

LEGISLATURE OF NEBRASKA

ONE HUNDRED FIRST LEGISLATURE

FIRST SESSION

LEGISLATIVE BILL 518

Introduced by McGill, 26.

Read first time January 21, 2009

Committee: Judiciary

A BILL

1 FOR AN ACT relating to crimes and offenses; to amend sections  
2 28-101, 28-105, 28-111, 28-201, 28-302, 28-303, 28-304,  
3 28-305, 28-306, 28-915, 28-915.01, 28-916.01, 28-1213,  
4 28-1214, 28-1219, 28-1223, 28-1224, 28-1227, 28-1229,  
5 28-1231, 28-1233, 28-1234, 28-1235, 28-1236, 28-1237,  
6 28-1238, 28-1239, 28-1239.01, 28-1241, 29-119, 29-1306,  
7 29-1603, 29-2004, 29-2027, 29-2221, 29-2261, 29-2519,  
8 29-2520, 29-2521, 29-2524, 29-4103, 43-283.01, 43-286,  
9 81-1850, 83-961, and 84-205, Reissue Revised Statutes  
10 of Nebraska; to change and eliminate provisions and  
11 procedures relating to homicide; to change provisions  
12 relating to life imprisonment, use of explosives,  
13 sentence enhancement, criminal attempt, perjury and false  
14 statements; to provide for applicability; to harmonize

1                   provisions; to repeal the original sections; and to  
2                   outright repeal section 29-1512, Reissue Revised Statutes  
3                   of Nebraska.  
4 Be it enacted by the people of the State of Nebraska,

1           Section 1. Section 28-101, Reissue Revised Statutes of  
2 Nebraska, is amended to read:

3           28-101 Sections 28-101 to 28-1350 and sections 8, 9, 11,  
4 20, 22, and 52 this act shall be known and may be cited as the  
5 Nebraska Criminal Code.

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

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

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

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

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

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

24                   (4) A person convicted of a felony for which a mandatory

1 minimum sentence is prescribed shall not be eligible for probation.

2           Sec. 3. Section 28-111, Reissue Revised Statutes of  
3 Nebraska, is amended to read:

4           28-111 Any person who commits one or more of the  
5 following criminal offenses against a person or a person's  
6 property because of the person's race, color, religion, ancestry,  
7 national origin, gender, sexual orientation, age, or disability  
8 or because of the person's association with a person of a  
9 certain race, color, religion, ancestry, national origin, gender,  
10 sexual orientation, age, or disability shall be punished by the  
11 imposition of the next higher penalty classification than the  
12 penalty classification prescribed for the criminal offense, unless  
13 such criminal offense is already punishable as a Class IB felony  
14 or higher classification: ~~Manslaughter,~~ Voluntary manslaughter,  
15 section 28-305; involuntary manslaughter, section 11 of this  
16 act; assault in the first degree, section 28-308; assault in  
17 the second degree, section 28-309; assault in the third degree,  
18 section 28-310; terroristic threats, section 28-311.01; stalking,  
19 section 28-311.03; kidnapping, section 28-313; false imprisonment  
20 in the first degree, section 28-314; false imprisonment in the  
21 second degree, section 28-315; sexual assault in the first degree,  
22 section 28-319; sexual assault in the second or third degree,  
23 section 28-320; sexual assault of a child, sections 28-319.01 and  
24 28-320.01; arson in the first degree, section 28-502; arson in the  
25 second degree, section 28-503; arson in the third degree, section

1 28-504; criminal mischief, section 28-519; criminal trespass in the  
2 first degree, section 28-520; ~~or~~ criminal trespass in the second  
3 degree, section 28-521; using explosives to damage or destroy  
4 property, section 28-1223 or section 20 of this act; or intentional  
5 use of explosives to kill or injure any person, section 28-1224.  
6 Enhancement of punishment under this section shall be treated as  
7 an essential element of the offense and shall be alleged in the  
8 information or indictment. The state shall prove the allegation  
9 beyond a reasonable doubt before a jury unless the right to a jury  
10 trial is waived by the defendant.

11 Sec. 4. Section 28-201, Reissue Revised Statutes of  
12 Nebraska, is amended to read:

13 28-201 (1) A person shall be guilty of an attempt to  
14 commit a crime if he or she:

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

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

22 (2) When causing a particular result is an element of  
23 the crime, a person shall be guilty of an attempt to commit the  
24 crime if, acting with the state of mind required to establish  
25 liability with respect to the attendant circumstances specified in

1 the definition of the crime, he or she intentionally engages in  
2 conduct which is a substantial step in a course of conduct intended  
3 or known to cause such a result.

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

7 (4) Criminal attempt is:

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

10 (b) A Class III felony when the crime attempted is a  
11 Class II felony;

12 (c) A Class IIIA felony when the crime attempted  
13 is assault in the first degree under section 28-308, sexual  
14 assault in the second degree under section 28-320, manufacturing,  
15 distributing, delivering, dispensing, or possessing with intent to  
16 manufacture, distribute, deliver, or dispense controlled substances  
17 listed in Schedule I, II, or III of section 28-405 under section  
18 28-416 except for an exceptionally hazardous drug, incest under  
19 section 28-703, child abuse under subsection (5) of section 28-707,  
20 assault on an officer in the second degree under section 28-930,  
21 or assault by a confined person with a deadly or dangerous weapon  
22 under section 28-932;

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

25 (e) A Class I misdemeanor when the crime attempted is a

1 Class IIIA or Class IV felony;

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

4 (g) A Class III misdemeanor when the crime attempted is  
5 a Class II misdemeanor.

6 Sec. 5. Section 28-302, Reissue Revised Statutes of  
7 Nebraska, is amended to read:

8 28-302 As used in sections 28-302 to 28-306 and sections  
9 8, 9, and 11 of this act, unless the context otherwise requires:

10 (1) Causes the death of another means that the death of  
11 another person was the proximate result of the act or acts of the  
12 defendant;

13 (2) Deliberate means not suddenly, not rashly, but that  
14 the defendant considered the probable consequences of his or her  
15 act before doing the act;

16 ~~(1)~~ (3) Homicide shall mean means the killing of a person  
17 by another;

18 (4) Intentionally means willfully or purposely and not  
19 accidentally or involuntarily;

20 (5) Kills another means the act or acts of the defendant  
21 were a direct cause of the death of another person;

22 (6) Malice means the intentional doing of a wrongful act  
23 without just cause or excuse;

24 ~~(2)~~ (7) Person, when referring to the victim of a  
25 homicide, ~~shall mean~~ means a human being who had been born and was



1 alive at the time of the homicidal act; and

2 ~~(3)~~ (8) Premeditation shall mean means a design formed to  
3 do something before it is done;—

4 (9) Proximate result means that the act of the defendant  
5 was a moving or effective cause or fault which, in the natural and  
6 continuous sequence, unbroken by an efficient intervening cause,  
7 produced the death and without which the death would not have  
8 occurred; and

9 (10) Unintentionally means not willfully or purposely,  
10 but accidentally or involuntarily.

11 Sec. 6. Section 28-303, Reissue Revised Statutes of  
12 Nebraska, is amended to read:

13 28-303 (1) A person commits first degree premeditated  
14 murder in the first degree if he or she kills another person  
15 ~~(1) purposely intentionally~~ and with deliberate and premeditated  
16 malice. ~~or (2) in the perpetration of or attempt to perpetrate~~  
17 ~~any sexual assault in the first degree, arson, robbery, kidnapping,~~  
18 ~~hijacking of any public or private means of transportation, or~~  
19 ~~burglary, or (3) by administering poison or causing the same to be~~  
20 ~~done, or if by willful and corrupt perjury or subornation of the~~  
21 ~~same he or she purposely procures the conviction and execution of~~  
22 ~~any innocent person.~~

23 (2) The determination of whether first degree  
24 premeditated murder in the first degree shall be punished as a  
25 Class I or Class IA felony shall be made pursuant to sections

1 29-2519 to 29-2524.

2 Sec. 7. Section 28-304, Reissue Revised Statutes of  
3 Nebraska, is amended to read:

4 28-304 (1) A person commits second degree murder in the  
5 second degree if he or she kills another causes the death of a  
6 person intentionally without lawful justification or excuse, but  
7 without premeditation.

8 (2) ~~Murder in the second degree~~ Second degree murder is a  
9 Class IB felony.

10 Sec. 8. (1) A person commits first degree felony murder  
11 if he or she intentionally kills another person in the perpetration  
12 of or attempt to perpetrate any sexual assault in the first degree,  
13 arson, robbery, kidnapping, intentional use of an explosive device  
14 to cause personal injury, or burglary.

15 (2) The determination of whether first degree felony  
16 murder shall be punished as a Class I or Class IA felony shall be  
17 made pursuant to sections 29-2519 to 29-2524.

18 Sec. 9. (1) A person commits second degree felony murder  
19 if he or she causes the death of another person in the perpetration  
20 of or attempt to perpetrate any sexual assault in the first degree,  
21 arson, robbery, kidnapping, intentional use of an explosive device  
22 to cause personal injury, or burglary.

23 (2) Second degree felony murder is a Class IB felony.

24 Sec. 10. Section 28-305, Reissue Revised Statutes of  
25 Nebraska, is amended to read:

1                   28-305 (1) A person commits voluntary manslaughter if he  
 2 or she kills another without malice, either upon a sudden quarrel,  
 3 or causes the death of another unintentionally while in the  
 4 commission of an unlawful act.

5                   (2) ~~Manslaughter~~ Voluntary manslaughter is a Class III  
 6 felony.

7                   Sec. 11. (1) A person commits involuntary manslaughter if  
 8 he or she unintentionally causes the death of another while in the  
 9 commission of an unlawful act.

10                   (2) Involuntary manslaughter is a Class IV felony.

11                   (3) Unlawful act means a criminal offense under the  
 12 statutes of the State of Nebraska punishable as a Class III  
 13 misdemeanor or greater, but does not include offenses involving the  
 14 operation of a motor vehicle as an essential element of the crime.

15                   (4) The information or indictment alleging the offense of  
 16 involuntary manslaughter shall specify the unlawful act. It shall  
 17 be sufficient if the unlawful act is alleged in the language of the  
 18 statute.

19                   Sec. 12. Section 28-306, Reissue Revised Statutes of  
 20 Nebraska, is amended to read:

21                   28-306 (1) A person ~~who~~ commits motor vehicle homicide  
 22 if he or she unintentionally causes the death of another  
 23 unintentionally while engaged in the operation of as the proximate  
 24 result of operating a motor vehicle in violation of the law of the  
 25 State of Nebraska or in violation of any city or village ordinance.

1 ~~commits motor vehicle homicide.~~

2 (2) Except as provided in subsection (3) of this section,  
3 motor vehicle homicide is a Class I misdemeanor.

4 (3) (a) If the ~~proximate cause of the~~ death of another is  
5 the ~~operation of~~ proximate result of operating a motor vehicle in  
6 violation of section 60-6,213 or 60-6,214, motor vehicle homicide  
7 is a Class IIIA felony.

8 (b) If the ~~proximate cause of the~~ death of another is  
9 the ~~operation of~~ proximate result of operating a motor vehicle  
10 in violation of section 60-6,196 or 60-6,197.06, motor vehicle  
11 homicide is a Class III felony. The court shall, as part of the  
12 judgment of conviction, order the person not to drive any motor  
13 vehicle for any purpose for a period of at least one year and not  
14 more than fifteen years and shall order that the operator's license  
15 of such person be revoked for the same period.

