

AMENDMENTS TO LB 543

Introduced by Coash

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

3 Section 1. Section 23-3406, Reissue Revised Statutes of
4 Nebraska, is amended to read:

5 23-3406 (1) The contract negotiated between the county
6 board and the contracting attorney shall specify the categories of
7 cases in which the contracting attorney is to provide services.

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

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

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

20 (a) The customary compensation in the community for
21 similar services rendered by a privately retained counsel to a
22 paying client or by government or other publicly paid attorneys to
23 a public client;

1 (b) The time and labor required to be spent by the
2 attorney; and

3 (c) The degree of professional ability, skill, and
4 experience called for and exercised in the performance of the
5 services.

6 (5) The contract between the county board and the
7 contracting attorney shall provide that the contracting attorney
8 may decline to represent clients with no reduction in compensation
9 if the contracting attorney is assigned more cases which require an
10 extraordinary amount of time and preparation than the contracting
11 attorney can competently handle.

12 (6) The contract between the contracting attorney and
13 the county board shall provide that the contracting attorney shall
14 receive at least ten hours of continuing legal education annually
15 in the area of criminal law. The contract between the county board
16 and the contracting attorney shall provide funds for the continuing
17 legal education of the contracting attorney in the area of criminal
18 law.

19 (7) The contract between the county board and the
20 contracting attorney shall require that the contracting attorney
21 provide legal counsel to all clients in a professional, skilled
22 manner consistent with minimum standards set forth by the American
23 Bar Association and the Canons of Ethics for Attorneys in the
24 State of Nebraska. The contract between the county board and the
25 contracting attorney shall provide that the contracting attorney
26 shall be available to eligible defendants upon their request, or
27 the request of someone acting on their behalf, at any time the

1 Constitution of the United States or the Constitution of Nebraska
2 requires the appointment of counsel.

3 (8) The contract between the county board and the
4 contracting attorney shall provide for reasonable compensation
5 over and above the normal contract price for cases which require an
6 extraordinary amount of time and preparation. ~~including capital~~
7 ~~cases.~~

8 Sec. 2. Section 24-1106, Reissue Revised Statutes of
9 Nebraska, is amended to read:

10 24-1106 (1) In cases which were appealable to the Supreme
11 Court before September 6, 1991, the appeal, if taken, shall be to
12 the Court of Appeals except in ~~capital cases~~, cases in which life
13 imprisonment without possibility of parole has been imposed, and
14 cases involving the constitutionality of a statute.

15 (2) Any party to a case appealed to the Court of Appeals
16 may file a petition in the Supreme Court to bypass the review
17 by the Court of Appeals and for direct review by the Supreme
18 Court. The procedure and time for filing the petition shall be
19 as provided by rules of the Supreme Court. In deciding whether to
20 grant the petition, the Supreme Court may consider one or more of
21 the following factors:

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

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

26 (c) Whether the case raises a question of law regarding
27 the validity of a statute;

1 (d) Whether the case involves issues upon which there is
2 an inconsistency in the decisions of the Court of Appeals or of the
3 Supreme Court; and

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

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

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

21 Sec. 3. Section 25-1140.09, Reissue Revised Statutes of
22 Nebraska, is amended to read:

23 25-1140.09 On the application of the county attorney or
24 any party to a suit in which a record of the proceedings has
25 been made, ~~upon receipt of the notice provided in section 29-2525,~~
26 or upon the filing of a praecipe for a bill of exceptions by an
27 appealing party in the office of the clerk of the district court

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

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

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

1 Sec. 4. Section 28-104, Reissue Revised Statutes of
2 Nebraska, is amended to read:

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

6 Sec. 5. Section 28-105, Revised Statutes Cumulative
7 Supplement, 2012, 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 of
10 the code, felonies are divided into ~~nine~~ eight 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 |
| 15 | <u>Class IA felony</u> | <u>Life imprisonment without possibility of parole</u> |
| 16 | Class IB felony | Maximum - life imprisonment |
| 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 |
| 26 | | Minimum - one year imprisonment |
| 27 | Class IIIA felony | Maximum - five years imprisonment, or |

