue Revised Statutes of
15 Nebraska, is amended to read:

16 29-1602 All informations shall be filed in the court
17 having jurisdiction of the offense specified therein, by the
18 prosecuting attorney of the proper county as informant. The
19 prosecuting attorney shall subscribe his or her name thereto
20 and endorse thereon the names of the witnesses known to him or her
21 at the time of filing. After the information has been filed, the
22 prosecuting attorney shall endorse on the information the names of
23 such other witnesses as shall then be known to him or her as the
24 court in its discretion may prescribe. ~~7 except that if a notice of~~
25 ~~aggravation is contained in the information as provided in section~~

1 ~~29-1603, the prosecuting attorney may endorse additional witnesses~~
2 ~~at any time up to and including the thirtieth day prior to the~~
3 ~~trial of guilt.~~

4 Sec. 9. Section 29-1603, Reissue Revised Statutes of
5 Nebraska, is amended to read:

6 29-1603 (1) All informations shall be verified by the
7 oath of the county attorney, complainant, or some other person, and
8 the offenses charged therein shall be stated with the same fullness
9 and precision in matters of substance as is required in indictments
10 in like cases.

11 ~~(2)(a) Any information charging a violation of section~~
12 ~~28-303 and in which the death penalty is sought shall contain~~
13 ~~a notice of aggravation which alleges one or more aggravating~~
14 ~~circumstances, as such aggravating circumstances are provided in~~
15 ~~section 29-2523. The notice of aggravation shall be filed as~~
16 ~~provided in section 29-1602. It shall constitute sufficient notice~~
17 ~~to describe the alleged aggravating circumstances in the language~~
18 ~~provided in section 29-2523.~~

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

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

25 ~~(3) (2) Different offenses and different degrees of the~~

1 same offense may be joined in one information, in all cases
2 in which the same might by different counts be joined in one
3 indictment; and in all cases a defendant or defendants shall have
4 the same right, as to proceedings therein, as the defendant or
5 defendants would have if prosecuted for the same offense upon
6 indictment.

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

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

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

21 29-2004 (1) All parties may stipulate that the jury may
22 be selected up to thirty-one days prior to the date of trial. The
23 stipulation must be unanimous among all parties and evidenced by a
24 joint stipulation to the county court.

25 (2) In all cases, except as may be otherwise expressly

1 provided, the accused shall be tried by a jury drawn, summoned, and
2 impaneled according to provisions of the code of civil procedure,
3 except that whenever in the opinion of the court the trial is
4 likely to be a protracted one, the court may, immediately after
5 the jury is impaneled and sworn, direct the calling of one or two
6 additional jurors, to be known as alternate jurors. Such jurors
7 shall be drawn from the same source and in the same manner, and
8 have the same qualifications as regular jurors, and be subject to
9 examination and challenge as such jurors, except that each party
10 shall be allowed one peremptory challenge to each alternate juror.
11 The alternate jurors shall take the proper oath or affirmation and
12 shall be seated near the regular jurors with equal facilities for
13 seeing and hearing the proceedings in the cause, and shall attend
14 at all times upon the trial of the cause in company with the
15 regular jurors. They shall obey all orders and admonitions of the
16 court, and if the regular jurors are ordered to be kept in the
17 custody of an officer during the trial of the cause, the alternate
18 jurors shall also be kept with the other jurors and, except as
19 hereinafter provided, shall be discharged upon the final submission
20 of the cause to the jury. ~~If an information charging a violation~~
21 ~~of section 28-303 and in which the death penalty is sought contains~~
22 ~~a notice of aggravation, the alternate jurors shall be retained as~~
23 ~~provided in section 29-2520.~~ If, before the final submission of the
24 cause a regular juror dies or is discharged, the court shall order
25 the alternate juror, if there is but one, to take his or her place

1 in the jury box. If there are two alternate jurors the court shall
2 select one by lot, who shall then take his or her place in the jury
3 box. After an alternate juror is in the jury box he or she shall be
4 subject to the same rules as a regular juror.

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

7 29-2005 Every person arraigned for any crime punishable
8 ~~with death, or~~ by imprisonment for life without possibility of
9 parole or imprisonment for life, shall be admitted on his or her
10 trial to a peremptory challenge of twelve jurors. Every ~~and no~~
11 ~~more,~~ every person arraigned for any offense that may be punishable
12 by imprisonment for a term exceeding eighteen months and less than
13 life, shall be admitted to a peremptory challenge of six jurors. In
14 ~~and in~~ all other criminal trials, the defendant shall be allowed
15 a peremptory challenge of three jurors. The attorney prosecuting
16 on behalf of the state shall be admitted to a peremptory challenge
17 of twelve jurors in all cases when the offense is punishable with
18 ~~death or~~ by imprisonment for life without possibility of parole or
19 imprisonment for life, six jurors when the offense is punishable
20 by imprisonment for a term exceeding eighteen months and less than
21 life, and three jurors in all other cases. In each case for which
22 ~~PROVIDED,~~ that in all cases where alternate jurors are called, as
23 provided in section 29-2004, ~~then in that case~~ both the defendant
24 and the attorney prosecuting for the state shall each be allowed
25 one added peremptory challenge to each alternate juror.