16 (c) If the ~~proximate cause of the~~ death of another is  
17 the ~~operation of~~ proximate result of operating a motor vehicle  
18 in violation of section 60-6,196 or 60-6,197.06, motor vehicle  
19 homicide is a Class II felony if the defendant has a prior  
20 conviction for a violation of section 60-6,196 or 60-6,197.06,  
21 under a city or village ordinance enacted in conformance with  
22 section 60-6,196, or under a law of another state if, at the time  
23 of the conviction under the law of such other state, the offense  
24 for which the defendant was convicted would have been a violation  
25 of section 60-6,196. The court shall, as part of the judgment of

1 conviction, order the person not to drive any motor vehicle for  
2 any purpose for a period of fifteen years and shall order that the  
3 operator's license of such person be revoked for the same period.

4 (d) An order of the court described in subdivision (b) or  
5 (c) of this subsection shall be administered upon sentencing, upon  
6 final judgment of any appeal or review, or upon the date that any  
7 probation is revoked.

8 (4) When the death of another is alleged to have been  
9 the proximate result of operating a motor vehicle in violation  
10 of section 60-6,213, 60-6,214, 60-6,196, or 60-6,197.06, the  
11 allegation shall be contained in the information or indictment  
12 and the existence of a violation of such sections shall be found by  
13 the jury as an element of the offense unless the right to a jury  
14 trial is waived by the defendant.

15 (5) If the defendant is alleged to have a prior  
16 conviction as set forth in subdivision (3)(c) of this section,  
17 then the allegation shall be contained in the information or  
18 indictment. The existence of the allegation shall not be disclosed  
19 to the jury and the determination of the prior conviction shall be  
20 made by the court following conviction, but at a hearing held prior  
21 to sentencing.

22 Sec. 13. Section 28-915, Reissue Revised Statutes of  
23 Nebraska, is amended to read:

24 28-915 (1) A person ~~is guilty~~ commits the offense of  
25 perjury, a Class III ~~felony~~, if in any official proceeding he or

1 she knowingly and intentionally makes a materially false statement  
2 under oath or equivalent affirmation~~7~~ or swears or affirms the  
3 truth of a materially false statement previously made~~7~~ ~~when the~~  
4 ~~statement is material and he or she does not believe it to be true.~~  
5 by the defendant.

6 (2) A person is guilty of subornation of perjury~~7~~ a Class  
7 ~~III felony~~~~7~~ if he or she persuades, procures, or suborns any other  
8 person to commit perjury.

9 (3) A materially false statement means any statement  
10 of fact that falsification shall be material~~7~~ ~~regardless of the~~  
11 ~~admissibility of the statement under rules of evidence~~~~7~~ ~~if it~~  
12 ~~could have affected the course or outcome of the proceeding~~  
13 regardless of whether the statement was admissible under the  
14 Nebraska Evidence Rules. It shall not be a defense that the  
15 declarant mistakenly believed the falsification to be immaterial.  
16 Whether a falsification is material in a given factual situation  
17 shall be a question of ~~law.~~ fact to be determined by the jury  
18 unless the right to a jury trial has been waived.

19 (4) It shall not be a defense to prosecution under this  
20 section that the oath or affirmation was administered or taken in  
21 an irregular manner, ~~or that the declarant was not competent to~~  
22 ~~make the statement.~~ A document purporting to be made upon oath or  
23 affirmation at any time when the actor presents it as being so  
24 verified shall be deemed to have been duly sworn or affirmed.

25 (5) ~~No person shall be guilty of an offense~~ It shall be

1 an affirmative defense to prosecution under this section if he or  
2 she the declarant retracted the falsification false statement in  
3 the course of the proceeding in which it was made before it became  
4 manifest that the falsification false statement was or would be  
5 exposed and before the falsification false statement substantially  
6 affected the proceeding.

7 (6) When the defendant made inconsistent statements under  
8 oath or equivalent affirmation, ~~both~~ the later statement having  
9 been made within the period of the statute of limitations,  
10 the prosecution may proceed by setting forth the inconsistent  
11 statements in a single count alleging in the alternative that one  
12 or the other was known by the defendant to be false. ~~and not~~  
13 ~~believed by the defendant.~~ In such case it shall not be necessary  
14 for the prosecution to prove which statement was false but only  
15 that one or the other was false and ~~not believed by the defendant~~  
16 ~~to be~~ knew one or the other of the statements were not true.

17 (7) No person shall be convicted of an offense under this  
18 section when proof of falsity rests solely upon contradiction by  
19 testimony of a single person other than the defendant as set forth  
20 in subsection (6) of this section.

21 (8) Perjury and subornation of perjury shall be punished  
22 as a Class III felony, unless the offense is committed during  
23 proceedings involving the prosecution of a Class I, IA, IB, or IC  
24 felony, in which case the offense shall be punished as a Class II  
25 felony.

1           (9) Whenever a witness or declarant has made a materially  
2 false statement in a verified pleading, in an affidavit, or through  
3 sworn testimony on behalf of the state in a criminal prosecution,  
4 a special prosecutor shall be appointed by the court under the  
5 following circumstances:

6           (a) The prosecuting attorney received or discovered  
7 credible evidence that a materially false statement was presented  
8 on behalf of the state;

9           (b) The prosecuting attorney declined to prosecute the  
10 witness or seek appointment of a special prosecutor within ninety  
11 days after receipt or discovery of evidence regarding the false  
12 statement;

13           (c) The party against whom the materially false statement  
14 was offered filed a motion with the court requesting that a special  
15 prosecutor be appointed; and

16           (d) The court finds that there is credible evidence  
17 establishing probable cause that perjury was committed in an  
18 official proceeding before that court and that the prosecuting  
19 attorney has declined to prosecute or seek appointment of a special  
20 prosecutor within ninety days after receipt or discovery of the  
21 evidence.

22           The decision by the court whether or not to appoint a  
23 special prosecutor is final and not an appealable order.

24           (10) The time limitations for prosecution set forth in  
25 section 29-110 shall commence from the date of false statement



1 or, if there are two or more inconsistent statements as set forth  
2 in subsection (6) of this section, from the date of the latter  
3 statement.

4           Sec. 14. Section 28-915.01, Reissue Revised Statutes of  
5 Nebraska, is amended to read:

6           28-915.01 (1) A person who makes a false statement under  
7 oath or equivalent affirmation, or swears or affirms the truth of  
8 such a statement previously made, when he or she does not believe  
9 the statement to be true, is guilty of a Class I misdemeanor if the  
10 falsification:

11           (a) Occurs in an official proceeding; or

12           (b) Is intended to mislead a public servant in performing  
13 his or her official function.

14           (2) A person who makes a false statement under oath or  
15 equivalent affirmation, or swears or affirms the truth of such a  
16 statement previously made, when he or she does not believe the  
17 statement to be true, is guilty of a Class II misdemeanor if the  
18 statement is one which is required by law to be sworn or affirmed  
19 before a notary or other person authorized to administer oaths.

20           (3) Subsections (4) through ~~(7)~~ (11) of section 28-915  
21 shall apply to subsections (1) and (2) of this section.

22           (4) This section shall not apply to reports, statements,  
23 affidavits, or other documents made or filed pursuant to the  
24 Campaign Finance Limitation Act or the Nebraska Political  
25 Accountability and Disclosure Act.

1           Sec. 15. Section 28-916.01, Reissue Revised Statutes of  
2 Nebraska, is amended to read:

3           28-916.01 As used in this section and sections 28-915,  
4 28-915.01, and 28-919, unless the context otherwise requires:

5           (1) Administrative proceeding shall mean any proceeding,  
6 other than a judicial proceeding, the outcome of which is required  
7 to be based on a record or documentation prescribed by law, or  
8 in which law or regulation is particularized in application to  
9 individuals;

10          (2) Benefit shall mean gain or advantage, or anything  
11 regarded by the beneficiary as gain or advantage, including benefit  
12 to any other person or entity in whose welfare he or she is  
13 interested, but not an advantage promised generally to a group  
14 or class of voters as a consequence of public measures which a  
15 candidate engages to support or oppose;

16          (3) Government shall include any branch, subdivision, or  
17 agency of the government of the state or any locality within it;

18          (4) Harm shall mean loss, disadvantage, or injury, or  
19 anything so regarded by the person affected, including loss,  
20 disadvantage, or injury to any other person or entity in whose  
21 welfare he or she is interested;

22          (5) Pecuniary benefit shall mean benefit in the form of  
23 money, property, commercial interests, or anything else the primary  
24 significance of which is economic gain;

25          (6) Public servant shall mean any officer or employee

1 of government, including legislators and judges, and any person  
2 participating as juror, advisor, consultant, or otherwise, in  
3 performing a governmental function, but the term shall not include  
4 witnesses;

5 (7) Official proceeding shall mean a ~~proceeding~~  
6 ~~heard or which may be heard before any legislative, judicial,~~  
7 ~~administrative, or other governmental agency or official authorized~~  
8 ~~to take evidence under oath, including any referee, hearing~~  
9 ~~examiner, commissioner, notary, or other person taking testimony~~  
10 ~~or deposition in connection with any such proceeding, any verified~~  
11 ~~motion, petition, affidavit, or official pleading filed with any~~  
12 ~~court or tribunal in this state, or testimony presented under oath~~  
13 ~~at any hearing, trial, or proceeding in any of the courts or~~  
14 ~~tribunals authorized to administer an oath, any grand jury, or any~~  
15 ~~deposition taken pursuant to law; and~~

16 (8) Statement shall mean any representation, but shall  
17 include a representation of opinion, belief, or other state of mind  
18 only if the representation clearly relates to state of mind apart  
19 from or in addition to any facts which are the subject of the  
20 representation.

21 Sec. 16. Section 28-1213, Reissue Revised Statutes of  
22 Nebraska, is amended to read:

23 28-1213 For purposes of sections 28-1213 to 28-1239 and  
24 sections 20 and 22 of this act, unless the context otherwise  
25 requires:

1           (1) Person means any individual, corporation, company,  
2 association, firm, partnership, limited liability company, society,  
3 or joint-stock company;

4           (2) Business enterprise means any corporation,  
5 partnership, limited liability company, company, or joint-stock  
6 company;

7           (3) Explosive materials means explosives, blasting  
8 agents, and detonators;

9           (4) Explosives means any chemical compound, mixture, or  
10 device, the primary or common purpose of which is to function by  
11 explosion, including, but not limited to, dynamite and other high  
12 explosives, black powder, pellet powder, initiating explosives,  
13 detonators, safety fuses, squibs, detonating cord, ignited cord,  
14 igniters, display fireworks as defined in section 28-1241, and  
15 firecrackers or devices containing more than one hundred thirty  
16 milligrams of explosive composition, but does not include common  
17 fireworks as defined in such section, gasoline, kerosene, naphtha,  
18 turpentine, benzine, acetone, ethyl ether, benzol, fixed ammunition  
19 and primers for small arms, safety fuses, or matches;

20           (5) Blasting agent means any material or mixture,  
21 intended for blasting which meets the requirements of 49 C.F.R.  
22 part 173, subpart C, as such subpart existed on March 7, 2006;

23           (6) Detonator means any device containing an initiating  
24 or primary explosive that is used for initiating detonation.  
25 Excluding ignition or delay charges, a detonator shall not contain

1 more than ten grams of explosive material per unit. Detonator  
2 includes an electric detonator of instantaneous or delay type,  
3 a detonator for use with safety fuses, a detonating cord delay  
4 connector, and a nonelectric detonator of instantaneous or delay  
5 type which consists of detonating cord, shock tube, or any other  
6 replacement for electric leg wires;

7 (7) (a) Destructive devices means:

8 (i) Any explosive, incendiary, chemical or biological  
9 poison, or poison gas (A) bomb, (B) grenade, (C) rocket having a  
10 propellant charge of more than four ounces, (D) missile having an  
11 explosive or incendiary charge of more than one-quarter ounce, (E)  
12 mine, (F) booby trap, (G) Molotov cocktail, (H) bottle bomb, (I)  
13 vessel or container intentionally caused to rupture or mechanically  
14 explode by expanding pressure from any gas, acid, dry ice, or other  
15 chemical mixture, or (J) any similar device, the primary or common  
16 purpose of which is to explode and to be used as a weapon against  
17 any person or property; or

18 (ii) Any combination of parts either designed or intended  
19 for use in converting any device into a destructive device as  
20 defined in subdivision (7) (a) (i) of this section from which a  
21 destructive device may be readily assembled.