1 ten thousand dollars fine, or both

2 Minimum - none

3 Class IV felony Maximum - five years imprisonment, or

4 ten thousand dollars fine, or both

5 Minimum - none

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

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

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

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

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

26 28-303 A person commits murder in the first degree if
27 he or she kills another person (1) purposely and with deliberate

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

11 Sec. 7. Section 29-1602, Reissue Revised Statutes of
12 Nebraska, is amended to read:

13 29-1602 All informations shall be filed in the court
14 having jurisdiction of the offense specified ~~therein,~~ in the
15 informations, by the prosecuting attorney of the proper county as
16 informant. The prosecuting attorney shall subscribe his or her name
17 thereto and endorse thereon the names of the witnesses known to him
18 or her at the time of filing. After the information has been filed,
19 the prosecuting attorney shall endorse on the information the names
20 of such other witnesses as shall then be known to him or her as the
21 court in its discretion may prescribe. ~~except that if a notice of~~
22 ~~aggravation is contained in the information as provided in section~~
23 ~~29-1603, the prosecuting attorney may endorse additional witnesses~~
24 ~~at any time up to and including the thirtieth day prior to the~~
25 ~~trial of guilt.~~

26 Sec. 8. Section 29-1603, Revised Statutes Cumulative
27 Supplement, 2012, is amended to read:

1 29-1603 (1) All informations shall be in writing and
2 signed by the county attorney, complainant, or some other person,
3 and the offenses charged ~~therein~~ in the informations shall be
4 stated with the same fullness and precision in matters of substance
5 as is required in indictments in like cases.

6 ~~(2)(a) Any information charging a violation of section~~
7 ~~28-303 and in which the death penalty is sought shall contain~~
8 ~~a notice of aggravation which alleges one or more aggravating~~
9 ~~circumstances, as such aggravating circumstances are provided in~~
10 ~~section 29-2523. The notice of aggravation shall be filed as~~
11 ~~provided in section 29-1602. It shall constitute sufficient notice~~
12 ~~to describe the alleged aggravating circumstances in the language~~
13 ~~provided in section 29-2523.~~

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

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

20 ~~(3) (2) Different offenses and different degrees of the~~
21 ~~same offense may be joined in one information, in all cases~~
22 ~~in which the same might by different counts be joined in one~~
23 ~~indictment; and in all cases a defendant or defendants shall have~~
24 ~~the same right, as to proceedings therein, as the defendant or~~
25 ~~defendants would have if prosecuted for the same offense upon~~
26 ~~indictment.~~

27 Sec. 9. Section 29-1822, Reissue Revised Statutes of

1 Nebraska, is amended to read:

2 29-1822 A person who becomes mentally incompetent after
3 the commission of a crime or misdemeanor shall not be tried for the
4 offense during the continuance of the incompetency. If, after the
5 verdict of guilty and before judgment is pronounced, such person
6 becomes mentally incompetent, then no judgment shall be given
7 while such incompetency ~~shall continue; and if, after judgment and~~
8 ~~before execution of the sentence, such person shall become mentally~~
9 ~~incompetent, then in case the punishment be capital, the execution~~
10 ~~thereof shall be stayed until the recovery of such person from the~~
11 ~~incompetency. continues.~~

12 Sec. 10. Section 29-2004, Reissue Revised Statutes of
13 Nebraska, is amended to read:

14 29-2004 (1) All parties may stipulate that the jury may
15 be selected up to thirty-one days prior to the date of trial. The
16 stipulation must be unanimous among all parties and evidenced by a
17 joint stipulation to the county court.