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

3 29-2006 The following shall be good causes for challenge
4 to any person called as a juror or alternate juror, on the trial of
5 any indictment:

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

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

24 (3) ~~in indictments for an offense the punishment whereof~~
25 ~~is capital,~~ ~~that his opinions are such as to preclude him from~~

1 ~~finding the accused guilty of an offense punishable with death;~~ (4)
 2 ~~that he~~ That he or she is a relation within the fifth degree to the
 3 person alleged to be injured or attempted to be injured, or to the
 4 person on whose complaint the prosecution was instituted, or to the
 5 defendant;

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

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

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

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

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

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

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

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

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

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

13 Sec. 16. Section 29-2204, Reissue Revised Statutes of
14 Nebraska, is amended to read:

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

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

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

24 ~~(A) (a)(i) Fix the minimum and maximum limits of the~~
25 ~~sentence to be served within the limits provided by law for any~~

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

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

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

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

22 If any discrepancy exists between the statement of
23 the minimum limit of the sentence and the statement of parole
24 eligibility or between the statement of the maximum limit of the
25 sentence and the statement of mandatory release, the statements

1 of the minimum limit and the maximum limit shall control the
2 calculation of the offender's term. If the court imposes more
3 than one sentence upon an offender or imposes a sentence upon
4 an offender who is at that time serving another sentence, the
5 court shall state whether the sentences are to be concurrent or
6 consecutive.

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

1 in accordance with subsection (1) of this section. The term of the
2 sentence shall run from the date of original commitment under this
3 subsection.

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

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

23 Sec. 17. Section 29-2261, Reissue Revised Statutes of
24 Nebraska, is amended to read:

25 29-2261 (1) Unless it is impractical to do so, when an

1 offender has been convicted of a felony, ~~other than murder in the~~
2 ~~first degree,~~ the court shall not impose sentence without first
3 ordering a presentence investigation of the offender and according
4 due consideration to a written report of such investigation. ~~When~~
5 ~~an offender has been convicted of murder in the first degree and~~
6 ~~(a) a jury renders a verdict finding the existence of one or more~~
7 ~~aggravating circumstances as provided in section 29-2520 or (b)(i)~~
8 ~~the information contains a notice of aggravation as provided in~~
9 ~~section 29-1603 and (ii) the offender waives his or her right to~~
10 ~~a jury determination of the alleged aggravating circumstances,~~ the
11 court shall not commence the sentencing determination proceeding as
12 provided in section 29-2521 without first ordering a presentence
13 investigation of the offender and according due consideration to a
14 written report of such investigation.

15 (2) A court may order a presentence investigation in any
16 case, except in cases in which an offender has been convicted
17 of a Class IIIA misdemeanor, a Class IV misdemeanor, a Class V
18 misdemeanor, a traffic infraction, or any corresponding city or
19 village ordinance.

20 (3) The presentence investigation and report shall
21 include, when available, an analysis of the circumstances attending
22 the commission of the crime, the offender's history of delinquency
23 or criminality, physical and mental condition, family situation and
24 background, economic status, education, occupation, and personal
25 habits, and any other matters that the probation officer deems

1 relevant or the court directs to be included. All local and state
2 police agencies and Department of Correctional Services adult
3 correctional facilities shall furnish to the probation officer
4 copies of such criminal records, in any such case referred to
5 the probation officer by the court of proper jurisdiction, as the
6 probation officer shall require without cost to the court or the
7 probation officer.

8 Such investigation shall also include:

9 (a) Any written statements submitted to the county
10 attorney by a victim; and

11 (b) Any written statements submitted to the probation
12 officer by a victim.

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

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

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

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

21 (5) Before imposing sentence, the court may order the
22 offender to submit to psychiatric observation and examination for
23 a period of not exceeding sixty days or such longer period as the
24 court determines to be necessary for that purpose. The offender
25 may be remanded for this purpose to any available clinic or mental

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

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

1 (7) If an offender is sentenced to imprisonment, a copy
2 of the report of any presentence investigation or psychiatric
3 examination shall be transmitted immediately to the Department of
4 Correctional Services. Upon request, the Board of Parole or the
5 Office of Parole Administration may receive a copy of the report
6 from the department.

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

15 (9) Notwithstanding subsection (6) of this section, the
16 Supreme Court or an agent of the Supreme Court acting under the
17 direction and supervision of the Chief Justice shall have access to
18 psychiatric examinations and presentence investigations and reports
19 for research purposes. The Supreme Court and its agent shall
20 treat such information as confidential and nothing identifying any
21 individual shall be released.