22 (b) The term destructive device does not include (i) any  
23 device which is neither designed nor redesigned for use as a weapon  
24 to be used against person or property, (ii) any device, although  
25 originally designed for use as a weapon, which is redesigned for

1 use as a signaling, pyrotechnic, line-throwing, safety, or similar  
2 device, (iii) surplus ordnance sold, loaned, or given by the  
3 Secretary of the Army pursuant to 10 U.S.C. 4684(2), 4685, or 4686,  
4 as such sections existed on March 7, 2006, (iv) any other device  
5 which the Nebraska State Patrol finds is not likely to be used  
6 as a weapon or is an antique, or (v) any other device possessed  
7 under circumstances negating an intent that the device be used as a  
8 weapon against any person or property;

9 (8) Federal permittee means any lawful user of explosive  
10 materials who has obtained a federal user permit under 18 U.S.C.  
11 chapter 40, as such chapter existed on March 7, 2006;

12 (9) Federal licensee means any importer, manufacturer,  
13 or dealer in explosive materials who has obtained a federal  
14 importers', manufacturers', or dealers' license under 18 U.S.C.  
15 chapter 40, as such chapter existed on March 7, 2006; and

16 (10) Smokeless propellants means solid propellants  
17 commonly called smokeless powders in the trade and used in small  
18 arms ammunition.

19 Sec. 17. Section 28-1214, Reissue Revised Statutes of  
20 Nebraska, is amended to read:

21 28-1214 (1) Sections 28-1213 to 28-1239 and sections  
22 20 and 22 of this act shall apply to persons engaged in the  
23 manufacture, ownership, possession, storage, use, transportation,  
24 purchase, sale, or gift of explosive materials, except as may be  
25 otherwise indicated herein.

1                   (2) Sections 28-1213 to 28-1239 and sections 20 and 22  
2 of this act shall not apply to explosive materials while being  
3 transported in conformity with federal law or regulations, nor,  
4 except as may be otherwise provided in such sections, to the  
5 ownership, possession, storage, use, transportation, purchase, or  
6 sale of explosive materials by the armed forces of the United  
7 States, the National Guard, other reserve components of the armed  
8 forces of the United States, and the duly constituted police and  
9 firefighting forces of the United States and of the state and its  
10 political subdivisions in the lawful discharge of their official  
11 duties.

12                   Sec. 18. Section 28-1219, Reissue Revised Statutes of  
13 Nebraska, is amended to read:

14                   28-1219 (1) Any person who knowingly withholds  
15 information or makes any false, fictitious, or misrepresented  
16 statement or furnishes or exhibits any false, fictitious, or  
17 misrepresented identification for the purpose of obtaining a permit  
18 or relief from disability under the provisions of sections 28-1213  
19 to 28-1239 and sections 20 and 22 of this act or knowingly makes  
20 any false entry in a record which such person is required to keep  
21 pursuant to such sections or the regulations promulgated pursuant  
22 to such sections, commits the offense of obtaining a permit through  
23 false representations.

24                   (2) Obtaining a permit through false representations is a  
25 Class IV felony.

1           Sec. 19. Section 28-1223, Reissue Revised Statutes of  
2 Nebraska, is amended to read:

3           28-1223 (1) Any person who, by means of an explosive  
4 material or destructive device, ~~maliciously~~ intentionally and  
5 knowingly attempts to damage or destroy or does damage or  
6 destroy any building, structure, vehicle, or other real or personal  
7 property without lawful justification or excuse commits the offense  
8 of using explosives to damage or destroy property.

9           (2) ~~Except as provided under subsection (3) or (4) of~~  
10 ~~this section, using~~ Using explosives to damage or destroy property  
11 is a Class III felony.

12           ~~(3) If a personal injury results, using explosives to~~  
13 ~~damage or destroy property is a Class II felony.~~

14           ~~(4) If death results, using explosives to damage or~~  
15 ~~destroy property shall be punished as for conviction of murder in~~  
16 ~~the first degree.~~

17           Sec. 20. (1) Any person who, by means of an explosive  
18 material or destructive device, intentionally and knowingly  
19 attempts to damage or destroy or does damage or destroy any  
20 building, structure, vehicle, or other real or personal property  
21 without lawful justification or excuse which unintentionally  
22 results in personal injury commits the offense of using explosives  
23 to damage or destroy property that causes personal injury.

24           (2) Using explosives to damage or destroy property that  
25 causes personal injury is a Class II felony.



1           Sec. 21. Section 28-1224, Reissue Revised Statutes of  
2 Nebraska, is amended to read:

3           28-1224 (1) Any person who uses explosive materials or  
4 destructive devices to intentionally kill, injure, or intimidate  
5 any individual commits the offense of intentionally using  
6 explosives to kill or injure any person.

7           (2) ~~Except as provided in subsection (3) or (4) of this~~  
8 ~~section,~~ Intentionally using explosives to kill or injure any  
9 person is a Class ~~III~~ II felony.

10          ~~(3) If personal injury results, using explosives to kill~~  
11 ~~or injure any person is a Class II felony.~~

12          ~~(4) If death results, using explosives to kill or injure~~  
13 ~~any person shall be punished as for conviction of murder in the~~  
14 ~~first degree.~~

15           Sec. 22. (1) Any person who uses explosive materials or  
16 destructive devices to intentionally kill, injure, or intimidate  
17 any individual and causes personal injury to any individual commits  
18 the offense of intentionally using explosives to kill or injure any  
19 person that causes personal injury.

20           (2) Intentionally using explosives to kill or injure any  
21 person that causes personal injury is a Class IB felony.

22           Sec. 23. Section 28-1227, Reissue Revised Statutes of  
23 Nebraska, is amended to read:

24           28-1227 With the exception of sections 28-1213 to 28-1226  
25 and sections 20 and 22 of this act, any person who violates any

1 other provision of sections 28-1213 to 28-1239 and sections 20 and  
2 22 of this act or rules and regulations adopted and promulgated  
3 pursuant to such sections commits a Class III misdemeanor.

4 Sec. 24. Section 28-1229, Reissue Revised Statutes of  
5 Nebraska, is amended to read:

6 28-1229 (1) The Nebraska State Patrol shall have the  
7 authority to issue permits for:

8 (a) The storage of explosive materials;

9 (b) The use of explosive materials; and

10 (c) The purchase of explosive materials by business  
11 enterprises.

12 (2) The Nebraska State Patrol shall not issue a permit to  
13 store or use explosive materials to any person who:

14 (a) Is under twenty-one years of age;

15 (b) Has been convicted in any court of a felony;

16 (c) Is charged with a felony;

17 (d) Is a fugitive from justice;

18 (e) Is an unlawful user of any depressant, stimulant, or  
19 narcotic drug;

20 (f) Has been admitted as a patient or inmate in a  
21 public or private institution for the treatment of a mental or  
22 emotional disease or disorder within five years preceding the date  
23 of application;

24 (g) Has no reasonable educational, industrial,  
25 commercial, agricultural, recreational, or other legitimate need

1 for a permit to store or use explosive materials;

2 (h) Has been convicted in any court of a misdemeanor  
3 crime of domestic violence. This includes any misdemeanor  
4 conviction involving the use or attempted use of physical force  
5 committed by a current or former spouse, parent, or guardian of the  
6 victim or by a person with a similar relationship with the victim;

7 (i) Is subject to a court order restraining him or her  
8 from harassing, stalking, or threatening an intimate partner or  
9 child of such partner; or

10 (j) Is an alien illegally in the United States.

11 (3) Upon filing of a proper application and payment of  
12 the prescribed fee, and subject to the provisions of sections  
13 28-1213 to 28-1239 and sections 20 and 22 of this act and other  
14 applicable laws, the Nebraska State Patrol shall issue to such  
15 applicant a permit to store explosive materials if:

16 (a) The applicant, including, in the case of  
17 a corporation, partnership, limited liability company, or  
18 association, any individual possessing, directly or indirectly,  
19 the power to direct or cause the direction of the management  
20 and policies of the corporation, partnership, limited liability  
21 company, or association, is not a person to whom the Nebraska State  
22 Patrol is prohibited to issue a permit under subsection (2) of this  
23 section;

24 (b) The applicant has not willfully violated any of the  
25 provisions of sections 28-1213 to 28-1239 and sections 20 and 22 of

1 this act or of 18 U.S.C. chapter 40; and

2 (c) The applicant has a place of storage for explosive  
3 materials which meets such standards of public safety, based on  
4 the class, type, and quantity of explosive materials to be stored,  
5 and security against theft as prescribed in rules and regulations  
6 adopted and promulgated by the Nebraska State Patrol pursuant to  
7 sections 28-1213 to 28-1239 and sections 20 and 22 of this act and  
8 by the Secretary of the Treasury of the United States pursuant to  
9 18 U.S.C. chapter 40.

10 (4) A permit for the storage of explosive materials shall  
11 specify the class, type, and quantity of explosive materials which  
12 are authorized to be stored. It shall also specify the type of  
13 security required. A permit for the storage of explosive materials  
14 shall be valid for a period of two years unless a shorter period is  
15 specified in the permit.

16 (5) Upon filing of a proper application and payment of  
17 the prescribed fee, and subject to the provisions of sections  
18 28-1213 to 28-1239 and sections 20 and 22 of this act and other  
19 applicable laws, the Nebraska State Patrol shall issue to such  
20 applicant a permit to use explosive materials if:

21 (a) The applicant is an individual to whom the Nebraska  
22 State Patrol is not prohibited to issue a permit under subsection  
23 (2) of this section;

24 (b) The applicant has not willfully violated any of the  
25 provisions of sections 28-1213 to 28-1239 and sections 20 and 22 of

1 this act or of 18 U.S.C. chapter 40;

2 (c) The applicant has demonstrated and certified in  
3 writing that he or she is familiar with all published laws of  
4 this state and published local ordinances relating to the use of  
5 explosive materials applicable at the place or places he or she  
6 intends to use such explosive materials;

7 (d) The applicant has demonstrated that he or she  
8 has adequate knowledge, training, and experience in the use of  
9 explosive materials of the class and type for which he or she  
10 seeks a users permit and has passed a qualifying examination, as  
11 prescribed by the Nebraska State Patrol, concerning the use of such  
12 explosive materials; and

13 (e) The applicant has been fingerprinted and the  
14 fingerprints submitted to the Nebraska State Patrol for a criminal  
15 history record check. If no disqualifying record is located at the  
16 state level, the fingerprints shall be forwarded by the patrol to  
17 the Identification Division of the Federal Bureau of Investigation  
18 for a national criminal history record check.

19 (6) A permit for the use of explosive materials shall  
20 specify the class and type of explosive materials the permitholder  
21 is qualified to use. It shall be applicable to the permitholder  
22 and to any individual acting under his or her direct personal  
23 supervision. A permit may be issued for a single use of explosive  
24 materials or, when the applicant is engaged or employed in a  
25 business requiring the frequent use of explosive materials, for a

1 period of not more than two years.

2 (7) Upon filing of a proper application and payment of  
3 the prescribed fees and subject to sections 28-1213 to 28-1239  
4 and sections 20 and 22 of this act and other applicable laws, the  
5 Nebraska State Patrol shall issue to a business enterprise a permit  
6 to purchase explosive materials if:

7 (a) The business enterprise has a place of business in  
8 this state;

9 (b) No individual possessing, directly or indirectly,  
10 the power to direct or cause the direction of the management  
11 and policies of the business enterprise is a person to whom  
12 the Nebraska State Patrol is prohibited to issue a permit under  
13 subsection (2) of this section;

14 (c) An authorized officer of the business enterprise  
15 certifies that all explosive materials will be used on the date of  
16 purchase of such materials unless such business enterprise is in  
17 possession of a valid storage permit; and

18 (d) The business enterprise employs at least one employee  
19 having a valid use permit issued under this section.