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

1 shall be allowed one peremptory challenge to each alternate juror.
2 The alternate jurors shall take the proper oath or affirmation,
3 ~~and~~ shall be seated near the regular jurors with equal facilities
4 for seeing and hearing the proceedings in the cause, and shall
5 attend at all times upon the trial of the cause in company with
6 the regular jurors. They shall obey all orders and admonitions of
7 the court, and if the regular jurors are ordered to be kept in the
8 custody of an officer during the trial of the cause, the alternate
9 jurors shall also be kept with the other jurors and, except as
10 hereinafter provided, shall be discharged upon the final submission
11 of the cause to the jury. ~~If an information charging a violation~~
12 ~~of section 28-303 and in which the death penalty is sought contains~~
13 ~~a notice of aggravation,~~ the alternate jurors shall be retained as
14 ~~provided in section 29-2520.~~ If, before the final submission of the
15 cause, a regular juror dies or is discharged, the court shall order
16 the alternate juror, if there is but one, to take his or her place
17 in the jury box. If there are two alternate jurors, the court shall
18 select one by lot, who shall then take his or her place in the jury
19 box. After an alternate juror is in the jury box, he or she shall
20 be subject to the same rules as a regular juror.

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

23 29-2005 Every person arraigned for any crime punishable
24 ~~with death,~~ by imprisonment for life without possibility of parole
25 or imprisonment for life, shall be admitted on his or her trial
26 to a peremptory challenge of twelve jurors. Every ~~and no more,~~
27 every person arraigned for any offense that may be punishable by

1 imprisonment for a term exceeding eighteen months and less than
2 life, shall be admitted to a peremptory challenge of six jurors. In
3 ~~and in~~ all other criminal trials, the defendant shall be allowed
4 a peremptory challenge of three jurors. The attorney prosecuting
5 on behalf of the state shall be admitted to a peremptory challenge
6 of twelve jurors in all cases when the offense is punishable ~~with~~
7 ~~death~~ by imprisonment for life without possibility of parole or
8 imprisonment for life, six jurors when the offense is punishable
9 by imprisonment for a term exceeding eighteen months and less than
10 life, and three jurors in all other cases. In each case for which
11 ~~Provided,~~ that in all cases where alternate jurors are called, as
12 provided in section 29-2004, ~~then in that case~~ both the defendant
13 and the attorney prosecuting for the state shall each be allowed
14 one added peremptory challenge to each alternate juror.

15 Sec. 12. Section 29-2006, Reissue Revised Statutes of
16 Nebraska, is amended to read:

17 29-2006 (1) The following shall be good causes for
18 challenge to any person called as a juror or alternate juror, on
19 the trial of any indictment:

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

22 (2) ~~that he~~ (b) That he or she has formed or expressed
23 an opinion as to the guilt or innocence of the accused. However,
24 ~~Provided,~~ if a juror or alternate juror shall ~~state~~ states that
25 he or she has formed or expressed an opinion as to the guilt or
26 innocence of the accused, the court shall thereupon proceed to
27 examine, on oath, such juror or alternate juror as to the ground of

1 such opinion; and if it ~~shall appear~~ appears to have been founded
2 upon reading newspaper statements, communications, comments, or
3 reports, or upon rumor or hearsay, and not upon conversations with
4 witnesses of the transactions or reading reports of their testimony
5 or hearing them testify, and the juror or alternate juror ~~shall~~
6 say says on oath that he or she feels able, notwithstanding such
7 opinion, to render an impartial verdict upon the law and the
8 evidence, the court, if satisfied that such juror or alternate
9 juror is impartial and will render such verdict, may, in its
10 discretion, admit such juror or alternate juror as competent to
11 serve in such case;

12 ~~(3) in indictments for an offense the punishment whereof~~
13 ~~is capital, that his opinions are such as to preclude him from~~
14 ~~finding the accused guilty of an offense punishable with death;~~ (4)
15 ~~that he~~ (c) That he or she is a relation within the fifth degree
16 to the person alleged to be injured or attempted to be injured, or
17 to the person on whose complaint the prosecution was instituted, or
18 to the defendant;