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

24 29-2282 In determining restitution, if the offense
25 results in damage, destruction, or loss of property, the court may

1 require: (1) Return of the property to the victim, if possible;
2 (2) payment of the reasonable value of repairing the property,
3 including property returned by the defendant; or (3) payment of
4 the reasonable replacement value of the property, if return or
5 repair is impossible, impractical, or inadequate. If the offense
6 results in bodily injury, the court may require payment of
7 necessary medical care, including, but not limited to, physical or
8 psychological treatment and therapy, and payment for income lost
9 due to such bodily injury. If the offense results in the death of
10 the victim, the court may require payment to be made to the estate
11 of the victim for any pain and suffering of the victim caused by
12 the offense, for the cost of any medical care prior to death, and
13 for funeral and burial expenses.

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

16 29-2407 Judgments for fines and costs in criminal cases
17 shall be a lien upon all the property of the defendant within the
18 county from the time of docketing the case by the clerk of the
19 proper court, and judgments upon forfeited recognizance shall be a
20 like lien from the time of forfeiture. No property of any convict
21 shall be exempt from execution issued upon any such judgment as
22 set out in this section against such convict except in cases when
23 the convict is sentenced to a Department of Correctional Services
24 adult correctional facility for a period of more than two years,
25 ~~or to suffer death,~~ in which cases case there shall be the same

1 exemptions as at the time may be provided by law for civil cases.
2 The lien on real estate of any such judgment for costs shall
3 terminate as provided in section 25-1716.

4 Sec. 20. A sentence of life imprisonment without
5 possibility of parole imposed for a Class I felony means that
6 subject only to the constitutional power of the Board of Pardons in
7 Article IV, section 13, of the Constitution of Nebraska to modify
8 such sentence by commutation, a person so sentenced shall not
9 under any circumstances whatsoever be paroled. A sentence of life
10 imprisonment means that the person so sentenced shall be eligible
11 for consideration of parole only under the conditions prescribed by
12 sections 83-192 and 83-1,106 to 83-1,125.

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

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

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

1 29-2801 If any person, except persons convicted of some
2 crime or offense for which they stand committed, ~~or persons~~
3 ~~committed for treason or felony, the punishment whereof is capital,~~
4 ~~plainly and specially expressed in the warrant of commitment,~~ now
5 or in the future, ~~is or shall be~~ confined in any jail of this
6 state, ~~or shall be~~ is unlawfully deprived of his or her liberty,
7 and ~~shall make~~ makes application, either by ~~him~~ himself or herself
8 or by any person on his or her behalf, to any one of the judges
9 of the district court, or to any county judge, and does at the
10 same time produce to such judge a copy of the commitment or cause
11 of detention of such person, or if the person so imprisoned or
12 detained is imprisoned or detained without any legal authority,
13 upon making the same appear to such judge, by oath or affirmation,
14 ~~it shall be his duty~~ is the duty of the judge forthwith to allow
15 a writ of habeas corpus, which writ shall be issued forthwith by
16 the clerk of the district court, or by the county judge, as the
17 case may require, under the seal of the court whereof the person
18 allowing such writ is a judge, directed to the proper officer,
19 person, ~~or persons who detains~~ detain such prisoner.

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

22 29-3205 ~~Sections 29-3201 to 29-3210 of~~ The Uniform
23 Rendition of Prisoners as Witnesses in Criminal Proceedings Act
24 shall not apply to any person in this state confined as mentally
25 ill, ~~or under sentence of death.~~

1 Sec. 25. Section 29-3920, Reissue Revised Statutes of
2 Nebraska, is amended to read:

3 29-3920 The Legislature finds that:

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

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

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

18 (4) Property tax relief in the form of state assistance
19 to the counties of Nebraska in providing for indigent defense
20 services will also improve inconsistent and inadequate funding of
21 indigent defense services by the counties;

22 (5) Property tax relief in the form of state assistance
23 to the counties of Nebraska in providing for indigent defense
24 services will also lessen the impact on county property taxpayers
25 of the cost of a high profile ~~death penalty~~ first-degree murder

1 case which can significantly affect the finances of the counties;
2 and

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

9 Sec. 26. Section 29-3922, Reissue Revised Statutes of
10 Nebraska, is amended to read:

11 29-3922 For purposes of the County Revenue Assistance
12 Act:

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

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

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

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

23 (5) Council means the Indigent Defense Standards Advisory
24 Council;

25 (6) Court-appointed attorney means an attorney other than

1 a contracting attorney or a public defender appointed by the court
2 to represent an indigent person;

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

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

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

15 (10) Public defender means an attorney appointed or
16 elected pursuant to sections 23-3401 to ~~23-3403~~, 23-3408.