20 (8) A permit for a business enterprise to purchase  
21 explosive materials shall specify the class and type of explosive  
22 materials which are authorized to be purchased. The class and type  
23 of explosive materials covered by such permit shall be the same as  
24 those specified in the use permit or permits issued to an employee  
25 or employees of the business enterprise. The permit may be issued

1 for a period of up to two years but shall become void if the  
2 business enterprise ceases to employ an individual having a valid  
3 use permit issued under this section for the class and type of  
4 explosive materials covered by the purchase permit of the business  
5 enterprise.

6 (9) If the applicant is an individual, an application for  
7 a permit issued under this section shall include the applicant's  
8 social security number.

9 Sec. 25. Section 28-1231, Reissue Revised Statutes of  
10 Nebraska, is amended to read:

11 28-1231 (1) The Nebraska State Patrol may revoke any  
12 permit on any ground authorized in subsection (2) of section  
13 28-1229 for the denial of a permit or for any violation of the  
14 terms of such permit, for a violation of any provision of this  
15 article or of the rules and regulations of the Nebraska State  
16 Patrol, or for noncompliance with any order issued by the Nebraska  
17 State Patrol within the time specified in such order.

18 (2) Revocation of a permit for any ground authorized may  
19 be ordered only after giving written notice and an opportunity to  
20 be heard to the holder thereof. Revocation proceedings shall be  
21 in accordance with the procedure required for contested cases set  
22 forth in the Administrative Procedure Act. Such notice may be given  
23 to the holder personally or by mail and shall specify the ground or  
24 grounds on which it is proposed to revoke the permit. When a permit  
25 is revoked, the Nebraska State Patrol may direct the disposition of

1 the explosives held by such permittee. Upon revocation of a permit  
2 by the Nebraska State Patrol, the holder thereof shall surrender  
3 his or her permit to the Nebraska State Patrol at once or be  
4 subject to penalties as provided for elsewhere in sections 28-1213  
5 to 28-1239 and sections 20 and 22 of this act.

6 Sec. 26. Section 28-1233, Reissue Revised Statutes of  
7 Nebraska, is amended to read:

8 28-1233 (1) Every holder of any permit required under  
9 sections 28-1213 to 28-1239 and sections 20 and 22 of this act  
10 shall maintain an accurate inventory of all explosives in his or  
11 her possession and maintain records of transfers to other persons  
12 of explosive materials. Such records shall include a statement of  
13 intended use by the transferee and the name, date of birth, place  
14 of birth, social security number or taxpayer identification number,  
15 and place of residence of any natural person to whom the explosives  
16 are transferred. If the explosive materials are transferred to a  
17 corporation or other business entity, such records shall include  
18 the identity and principal and local places of business and the  
19 name, date of birth, place of birth, and place of residence of  
20 the natural person acting as the agent of the corporation or other  
21 business entity in arranging the transfer. In the case of a federal  
22 licensee or permittee who is also a permitholder under the terms  
23 of sections 28-1213 to 28-1239 and sections 20 and 22 of this act,  
24 the maintenance of one set of records for the fulfilling of the  
25 record-keeping requirements of 18 U.S.C. chapter 40 shall be deemed



1 compliance with the record-keeping requirements of sections 28-1213  
2 to 28-1239 and sections 20 and 22 of this act.

3 (2) Every holder of any storage or business enterprise  
4 permit required under sections 28-1213 to 28-1239 and sections 20  
5 and 22 of this act shall maintain a log describing the time, place,  
6 amount, and type of explosive used in any blasting operations  
7 performed by him or her or at his or her direction.

8 (3) Every holder of any storage, purchase, or use permit  
9 required under sections 28-1213 to 28-1239 and sections 20 and 22  
10 of this act shall notify the fire protection district in which  
11 any explosive over one pound in weight is to be used or stored  
12 twenty-four hours prior to such use or storage, and the holder  
13 shall keep a written record in the log describing the time the  
14 notice was given, office in the district to which the notice was  
15 given, and name of the person in the district notified. The fire  
16 protection district may waive the twenty-four-hour notice when the  
17 public safety requires such waiver to prevent loss of life or  
18 property if such notice is given prior to use or storage. The fire  
19 protection district may accept a single notification of ongoing use  
20 within a set timeframe not to exceed sixty days. Any holder of  
21 a storage, purchase, or use permit who fails to notify the fire  
22 protection district pursuant to this subsection is guilty of a  
23 Class II misdemeanor.

24 Sec. 27. Section 28-1234, Reissue Revised Statutes of  
25 Nebraska, is amended to read:

1           28-1234 (1) Permitholders shall make available for  
2 inspection at all reasonable times their records kept pursuant to  
3 sections 28-1213 to 28-1239 and sections 20 and 22 of this act and  
4 the rules and regulations adopted and promulgated pursuant to such  
5 sections. The Nebraska State Patrol may enter during business hours  
6 the premises, including places of storage, of any permitholder  
7 for the purpose of inspecting and examining (a) any records or  
8 documents required to be kept by such permitholder under sections  
9 28-1213 to 28-1239 and sections 20 and 22 of this act or the rules  
10 and regulations adopted and promulgated pursuant to such sections  
11 and (b) any explosive materials kept or stored by such permitholder  
12 at such premises.

13           (2) Holders of use permits and business enterprise  
14 purchase permits shall retain such permits and make them available  
15 to the Nebraska State Patrol on request. Storage permits shall be  
16 posted and kept available for inspection at all places of storage  
17 of explosive materials.

18           Sec. 28. Section 28-1235, Reissue Revised Statutes of  
19 Nebraska, is amended to read:

20           28-1235 No person shall transport any explosive materials  
21 into this state or within the boundaries of this state unless  
22 such person holds a permit as required by sections 28-1213 to  
23 28-1239 and sections 20 and 22 of this act or a permit or license  
24 issued pursuant to 18 U.S.C. chapter 40. Common carriers by air,  
25 highway, railway, or water transporting explosive materials into

1 this state or within the boundaries of this state and contract or  
2 private carriers by motor vehicle transporting explosive materials  
3 into this state or within the boundaries of this state in the  
4 lawful, ordinary course of business and engaged in such business  
5 pursuant to certificate or permit by whatever name issued to  
6 them by any federal or state officer, agency, bureau, commission,  
7 or department shall be excepted from this section except as the  
8 Nebraska State Patrol by rule and regulation may otherwise provide.  
9 All transportation of explosive materials subject to this section  
10 shall be in conformity with such safety rules and regulations as  
11 the Nebraska State Patrol may adopt and promulgate.

12           Sec. 29. Section 28-1236, Reissue Revised Statutes of  
13 Nebraska, is amended to read:

14           28-1236 The Nebraska State Patrol may adopt and  
15 promulgate rules and regulations supplemental to sections 28-1213  
16 to 28-1239 and sections 20 and 22 of this act necessary or  
17 desirable to assure the public safety as well as to provide  
18 reasonable and adequate protection of the lives, health, and safety  
19 of persons employed in the manufacture, storage, transportation,  
20 handling, and use of explosives. The Nebraska State Patrol may  
21 adopt and promulgate such rules and regulations necessary and  
22 proper for the administration of sections 28-1213 to 28-1239 and  
23 sections 20 and 22 of this act and, together with all other peace  
24 officers of the state and its political subdivisions, shall be  
25 charged with the enforcement of such sections.

1           Sec. 30. Section 28-1237, Reissue Revised Statutes of  
2 Nebraska, is amended to read:

3           28-1237 The provisions of sections 28-1213 to 28-1239 and  
4 sections 20 and 22 of this act and the rules adopted pursuant  
5 thereto shall be the minimum standard required and shall supersede  
6 any special law or local ordinance inconsistent therewith, and  
7 no local ordinance inconsistent therewith shall be adopted, but  
8 nothing herein contained shall prevent the enactment by local law  
9 or ordinance of additional requirements and restrictions.

10          Sec. 31. Section 28-1238, Reissue Revised Statutes of  
11 Nebraska, is amended to read:

12          28-1238 Any explosive materials or destructive devices  
13 involved in any violation of sections 28-1213 to 28-1239 and  
14 sections 20 and 22 of this act or any rule or regulation adopted  
15 and promulgated pursuant to such sections or in any violation of  
16 any other criminal law of this state shall be subject to seizure,  
17 and disposition may be made in accordance with the method of  
18 disposition directed for contraband in section 29-820, whenever the  
19 seized matter results in a judicial civil or criminal action by or  
20 against any person or as the Nebraska State Patrol directs in the  
21 absence of such judicial action.

22          Sec. 32. Section 28-1239, Reissue Revised Statutes of  
23 Nebraska, is amended to read:

24          28-1239 In addition to the exceptions provided in  
25 sections 28-1213 to 28-1239 and sections 20 and 22 of this act,

1 such sections shall not apply to:

2 (1) The use of explosive materials in medicines and  
3 medicinal agents in forms prescribed by the official United States  
4 Pharmacopoeia or the National Formulary;

5 (2) The sale, transportation, shipment, receipt, or  
6 importation of explosive materials for delivery to any agency  
7 of the United States or to any state or political subdivision  
8 thereof;

9 (3) Small arms ammunition and components thereof;

10 (4) The storage or possession of or dealing in black  
11 powder used for recreation purposes by a sportsperson;

12 (5) The storage or possession of or dealing in smokeless  
13 propellants, percussion caps, primers, and other components used by  
14 a sportsperson in the reloading of small arms ammunition;

15 (6) Bona fide war trophies capable of exploding and  
16 innocently found explosive materials possessed under circumstances  
17 negating an intent to use the same unlawfully, but the owner  
18 thereof shall surrender such items forthwith to any nationally  
19 certified hazardous device technician or military explosive  
20 ordnance expert upon demand by a law enforcement officer or agency  
21 or fire department; and

22 (7) The storage in minimum amounts necessary for lawful  
23 educational purposes of explosive materials to be used in the  
24 natural science laboratories of any state-accredited school system.

25 Sec. 33. Section 28-1239.01, Reissue Revised Statutes of

1 Nebraska, is amended to read:

2           28-1239.01 (1) No person shall conduct a public  
3 exhibition or display of fireworks without first procuring a  
4 display permit from the State Fire Marshal. If the applicant is an  
5 individual, the application for a display permit shall include the  
6 applicant's social security number. Such application for a display  
7 permit shall be accompanied by a fee of ten dollars to be deposited  
8 in the State Fire Marshal Cash Fund.

9           (2) No display fireworks shall be sold or delivered by  
10 a licensed distributor to any person who is not in possession of  
11 an approved display permit. Sales of display fireworks to persons  
12 without an approved display permit shall be subject to sections  
13 28-1213 to 28-1239 and sections 20 and 22 of this act.

14           Sec. 34. Section 28-1241, Reissue Revised Statutes of  
15 Nebraska, is amended to read:

16           28-1241 As used in sections 28-1239.01 and 28-1241 to  
17 28-1252, unless the context otherwise requires:

18           (1) Distributor means any person engaged in the business  
19 of making sales of fireworks at wholesale in this state to any  
20 person engaged in the business of making sales of fireworks either  
21 as a jobber or as a retailer or both;

22           (2) Jobber means any person engaged in the business of  
23 making sales of fireworks at wholesale to any other person engaged  
24 in the business of making sales at retail;

25           (3) Retailer means any person engaged in the business of

1 making sales of fireworks at retail to consumers or to persons  
2 other than distributors or jobbers;

3 (4) Sale includes barter, exchange, or gift or offer  
4 therefor and each such transaction made by any person, whether as  
5 principal, proprietor, agent, servant, or employee;

6 (5) Fireworks means any composition or device designed  
7 for the purpose of producing a visible or audible effect by  
8 combustion, deflagration, or detonation and which meets the  
9 definition of common or special fireworks set forth by the United  
10 States Department of Transportation in Title 49 of the Code of  
11 Federal Regulations;

12 (6) Common fireworks means any small firework device  
13 designed to produce visible effects by combustion and which is  
14 required to comply with the construction, chemical composition,  
15 and labeling regulations of the United States Consumer Product  
16 Safety Commission set forth in 16 C.F.R., small devices designed to  
17 produce audible effects such as whistling devices, ground devices  
18 containing fifty milligrams or less of explosive composition,  
19 and aerial devices and firecrackers containing one hundred thirty  
20 milligrams or less of explosive composition. Class C explosives as  
21 classified by the United States Department of Transportation shall  
22 be considered common fireworks;

23 (7) Permissible fireworks means only sparklers, vesuvius  
24 fountains, spray fountains, torches, color fire cones, star and  
25 comet type color aerial shells without explosive charge for

1 the purpose of making a noise, lady fingers, not to exceed  
2 seven-eighths of an inch in length or one-eighth inch in diameter,  
3 total explosive composition not to exceed fifty milligrams in  
4 weight, color wheels, and any other fireworks approved under  
5 section 28-1247; and

6 (8) Display fireworks means those materials manufactured  
7 exclusively for use in public exhibitions or displays of fireworks  
8 designed to produce visible or audible effects by combustion,  
9 deflagration, or detonation. Display fireworks includes, but is not  
10 limited to, firecrackers containing more than one hundred thirty  
11 milligrams of explosive composition, aerial shells containing more  
12 than forty grams of explosive composition, and other display pieces  
13 which exceed the limits for classification as common fireworks.  
14 Class B explosives as classified by the United States Department  
15 of Transportation shall be considered display fireworks. Display  
16 fireworks shall be considered an explosive as defined in section  
17 28-1213 and shall be subject to sections 28-1213 to 28-1239 and  
18 sections 20 and 22 of this act, except that display fireworks may  
19 be purchased, received, and discharged by the holder of an approved  
20 display permit issued pursuant to section 28-1239.01.

21 Sec. 35. Section 29-119, Reissue Revised Statutes of  
22 Nebraska, is amended to read:

23 29-119 For purposes of this section and sections 23-1201,  
24 29-120, and 29-2261, unless the context otherwise requires:

25 (1) A plea agreement means that as a result of a



1 discussion between the defense counsel and the prosecuting  
2 attorney:

3 (a) A charge is to be dismissed or reduced; or

4 (b) A defendant, if he or she pleads guilty to a charge,  
5 may receive less than the maximum penalty permitted by law; and

6 (2) Victim means a person who, as a result of a homicide  
7 as defined in sections 28-302 to 28-306 and sections 8, 9, and 11  
8 of this act, a first degree sexual assault as defined in section  
9 28-319, a first degree assault as defined in section 28-308, a  
10 sexual assault of a child in the second or third degree as defined  
11 in section 28-320.01, a sexual assault of a child in the first  
12 degree as defined in section 28-319.01, a second degree assault  
13 as defined in section 28-309, a first degree false imprisonment  
14 as defined in section 28-314, a second degree sexual assault as  
15 defined in section 28-320, or a robbery as defined in section  
16 28-324, has had a personal confrontation with the offender and also  
17 includes a person who has suffered serious bodily injury as defined  
18 in section 28-109 as a result of a motor vehicle accident when the  
19 driver was charged with a violation of section 60-6,196 or 60-6,197  
20 or with a violation of a city or village ordinance enacted in  
21 conformance with either section. In the case of a homicide, victim  
22 means the nearest surviving relative under the law as provided by  
23 section 30-2303 but does not include the alleged perpetrator of the  
24 homicide. In the case of a sexual assault of a child, victim means  
25 the child victim and the parents, guardians, or duly appointed

1 legal representative of the child victim but does not include the  
2 alleged perpetrator of the sexual assault.

3 Sec. 36. Section 29-1306, Reissue Revised Statutes of  
4 Nebraska, is amended to read:

5 29-1306 If any person shall give any mortal blow or  
6 administer any poison to another, in any county within this state,  
7 with intent to kill, and the party so stricken or poisoned thereof  
8 shall die in any other county or state, the person giving such  
9 mortal blow or administering such poison may be tried and convicted  
10 of murder or manslaughter, as the case may be, in the county ~~where~~  
11 in which such mortal blow was given or poison administered or the  
12 county in which such person died, but not both.

13 Sec. 37. Section 29-1603, Reissue Revised Statutes of  
14 Nebraska, is amended to read:

15 29-1603 (1) All informations shall be verified by the  
16 oath of the county attorney, complainant, or some other person, and  
17 the offenses charged therein shall be stated with the same fullness  
18 and precision in matters of substance as is required in indictments  
19 in like cases.

20 (2)(a) Any information charging a first degree  
21 premeditated murder or first degree felony murder in violation of  
22 section 28-303 or section 8 of this act and in which the death  
23 penalty is sought shall contain a notice of aggravation which  
24 alleges one or more aggravating circumstances, as such aggravating  
25 circumstances are provided in section 29-2523. The notice of

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

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

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

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

16           Sec. 38. Section 29-2004, Reissue Revised Statutes of  
17   Nebraska, is amended to read:

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

22           (2) In all cases, except as may be otherwise expressly  
23   provided, the accused shall be tried by a jury drawn, summoned, and  
24   impaneled according to provisions of the code of civil procedure,  
25   except that whenever in the opinion of the court the trial is

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

1 in the jury box he or she shall be subject to the same rules as a  
2 regular juror.

3 Sec. 39. Section 29-2027, Reissue Revised Statutes of  
4 Nebraska, is amended to read:

5 29-2027 In all trials for murder, except first degree  
6 felony murder, the jury before whom such trial is had, ~~if they~~  
7 ~~find the prisoner guilty thereof,~~ shall ascertain in their verdict  
8 whether it is murder in the first or second degree or manslaughter,  
9 and if the defendant is guilty of first degree premeditated  
10 murder, second degree murder, voluntary manslaughter, involuntary  
11 manslaughter, or not guilty. If the charge is first degree  
12 felony murder, then the jury shall ascertain in their verdict  
13 whether it is first degree felony murder, second degree felony  
14 murder, involuntary manslaughter, or not guilty. If such person is  
15 convicted by confession in open court, the court shall proceed by  
16 examination of witnesses in open court, to determine the degree of  
17 the crime, and shall pronounce sentence accordingly or as provided  
18 in sections 29-2519 to 29-2524, ~~for murder in the first degree.~~

19 Sec. 40. Section 29-2221, Reissue Revised Statutes of  
20 Nebraska, is amended to read:

21 29-2221 (1) Whoever has been twice convicted of a crime,  
22 sentenced, and committed to prison, in this or any other state or  
23 by the United States or once in this state and once at least in  
24 any other state or by the United States, for terms of not less  
25 than one year each shall, upon conviction of a felony committed

1 in this state, be deemed to be a habitual criminal and shall be  
2 punished by imprisonment in a Department of Correctional Services  
3 adult correctional facility for a mandatory minimum term of ten  
4 years and a maximum term of not more than sixty years, except that:

5 (a) If the felony committed is in violation of section  
6 28-303, 28-304, 28-308, 28-313, 28-319, 28-319.01, 28-502, 28-929,  
7 or 28-1222, or section 8 or 9 of this act, and at least one of the  
8 habitual criminal's prior felony convictions was for a violation  
9 of one of the sections listed in this subdivision or of a similar  
10 statute in another state or of the United States, the mandatory  
11 minimum term shall be twenty-five years and the maximum term not  
12 more than sixty years;

13 (b) If the felony committed is in violation of subsection  
14 (3) of section 28-306 and at least one of the prior convictions is  
15 in violation of subsection (3) of section 28-306 and the other is  
16 in violation of one of the sections set forth in subdivision (a) of  
17 this subsection or if the felony committed is in violation of one  
18 of the sections set forth in subdivision (a) of this subsection and  
19 both of the prior convictions are in violation of subsection (3)  
20 of section 28-306, the mandatory minimum term shall be twenty-five  
21 years and the maximum term not more than sixty years; and

22 (c) If a greater punishment is otherwise provided by  
23 statute, the law creating the greater punishment shall govern.

24 (2) When punishment of an accused as a habitual criminal  
25 is sought, the facts with reference thereto shall be charged in the

1 indictment or information which contains the charge of the felony  
2 upon which the accused is prosecuted, but the fact that the accused  
3 is charged with being a habitual criminal shall not be an issue  
4 upon the trial of the felony charge and shall not in any manner  
5 be disclosed to the jury. If the accused is convicted of a felony,  
6 before sentence is imposed a hearing shall be had before the court  
7 alone as to whether such person has been previously convicted of  
8 prior felonies. The court shall fix a time for the hearing and  
9 notice thereof shall be given to the accused at least three days  
10 prior thereto. At the hearing, if the court finds from the evidence  
11 submitted that the accused has been convicted two or more times of  
12 felonies and sentences imposed therefor by the courts of this or  
13 any other state or by the United States, the court shall sentence  
14 such person so convicted as a habitual criminal.

15 (3) If the person so convicted shows to the satisfaction  
16 of the court before which the conviction was had that he or she  
17 was released from imprisonment upon either of such sentences upon  
18 a pardon granted for the reason that he or she was innocent, such  
19 conviction and sentence shall not be considered as such under this  
20 section and section 29-2222.

21 Sec. 41. Section 29-2261, Reissue Revised Statutes of  
22 Nebraska, is amended to read:

23 29-2261 (1) Unless it is impractical to do so, when an  
24 offender has been convicted of a felony other than murder in the  
25 first degree in which the death penalty is sought or first degree

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

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

22 (3) The presentence investigation and report shall  
23 include, when available, an analysis of the circumstances attending  
24 the commission of the crime, the offender's history of delinquency  
25 or criminality, physical and mental condition, family situation and



1 background, economic status, education, occupation, and personal  
2 habits, and any other matters that the probation officer deems  
3 relevant or the court directs to be included. All local and state  
4 police agencies and Department of Correctional Services adult  
5 correctional facilities shall furnish to the probation officer  
6 copies of such criminal records, in any such case referred to  
7 the probation officer by the court of proper jurisdiction, as the  
8 probation officer shall require without cost to the court or the  
9 probation officer.

10 Such investigation shall also include:

11 (a) Any written statements submitted to the county  
12 attorney by a victim; and

13 (b) Any written statements submitted to the probation  
14 officer by a victim.

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

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

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

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

23 (5) Before imposing sentence, the court may order the  
24 offender to submit to psychiatric observation and examination for  
25 a period of not exceeding sixty days or such longer period as the

1 court determines to be necessary for that purpose. The offender  
2 may be remanded for this purpose to any available clinic or mental  
3 hospital, or the court may appoint a qualified psychiatrist to make  
4 the examination. The report of the examination shall be submitted  
5 to the court.

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

1 offender. The court may allow fair opportunity for an offender to  
2 provide additional information for the court's consideration.

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

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

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

24 Sec. 42. Section 29-2519, Reissue Revised Statutes of  
25 Nebraska, is amended to read:

1                   29-2519 (1) The Legislature hereby finds that it is  
2 reasonable and necessary to establish mandatory standards for the  
3 imposition of the sentence of death; that the imposition of the  
4 death penalty in every instance of the commission of ~~the crimes~~  
5 specified in first degree premeditated murder in violation of  
6 section 28-303 or first degree felony murder in violation of  
7 section 8 of this act fails to allow for mitigating factors which  
8 may dictate against the penalty of death; and that the rational  
9 imposition of the death sentence requires the establishment of  
10 specific legislative guidelines to be applied in individual cases  
11 by the court. The Legislature therefor determines that the death  
12 penalty should be imposed only for the crimes set forth in section  
13 28-303 and section 8 of this act and, in addition, that it  
14 shall only be imposed in those instances when the aggravating  
15 circumstances existing in connection with the crime outweigh the  
16 mitigating circumstances, as set forth in sections 29-2520 to  
17 29-2524.