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

19 29-3928 The commission shall appoint a chief counsel. The
20 responsibilities and duties of the chief counsel shall be defined
21 by the commission and shall include the overall supervision of
22 the workings of the various divisions of the commission. The chief
23 counsel shall be qualified for his or her position, shall have been
24 licensed to practice law in the State of Nebraska for at least five
25 years prior to the effective date of the appointment, and shall

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

5 Sec. 28. Section 29-3929, Reissue Revised Statutes of
6 Nebraska, is amended to read:

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

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

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

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

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

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

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

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

1 (8) Adopt and promulgate rules and regulations for the
2 management and administration of policies of the commission and the
3 conduct of employees of the commission;

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

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

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

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

13 29-3930 The following divisions are established within
14 the commission:

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

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

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

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

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

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

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

18 Sec. 31. Section 83-1,110.02, Reissue Revised Statutes of
19 Nebraska, is amended to read:

20 83-1,110.02 (1) A committed offender who is otherwise
21 eligible for parole, who is not under sentence of ~~death~~ life
22 imprisonment without possibility of parole or of life imprisonment,
23 and who because of an existing medical or physical condition is
24 determined by the department to be terminally ill or permanently
25 incapacitated may be considered for medical parole by the board. A

1 committed offender may be eligible for medical parole in addition
2 to any other parole. The department shall identify committed
3 offenders who may be eligible for medical parole based upon their
4 medical records.

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

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

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

24 Sec. 32. Section 83-4,143, Reissue Revised Statutes of
25 Nebraska, is amended to read:

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

10 (2) When the court is of the opinion that imprisonment is
11 appropriate, but that a brief and intensive period of regimented,
12 structured, and disciplined programming within a secure facility
13 may better serve the interests of society, the court may place an
14 offender in an incarceration work camp for a period not to exceed
15 one hundred eighty days as a condition of a sentence of intensive
16 supervision probation. The court may consider such placement if the
17 offender (a) is a male or female offender convicted of a felony
18 offense in a district court, (b) is medically and mentally fit
19 to participate, with allowances given for reasonable accommodation
20 as determined by medical and mental health professionals, and (c)
21 has not previously been incarcerated for a violent felony crime.
22 Offenders convicted of a crime under section 28-303 or sections
23 28-319 to ~~28-321~~ 28-322.04 or of any capital crime are not eligible
24 to be placed in an incarceration work camp.

25 (3) It is also the intent of the Legislature that the

1 Board of Parole may recommend placement of felony offenders at
2 the incarceration work camp. The offenders recommended by the
3 board shall be offenders currently housed at other Department
4 of Correctional Services adult correctional facilities and shall
5 complete the incarceration work camp programming prior to release
6 on parole.

7 (4) When the Board of Parole is of the opinion that
8 a felony offender currently incarcerated in a Department of
9 Correctional Services adult correctional facility may benefit
10 from a brief and intensive period of regimented, structured, and
11 disciplined programming immediately prior to release on parole, the
12 board may direct placement of such an offender in an incarceration
13 work camp for a period not to exceed one hundred eighty days as
14 a condition of release on parole. The board may consider such
15 placement if the felony offender (a) is medically and mentally fit
16 to participate, with allowances given for reasonable accommodation
17 as determined by medical and mental health professionals, and (b)
18 has not previously been incarcerated for a violent felony crime.
19 Offenders convicted of a crime under section 28-303 or sections
20 28-319 to ~~28-321~~ 28-322.04 or of any capital crime are not eligible
21 to be placed in an incarceration work camp.

22 Sec. 33. Original sections 23-3406, 24-1106, 25-1140.09,
23 28-104, 28-105, 28-303, 29-1602, 29-1603, 29-1822, 29-2004,
24 29-2005, 29-2006, 29-2020, 29-2027, 29-2204, 29-2261, 29-2282,
25 29-2407, 29-2801, 29-3205, 29-3920, 29-3922, 29-3928, 29-3929,

LB 306

LB 306

1 29-3930, 55-480, 83-1,110.02, and 83-4,143, Reissue Revised
2 Statutes of Nebraska, are repealed.

3 Sec. 34. The following sections are outright repealed:
4 Sections 24-1105, 28-105.01, 29-2519, 29-2520, 29-2521, 29-2521.01,
5 29-2521.02, 29-2521.03, 29-2521.04, 29-2521.05, 29-2522, 29-2523,
6 29-2524, 29-2524.01, 29-2524.02, 29-2525, 29-2527, 29-2528,
7 29-2532, 29-2533, 29-2534, 29-2535, 29-2536, 29-2537, 29-2538,
8 29-2539, 29-2540, 29-2541, 29-2542, 29-2543, 29-2544, 29-2545,
9 29-2546, 29-2811, 83-1,105.01, and 83-1,132, Reissue Revised
10 Statutes of Nebraska.