18                   (2) The Legislature hereby finds and declares that:

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

24                   (b) The changes made by Laws 2002, LB 1, Ninety-seventh  
25 Legislature, Third Special Session, are intended to be procedural

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

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

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

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

23 Sec. 43. Section 29-2520, Reissue Revised Statutes of  
24 Nebraska, is amended to read:

25 29-2520 (1) Whenever any person is found guilty of a

1 first degree premeditated murder in violation of section 28-303  
2 or first degree felony murder in violation of section 8 of this  
3 act and the information contains a notice of aggravation as  
4 provided in section 29-1603, the district court shall, as soon as  
5 practicable, fix a date for an aggravation hearing to determine  
6 the alleged aggravating circumstances. If no notice of aggravation  
7 has been filed, the district court shall enter a sentence of life  
8 imprisonment without parole.

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

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

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

15 (i) The defendant waived his or her right to a jury at  
16 the trial of guilt and either was convicted before a judge or was  
17 convicted on a plea of guilty or nolo contendere; or

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

20 A jury required by subdivision (2)(b) of this section  
21 shall be impaneled in the manner provided in sections 29-2004 to  
22 29-2010.

23 (3) The defendant may waive his or her right to a  
24 jury determination of the alleged aggravating circumstances. The  
25 court shall accept the waiver after determining that it is made

1 freely, voluntarily, and knowingly. If the defendant waives his  
2 or her right to a jury determination of the alleged aggravating  
3 circumstances, such determination shall be made by a panel of  
4 judges as a part of the sentencing determination proceeding as  
5 provided in section 29-2521.

6 (4) (a) At an aggravation hearing before a jury for the  
7 determination of the alleged aggravating circumstances, the state  
8 may present evidence as to the existence of the aggravating  
9 circumstances alleged in the information. The Nebraska Evidence  
10 Rules shall apply at the aggravation hearing.

11 (b) Alternate jurors who would otherwise be discharged  
12 upon final submission of the cause to the jury shall be retained  
13 during the deliberation of the defendant's guilt but shall not  
14 participate in such deliberations. Such alternate jurors shall  
15 serve during the aggravation hearing as provided in section 29-2004  
16 but shall not participate in the jury's deliberations under this  
17 subsection.

18 (c) If the jury serving at the aggravation hearing is  
19 the jury which determined the defendant's guilt, the jury may  
20 consider evidence received at the trial of guilt for purposes  
21 of reaching its verdict as to the existence or nonexistence of  
22 aggravating circumstances in addition to the evidence received at  
23 the aggravation hearing.

24 (d) After the presentation and receipt of evidence at  
25 the aggravation hearing, the state and the defendant or his or her

1 counsel may present arguments before the jury as to the existence  
2 or nonexistence of the alleged aggravating circumstances.

3 (e) The court shall instruct the members of the jury  
4 as to their duty as jurors, the definitions of the aggravating  
5 circumstances alleged in the information, and the state's burden to  
6 prove the existence of each aggravating circumstance alleged in the  
7 information beyond a reasonable doubt.

8 (f) The jury at the aggravation hearing shall deliberate  
9 and return a verdict as to the existence or nonexistence of each  
10 alleged aggravating circumstance. Each aggravating circumstance  
11 shall be proved beyond a reasonable doubt. Each verdict with  
12 respect to each alleged aggravating circumstance shall be  
13 unanimous. If the jury is unable to reach a unanimous verdict  
14 with respect to an aggravating circumstance, such aggravating  
15 circumstance shall not be weighed in the sentencing determination  
16 proceeding as provided in section 29-2521.

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

19 (h) If no aggravating circumstance is found to exist, the  
20 court shall enter a sentence of life imprisonment without parole.  
21 If one or more aggravating circumstances are found to exist, the  
22 court shall convene a panel of three judges to hold a hearing  
23 to receive evidence of mitigation and sentence excessiveness  
24 or disproportionality as provided in subsection (3) of section  
25 29-2521.



1           Sec. 44. Section 29-2521, Reissue Revised Statutes of  
2 Nebraska, is amended to read:

3           29-2521 (1) When a person has been found guilty of ~~murder~~  
4 in the first degree first degree premeditated murder in violation  
5 of section 28-303 or first degree felony murder in violation of  
6 section 8 of this act and (a) a jury renders a verdict finding  
7 the existence of one or more aggravating circumstances as provided  
8 in section 29-2520 or (b) (i) the information contains a notice of  
9 aggravation as provided in section 29-1603 and (ii) such person  
10 waives his or her right to a jury determination of the alleged  
11 aggravating circumstances, the sentence of such person shall be  
12 determined by:

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

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

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

5 (2) In the sentencing determination proceeding before  
6 a panel of judges when the right to a jury determination of  
7 the alleged aggravating circumstances has been waived, the panel  
8 shall, as soon as practicable after receipt of the written report  
9 resulting from the presentence investigation ordered as provided  
10 in section 29-2261, hold a hearing. At such hearing, evidence  
11 may be presented as to any matter that the presiding judge  
12 deems relevant to sentence and shall include matters relating to  
13 the aggravating circumstances alleged in the information, to any  
14 of the mitigating circumstances set forth in section 29-2523,  
15 and to sentence excessiveness or disproportionality. The Nebraska  
16 Evidence Rules shall apply to evidence relating to aggravating  
17 circumstances. Each aggravating circumstance shall be proved beyond  
18 a reasonable doubt. Any evidence at the sentencing determination  
19 proceeding which the presiding judge deems to have probative value  
20 may be received. The state and the defendant or his or her counsel  
21 shall be permitted to present argument for or against sentence of  
22 death. The presiding judge shall set forth the general order of  
23 procedure at the outset of the sentencing determination proceeding.  
24 The panel shall make written findings of fact based upon the trial  
25 of guilt and the sentencing determination proceeding, identifying

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

10 (3) When a jury renders a verdict finding the existence  
11 of one or more aggravating circumstances as provided in section  
12 29-2520, the panel of judges shall, as soon as practicable after  
13 receipt of the written report resulting from the presentence  
14 investigation ordered as provided in section 29-2261, hold  
15 a hearing to receive evidence of mitigation and sentence  
16 excessiveness or disproportionality. Evidence may be presented  
17 as to any matter that the presiding judge deems relevant to  
18 (a) mitigation, including, but not limited to, the mitigating  
19 circumstances set forth in section 29-2523, and (b) sentence  
20 excessiveness or disproportionality as provided in subdivision (3)  
21 of section 29-2522. Any such evidence which the presiding judge  
22 deems to have probative value may be received. The state and the  
23 defendant and his or her counsel shall be permitted to present  
24 argument for or against sentence of death. The presiding judge  
25 shall set forth the general order of procedure at the outset of

1 the sentencing determination proceeding. After the presentation and  
2 receipt of evidence and argument, the panel shall determine an  
3 appropriate sentence as provided in section 29-2522.

4 Sec. 45. Section 29-2524, Reissue Revised Statutes of  
5 Nebraska, is amended to read:

6 29-2524 Nothing in sections 25-1140.09, 28-303, 28-313,  
7 and 29-2519 to 29-2546 and section 8 of this act shall be in any  
8 way deemed to repeal or limit existing procedures for automatic  
9 review of capital cases, nor shall they in any way limit the right  
10 of the Supreme Court to reduce a sentence of death to a sentence of  
11 life imprisonment without parole in accordance with the provisions  
12 of section 29-2308, nor shall they limit the right of the Board  
13 of Pardons to commute any sentence of death to a sentence of life  
14 imprisonment without parole.

15 Sec. 46. Section 29-4103, Reissue Revised Statutes of  
16 Nebraska, is amended to read:

17 29-4103 For purposes of the DNA Identification  
18 Information Act:

19 (1) Combined DNA Index System means the Federal Bureau  
20 of Investigation's national DNA identification index system that  
21 allows the storage and exchange of DNA records submitted by state  
22 and local forensic DNA laboratories;

23 (2) DNA means deoxyribonucleic acid which is located in  
24 the cells and provides an individual's personal genetic blueprint.  
25 DNA encodes genetic information that is the basis of human heredity

1 and forensic identification;

2 (3) DNA record means the DNA identification information  
3 stored in the State DNA Data Base or the Combined DNA Index System  
4 which is derived from DNA typing test results;

5 (4) DNA sample means a blood, tissue, or bodily fluid  
6 sample provided by any person covered by the DNA Identification  
7 Information Act for analysis or storage, or both;

8 (5) DNA typing tests means the laboratory procedures  
9 which evaluate the characteristics of a DNA sample which are of  
10 value in establishing the identity of an individual;

11 (6) Felony sex offense means a felony offense, or an  
12 attempt, conspiracy, or solicitation to commit a felony offense,  
13 under any of the following:

14 (a) Kidnapping of a minor pursuant to section 28-313,  
15 except when the person is the parent of the minor and was not  
16 convicted of any other offense in this subdivision;

17 (b) Incest of a minor pursuant to section 28-703;

18 (c) Sexual assault in the first or second degree pursuant  
19 to section 28-319 or 28-320;

20 (d) Sexual assault of a child in the second or third  
21 degree pursuant to section 28-320.01;

22 (e) Sexual assault of a child in the first degree  
23 pursuant to section 28-319.01;

24 (f) Sexual assault of a vulnerable adult pursuant to  
25 subdivision (1)(c) of section 28-386; and

1 (g) False imprisonment of a minor in the first degree  
2 pursuant to section 28-314, except when the person is the parent  
3 of the minor and was not convicted of any other offense in this  
4 subdivision;

5 (7) Law enforcement agency includes a police department,  
6 a town marshal, a county sheriff, and the Nebraska State Patrol;

7 (8) Other specified offense means an offense, or an  
8 attempt, conspiracy, or solicitation to commit an offense, under  
9 any of the following:

10 (a) ~~Murder in the first degree~~ First degree premeditated  
11 murder pursuant to section 28-303;

12 (b) First degree felony murder pursuant to section 8 of  
13 this act;

14 ~~(b) Murder in the second degree~~ (c) Second degree murder  
15 pursuant to section 28-304;

16 (d) Second degree felony murder pursuant to section 9 of  
17 this act;

18 ~~(e) Manslaughter~~ (e) Voluntary manslaughter pursuant to  
19 section 28-305;

20 (f) Involuntary manslaughter pursuant to section 11 of  
21 this act;

22 ~~(d)~~ (g) Stalking pursuant to sections 28-311.02 to  
23 28-311.05;

24 ~~(e)~~ (h) Burglary pursuant to section 28-507 provided that  
25 the real estate is a dwelling place intended for human occupancy;

1 or

2 ~~(f)~~ (i) Robbery pursuant to section 28-324; and

3 (9) Released means any release, parole, furlough, work  
4 release, prerelease, or release in any other manner from a prison,  
5 a jail, or any other detention facility or institution.

6 Sec. 47. Section 43-283.01, Reissue Revised Statutes of  
7 Nebraska, is amended to read:

8 43-283.01 (1) In determining whether reasonable efforts  
9 have been made to preserve and reunify the family and in making  
10 such reasonable efforts, the juvenile's health and safety are the  
11 paramount concern.

12 (2) Except as provided in subsection (4) of this section,  
13 reasonable efforts shall be made to preserve and reunify families  
14 prior to the placement of a juvenile in foster care to prevent or  
15 eliminate the need for removing the juvenile from the juvenile's  
16 home and to make it possible for a juvenile to safely return to the  
17 juvenile's home.

18 (3) If continuation of reasonable efforts to preserve  
19 and reunify the family is determined to be inconsistent with the  
20 permanency plan determined for the juvenile in accordance with a  
21 permanency hearing under section 43-1312, efforts shall be made  
22 to place the juvenile in a timely manner in accordance with the  
23 permanency plan and to complete whatever steps are necessary to  
24 finalize the permanent placement of the juvenile.

25 (4) Reasonable efforts to preserve and reunify the

1 family are not required if a court of competent jurisdiction  
2 has determined that:

3 (a) The parent of the juvenile has subjected the  
4 juvenile to aggravated circumstances, including, but not limited  
5 to, abandonment, torture, chronic abuse, or sexual abuse;

6 (b) The parent of the juvenile has (i) committed first  
7 degree premeditated murder or second degree murder to another  
8 child of the parent, (ii) committed first or second degree felony  
9 murder to another child of the parent, (iii) committed voluntary  
10 manslaughter to another child of the parent, ~~(iii)~~ (iv) aided or  
11 abetted, attempted, conspired, or solicited to commit murder, or  
12 aided or abetted voluntary manslaughter of the juvenile or another  
13 child of the parent, or ~~(iv)~~ (v) committed a felony assault which  
14 results in serious bodily injury to the juvenile or another minor  
15 child of the parent; or

16 (c) The parental rights of the parent to a sibling of the  
17 juvenile have been terminated involuntarily.

18 (5) If reasonable efforts to preserve and reunify the  
19 family are not required because of a court determination made under  
20 subsection (4) of this section, a permanency hearing, as provided  
21 in section 43-1312, shall be held for the juvenile within thirty  
22 days after the determination, reasonable efforts shall be made  
23 to place the juvenile in a timely manner in accordance with the  
24 permanency plan, and whatever steps are necessary to finalize the  
25 permanent placement of the juvenile shall be made.



1           (6) Reasonable efforts to place a juvenile for adoption  
2 or with a guardian may be made concurrently with reasonable efforts  
3 to preserve and reunify the family, but priority shall be given to  
4 preserving and reunifying the family as provided in this section.

5           Sec. 48. Section 43-286, Reissue Revised Statutes of  
6 Nebraska, is amended to read:

7           43-286 (1) When any juvenile is adjudicated to be a  
8 juvenile described in subdivision (1), (2), or (4) of section  
9 43-247:

10           (a) The court may continue the dispositional portion of  
11 the hearing, from time to time upon such terms and conditions as  
12 the court may prescribe, including an order of restitution of any  
13 property stolen or damaged or an order requiring the juvenile to  
14 participate in community service programs, if such order is in  
15 the interest of the juvenile's reformation or rehabilitation, and,  
16 subject to the further order of the court, may:

17           (i) Place the juvenile on probation subject to the  
18 supervision of a probation officer;

19           (ii) Permit the juvenile to remain in his or her own home  
20 or be placed in a suitable family home, subject to the supervision  
21 of the probation officer; or

22           (iii) Cause the juvenile to be placed in a suitable  
23 family home or institution, subject to the supervision of the  
24 probation officer. If the court has committed the juvenile to the  
25 care and custody of the Department of Health and Human Services,

1 the department shall pay the costs of the suitable family home or  
2 institution which are not otherwise paid by the juvenile's parents.

3 Under subdivision (1)(a) of this section, upon a  
4 determination by the court that there are no parental, private, or  
5 other public funds available for the care, custody, and maintenance  
6 of a juvenile, the court may order a reasonable sum for the care,  
7 custody, and maintenance of the juvenile to be paid out of a  
8 fund which shall be appropriated annually by the county where the  
9 petition is filed until a suitable provision may be made for the  
10 juvenile without such payment; or

11 (b) The court may commit such juvenile to the Office  
12 of Juvenile Services, but a juvenile under the age of twelve  
13 years shall not be placed at the Youth Rehabilitation and  
14 Treatment Center-Geneva or the Youth Rehabilitation and Treatment  
15 Center-Kearney unless he or she has violated the terms of probation  
16 or has committed an additional offense and the court finds that the  
17 interests of the juvenile and the welfare of the community demand  
18 his or her commitment. This minimum age provision shall not apply  
19 if the act in question is murder or voluntary manslaughter.

20 (2) When any juvenile is found by the court to be a  
21 juvenile described in subdivision (3)(b) of section 43-247, the  
22 court may enter such order as it is empowered to enter under  
23 subdivision (1)(a) of this section or enter an order committing or  
24 placing the juvenile to the care and custody of the Department of  
25 Health and Human Services.

1           (3) Beginning July 15, 1998, when any juvenile is  
2 adjudicated to be a juvenile described in subdivision (1), (2),  
3 (3) (b), or (4) of section 43-247 because of a nonviolent act or  
4 acts and the juvenile has not previously been adjudicated to be  
5 such a juvenile because of a violent act or acts, the court may,  
6 with the agreement of the victim, order the juvenile to attend  
7 juvenile offender and victim mediation with a mediator or at an  
8 approved center selected from the roster made available pursuant to  
9 section 25-2908.

10           (4) (a) When a juvenile is placed on probation or under  
11 the supervision of the court and it is alleged that the juvenile is  
12 again a juvenile described in subdivision (1), (2), (3) (b), or (4)  
13 of section 43-247, a petition may be filed and the same procedure  
14 followed and rights given at a hearing on the original petition. If  
15 an adjudication is made that the allegations of the petition are  
16 true, the court may make any disposition authorized by this section  
17 for such adjudications.

18           (b) When a juvenile is placed on probation or under  
19 the supervision of the court for conduct under subdivision (1),  
20 (2), (3) (b), or (4) of section 43-247 and it is alleged that the  
21 juvenile has violated a term of probation or supervision or that  
22 the juvenile has violated an order of the court, a motion to revoke  
23 probation or supervision or to change the disposition may be filed  
24 and proceedings held as follows:

25           (i) The motion shall set forth specific factual

1 allegations of the alleged violations and a copy of such motion  
2 shall be served on all persons required to be served by sections  
3 43-262 to 43-267;

4 (ii) The juvenile shall be entitled to a hearing before  
5 the court to determine the validity of the allegations. At such  
6 hearing the juvenile shall be entitled to those rights relating  
7 to counsel provided by section 43-272 and those rights relating  
8 to detention provided by sections 43-254 to 43-256. The juvenile  
9 shall also be entitled to speak and present documents, witnesses,  
10 or other evidence on his or her own behalf. He or she may confront  
11 persons who have given adverse information concerning the alleged  
12 violations, may cross-examine such persons, and may show that he  
13 or she did not violate the conditions of his or her probation or,  
14 if he or she did, that mitigating circumstances suggest that the  
15 violation does not warrant revocation. The revocation hearing shall  
16 be held within a reasonable time after the juvenile is taken into  
17 custody;

18 (iii) The hearing shall be conducted in an informal  
19 manner and shall be flexible enough to consider evidence, including  
20 letters, affidavits, and other material, that would not be  
21 admissible in an adversarial criminal trial;

22 (iv) The juvenile shall be given a preliminary hearing  
23 in all cases when the juvenile is confined, detained, or otherwise  
24 significantly deprived of his or her liberty as a result of his or  
25 her alleged violation of probation. Such preliminary hearing shall

1 be held before an impartial person other than his or her probation  
2 officer or any person directly involved with the case. If, as a  
3 result of such preliminary hearing, probable cause is found to  
4 exist, the juvenile shall be entitled to a hearing before the court  
5 in accordance with this subsection;

6 (v) If the juvenile is found by the court to have  
7 violated the terms of his or her probation, the court may modify  
8 the terms and conditions of the probation order, extend the period  
9 of probation, or enter any order of disposition that could have  
10 been made at the time the original order of probation was entered;  
11 and

12 (vi) In cases when the court revokes probation, it shall  
13 enter a written statement as to the evidence relied on and the  
14 reasons for revocation.

15 Sec. 49. Section 81-1850, Reissue Revised Statutes of  
16 Nebraska, is amended to read:

17 81-1850 (1) Upon request of the victim and at the time of  
18 conviction of the offender, the county attorney of the jurisdiction  
19 in which a person is convicted of a felony shall forward to  
20 the Board of Parole, the Department of Correctional Services,  
21 the county corrections agency, or the Department of Health and  
22 Human Services the name and address of any victim, as defined in  
23 section 29-119, of the convicted person. The board, the Department  
24 of Correctional Services, the county corrections agency, or the  
25 Department of Health and Human Services shall include the name

1 in the file of the convicted person, but the name shall not be  
2 part of the public record of any parole hearings of the convicted  
3 person. Any victim, including a victim who has waived his or her  
4 right to notification at the time of conviction, may request the  
5 notification prescribed in this section, as applicable, by sending  
6 a written request to the board, the Department of Correctional  
7 Services, the county corrections agency, or the Department of  
8 Health and Human Services any time after the convicted person is  
9 incarcerated and until the convicted person is no longer under the  
10 jurisdiction of the board, the county corrections agency, or the  
11 Department of Correctional Services or, if the person is under the  
12 jurisdiction of the Department of Health and Human Services, within  
13 the three-year period after the convicted person is no longer under  
14 the jurisdiction of the board, the county corrections agency, or  
15 the Department of Correctional Services.

16 (2) A victim whose name appears in the file of the  
17 convicted person shall be notified by the Board of Parole:

18 (a) Within ninety days after conviction of an offender,  
19 of the tentative date of release and the earliest parole  
20 eligibility date of such offender;

21 (b) Of any parole hearings or proceedings;

22 (c) Of any decision of the Board of Parole;

23 (d) When a convicted person who is on parole is returned  
24 to custody because of parole violations; and

25 (e) If the convicted person has been adjudged a mentally

1 disordered sex offender or is a convicted sex offender, when such  
2 person is released from custody or treatment.

3 Such notification shall be given in person, by  
4 telecommunication, or by mail.

5 (3) A victim whose name appears in the file of  
6 the convicted person shall be notified by the Department of  
7 Correctional Services or a county corrections agency:

8 (a) When a convicted person is granted a furlough or  
9 release from incarceration for twenty-four hours or longer or any  
10 transfer of the convicted person to community status;

11 (b) When a convicted person is released into  
12 community-based programs, including educational release and work  
13 release programs. Such notification shall occur at the beginning  
14 and termination of any such program;

15 (c) When a convicted person escapes or does not return  
16 from a granted furlough or release and again when the convicted  
17 person is returned into custody;

18 (d) When a convicted person is discharged from custody  
19 upon completion of his or her sentence. Such notice shall be given  
20 at least thirty days before discharge, when practicable;

21 (e) Of the (i) department's calculation of the earliest  
22 parole eligibility date of the prisoner with all potential good  
23 time or disciplinary credits considered if the sentence exceeds  
24 ninety days or (ii) county corrections agency's calculation of  
25 the earliest release date of the prisoner. The victim may request

1 one notice of the calculation described in this subdivision. Such  
2 information shall be mailed not later than thirty days after  
3 receipt of the request;

4 (f) Of any reduction in the prisoner's minimum sentence;  
5 and

6 (g) Of the victim's right to submit a statement as  
7 provided in section 81-1848.

8 (4) A victim whose name appears in the file of a  
9 convicted person shall be notified by the Department of Health and  
10 Human Services:

11 (a) When a person convicted of an offense listed in  
12 subsection (5) of this section becomes the subject of a petition  
13 pursuant to the Nebraska Mental Health Commitment Act or the Sex  
14 Offender Commitment Act prior to his or her discharge from custody  
15 upon the completion of his or her sentence or within thirty days  
16 after such discharge. The county attorney who filed the petition  
17 shall notify the Department of Correctional Services of such  
18 petition. The Department of Correctional Services shall forward  
19 the names and addresses of victims appearing in the file of the  
20 convicted person to the Department of Health and Human Services;

21 (b) When a person under a mental health board commitment  
22 pursuant to subdivision (a) of this subsection escapes from an  
23 inpatient facility providing board-ordered treatment and again when  
24 the person is returned to an inpatient facility;

25 (c) When a person under a mental health board commitment



1 pursuant to subdivision (a) of this subsection is discharged or has  
2 a change in disposition from inpatient board-ordered treatment;

3 (d) When a person under a mental health board commitment  
4 pursuant to subdivision (a) of this subsection is granted a  
5 furlough or release for twenty-four hours or longer; and

6 (e) When a person under a mental health board commitment  
7 pursuant to subdivision (a) of this subsection is released  
8 into educational release programs or work release programs. Such  
9 notification shall occur at the beginning and termination of any  
10 such program.

11 (5) Subsection (4) of this section applies to persons  
12 convicted of at least one of the following offenses which is also  
13 alleged to be the recent act or threat underlying the commitment  
14 of such persons as mentally ill and dangerous or as dangerous sex  
15 offenders as defined in section 83-174.01:

16 (a) ~~Murder in the first degree~~ First degree premeditated  
17 murder pursuant to section 28-303;

18 (b) First degree felony murder pursuant to section 8 of  
19 this act;

20 ~~(b) Murder in the second degree~~ (c) Second degree murder  
21 pursuant to section 28-304;

22 (d) Second degree felony murder pursuant to section 9 of  
23 this act;

24 ~~(e)~~ (e) Kidnapping pursuant to section 28-313;

25 ~~(d)~~ (f) Assault in the first degree pursuant to section

1 28-308;

2 ~~(e)~~ (g) Assault in the second degree pursuant to section  
3 28-309;

4 ~~(f)~~ (h) Sexual assault in the first degree pursuant to  
5 section 28-319;

6 ~~(g)~~ (i) Sexual assault in the second degree pursuant to  
7 section 28-320;

8 ~~(h)~~ (j) Sexual assault of a child in the first degree  
9 pursuant to section 28-319.01;

10 ~~(i)~~ (k) Sexual assault of a child in the second or third  
11 degree pursuant to section 28-320.01;

12 ~~(j)~~ (l) Stalking pursuant to section 28-311.03; or

13 ~~(k)~~ (m) An attempt, solicitation, or conspiracy to commit  
14 an offense listed in subdivisions (a) through ~~(j)~~ (l) of this  
15 subsection.

16 (6) A victim whose name appears in the file of a  
17 convicted person shall be notified by the Board of Pardons:

18 (a) Of any pardon or commutation proceedings; and

19 (b) If a pardon or commutation has been granted.

20 (7) The Board of Parole, the Department of Correctional  
21 Services, the Department of Health and Human Services, and the  
22 Board of Pardons shall adopt and promulgate rules and regulations  
23 as needed to carry out this section.

24 (8) The victim's address and telephone number maintained  
25 by the Department of Correctional Services, the Department of

1 Health and Human Services, the county corrections agency, or the  
2 Board of Parole pursuant to subsection (1) of this section shall  
3 be exempt from disclosure under public records laws and federal  
4 freedom of information laws, as such laws existed on January 1,  
5 2004.

6 Sec. 50. Section 83-961, Reissue Revised Statutes of  
7 Nebraska, is amended to read:

8 83-961 For purposes of the Correctional System  
9 Overcrowding Emergency Act:

10 (1) Board means the Board of Parole;

11 (2) Committed offender has the definition found in  
12 section 83-170;

13 (3) Department means the Department of Correctional  
14 Services;

15 (4) Design capacity means the total designed bed space  
16 in facilities operated by the department, as certified by the  
17 director;

18 (5) Director means the Director of Correctional Services;

19 (6) Operational capacity means one hundred twenty-five  
20 percent of design capacity;

21 (7) Population means the actual number of inmates  
22 assigned to facilities operated by the department and does  
23 not include inmates assigned to county-operated correctional  
24 institutions; and

25 (8) Violent offense means any one or more of the

1 following crimes: ~~Murder in the first degree,~~ First degree  
2 premeditated murder, first degree felony murder, ~~murder in the~~  
3 second degree murder, second degree felony murder, voluntary  
4 manslaughter, involuntary manslaughter, assault in the first  
5 degree, kidnapping, sexual assault in the first degree, or robbery.

6 Sec. 51. Section 84-205, Reissue Revised Statutes of  
7 Nebraska, is amended to read:

8 84-205 The duties of the Attorney General shall be:

9 (1) To appear and defend actions and claims against the  
10 state;

11 (2) To investigate, commence, and prosecute any and all  
12 actions resulting from violations of sections 32-1401 to 32-1417;

13 (3) To consult with and advise the county attorneys, when  
14 requested by them, in all criminal matters and in matters relating  
15 to the public revenue. He or she shall have authority to require  
16 aid and assistance of the county attorney in all matters pertaining  
17 to the duties of the Attorney General in the county of such county  
18 attorney and may, in any case brought to the Court of Appeals or  
19 Supreme Court from any county, demand and receive the assistance of  
20 the county attorney from whose county such case is brought;

21 (4) To give, when required, without fee, his or her  
22 opinion in writing upon all questions of law submitted to him or  
23 her by the Governor, head of any executive department, Secretary  
24 of State, State Treasurer, Auditor of Public Accounts, Board of  
25 Educational Lands and Funds, State Department of Education, Public

1 Service Commission, or Legislature;

2 (5) At the request of the Governor, head of any executive  
3 department, Secretary of State, State Treasurer, Auditor of Public  
4 Accounts, Board of Educational Lands and Funds, State Department of  
5 Education, or Public Service Commission, to prosecute any official  
6 bond or any contract in which the state is interested which is  
7 deposited with any of them and to prosecute or defend for the  
8 state all civil or criminal actions and proceedings relating to  
9 any matter connected with any of such officers' departments if,  
10 after investigation, he or she is convinced there is sufficient  
11 legal merit to justify the proceeding. Such officers shall not  
12 pay or contract to pay from the funds of the state any money for  
13 special attorneys or counselors-at-law unless the employment of  
14 such special counsel is made upon the written authorization of the  
15 Governor or the Attorney General;

16 (6) To enforce the proper application of money  
17 appropriated by the Legislature to the various funds of the state  
18 and prosecute breaches of trust in the administration of such  
19 funds;

20 (7) To prepare, when requested by the Governor, Secretary  
21 of State, State Treasurer, or Auditor of Public Accounts or any  
22 other executive department, proper drafts for contracts, forms, or  
23 other writings which may be wanted for the use of the state and  
24 report to the Legislature, whenever requested, upon any business  
25 pertaining to the duties of his or her office;

1           (8) To pay all money received, belonging to the people  
2 of the state, immediately upon receipt thereof, into the state  
3 treasury;

4           (9) To keep a record in proper books provided for that  
5 purpose at the expense of the state, a register of all actions and  
6 demands prosecuted or defended by him or her in behalf of the state  
7 and all proceedings had in relation thereto, and deliver the same  
8 to his or her successor in office;

9           (10) To appear for the state and prosecute and defend all  
10 civil or criminal actions and proceedings in the Court of Appeals  
11 or Supreme Court in which the state is interested or a party. When  
12 requested by the Governor or the Legislature, the Attorney General  
13 shall appear for the state and prosecute or defend any action or  
14 conduct any investigation in which the state is interested or a  
15 party before any court, officer, board, tribunal, or commission;

16           (11) To prepare and promulgate model rules of procedure  
17 appropriate for use by as many agencies as possible. The Attorney  
18 General shall add to, amend, or revise the model rules as necessary  
19 for the proper guidance of agencies;

20           (12) To include within the budget of the office  
21 sufficient funding to assure oversight and representation of the  
22 State of Nebraska for district court appeals of administrative  
23 license revocation proceedings under section 60-498.04; and

24           (13) To create a Child Protection Division to be staffed  
25 by at least three assistant attorneys general who each have five or

1 more years of experience in the prosecution or defense of felonies  
 2 or misdemeanors, including two years in the prosecution or defense  
 3 of crimes against children. Upon the written request of a county  
 4 attorney, the division shall provide consultation and advise and  
 5 assist in the preparation of the trial of any case involving a  
 6 crime against a child, including, but not limited to, the following  
 7 offenses:

8 (a) Murder as defined in sections 28-303 and 28-304;

9 (b) Felony murder as defined in sections 8 and 9 of this  
 10 act;

11 ~~(b)~~ Manslaughter (c) Voluntary and involuntary  
 12 manslaughter as defined in section 28-305 and section 11 of this  
 13 act;

14 ~~(e)~~ (d) Kidnapping as defined in section 28-313;

15 ~~(d)~~ (e) False imprisonment as defined in sections 28-314  
 16 and 28-315;

17 ~~(e)~~ (f) Child abuse as defined in section 28-707;

18 ~~(f)~~ (g) Pandering as defined in section 28-802;

19 ~~(g)~~ (h) Debauching a minor as defined in section 28-805;

20 and

21 ~~(h)~~ (i) Offenses listed in sections 28-813, 28-813.01,  
 22 and 28-1463.03.

23 Any offense listed in subdivisions (a) through ~~(h)~~ (i)  
 24 of this subdivision shall include all inchoate offenses pursuant  
 25 to the Nebraska Criminal Code and compounding a felony pursuant

1 to section 28-301. Such crimes shall not include matters involving  
2 dependent and neglected children, infraction violations, custody,  
3 parenting time, visitation, or other access matters, or child  
4 support. If the county attorney declines in writing to prosecute  
5 a case involving a crime against a child because of an ethical  
6 consideration, including the presence or appearance of a conflict  
7 of interest, or for any other reason, the division shall, upon the  
8 receipt of a written request of the county attorney, the Department  
9 of Health and Human Services, the minor child, the parents of  
10 the minor child, or any other interested party, investigate the  
11 matter and either decline to prosecute the matter or initiate the  
12 appropriate criminal proceedings in a court of proper jurisdiction.

13 For purposes of this subdivision, child or children shall  
14 mean an individual or individuals sixteen years of age or younger.

15 Sec. 52. (1) The changes contained in this legislative  
16 bill are prospective only and shall not apply to any offense  
17 committed prior to the effective date of this act. Any changes that  
18 may mitigate sentence not yet final on the effective date of this  
19 act shall not apply as a result of the doctrine stated in State v.  
20 Randolph, 186 Neb. 297, 183 N.W.2d 225 (1971).

21 (2) All offenses committed before the effective date  
22 of this act shall be construed and punished according to the  
23 provisions of law existing at the time of the commission thereof in  
24 the same manner as if this legislative bill had not been enacted.

25 (3) An offense shall be deemed to have been committed



1 prior to the effective date of this act if any element of the  
2 offense occurred prior to such date.

3 (4) This legislative bill shall not bar, suspend, or  
4 otherwise affect any right or liability to damages, penalty,  
5 forfeiture, or other remedy authorized by law to be recovered or  
6 enforced in a civil action.

7           Sec. 53. Original sections 28-101, 28-105, 28-111,  
8 28-201, 28-302, 28-303, 28-304, 28-305, 28-306, 28-915, 28-915.01,  
9 28-916.01, 28-1213, 28-1214, 28-1219, 28-1223, 28-1224, 28-1227,  
10 28-1229, 28-1231, 28-1233, 28-1234, 28-1235, 28-1236, 28-1237,  
11 28-1238, 28-1239, 28-1239.01, 28-1241, 29-119, 29-1306, 29-1603,  
12 29-2004, 29-2027, 29-2221, 29-2261, 29-2519, 29-2520, 29-2521,  
13 29-2524, 29-4103, 43-283.01, 43-286, 81-1850, 83-961, and 84-205,  
14 Reissue Revised Statutes of Nebraska, are repealed.

15           Sec. 54. The following section is outright repealed:  
16 Section 29-1512, Reissue Revised Statutes of Nebraska.