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

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

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

27 ~~(8) that he~~ (g) That he or she is a habitual drunkard.†

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

4 Sec. 13. Section 29-2020, Reissue Revised Statutes of
5 Nebraska, is amended to read:

6 29-2020 ~~Except as provided in section 29-2525 for cases~~
7 ~~when the punishment is capital, in~~ In all criminal cases when a
8 defendant feels aggrieved by any opinion or decision of the court,
9 he or she may order a bill of exceptions. The ordering, preparing,
10 signing, filing, correcting, and amending of the bill of exceptions
11 shall be governed by the rules established in such matters in civil
12 cases.

13 Sec. 14. Section 29-2027, Reissue Revised Statutes of
14 Nebraska, is amended to read:

15 29-2027 In all trials for murder the jury before whom
16 such trial is had, if they find the prisoner guilty thereof,
17 shall ascertain in their verdict whether it is murder in the first
18 or second degree or manslaughter. If ~~and if~~ such person is
19 convicted by confession in open court, the court shall proceed by
20 examination of witnesses in open court, to determine the degree of
21 the crime, and shall pronounce sentence accordingly. ~~or as provided~~
22 ~~in sections 29-2519 to 29-2524 for murder in the first degree.~~

23 Sec. 15. Section 29-2204, Revised Statutes Cumulative
24 Supplement, 2012, is amended to read:

25 29-2204 (1) Except when a ~~term of life imprisonment is~~
26 ~~required by law,~~ the defendant is found guilty of a Class IA
27 felony, in imposing an indeterminate sentence upon an offender, the

1 court shall:

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

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

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

19 ~~(B) (ii) Impose a definite term of years, in which event~~
20 ~~the maximum term of the sentence shall be the term imposed by the~~
21 ~~court and the minimum term shall be the minimum sentence provided~~
22 ~~by law;~~

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

27 (c) Advise the offender on the record the time the

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

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

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

1 to the court for sentencing and the court shall be provided
2 with a written report of the results of the study, including
3 whatever recommendations the department believes will be helpful to
4 a proper resolution of the case. After receiving the report and the
5 recommendations, the court shall proceed to sentence the offender
6 in accordance with subsection (1) of this section. The term of the
7 sentence shall run from the date of original commitment under this
8 subsection.

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

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

1 Sec. 16. Section 29-2261, Revised Statutes Cumulative
2 Supplement, 2012, is amended to read:

3 29-2261 (1) Unless it is impractical to do so, when an
4 offender has been convicted of a felony, ~~other than murder in the~~
5 ~~first degree,~~ the court shall not impose sentence without first
6 ordering a presentence investigation of the offender and according
7 due consideration to a written report of such investigation. ~~When~~
8 ~~an offender has been convicted of murder in the first degree and~~
9 ~~(a) a jury renders a verdict finding the existence of one or more~~
10 ~~aggravating circumstances as provided in section 29-2520 or (b)(i)~~
11 ~~the information contains a notice of aggravation as provided in~~
12 ~~section 29-1603 and (ii) the offender waives his or her right to~~
13 ~~a jury determination of the alleged aggravating circumstances,~~ the
14 court shall not commence the sentencing determination proceeding as
15 provided in section 29-2521 without first ordering a presentence
16 investigation of the offender and according due consideration to a
17 written report of such investigation.

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

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

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

9 Such investigation shall also include:

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

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

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

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

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

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

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

1 the examination. The report of the examination shall be submitted
2 to the court.

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

25 (7) If an offender is sentenced to imprisonment, a copy
26 of the report of any presentence investigation or psychiatric
27 examination shall be transmitted immediately to the Department of

1 Correctional Services. Upon request, the Board of Parole or the
2 Office of Parole Administration may receive a copy of the report
3 from the department.

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

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

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

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

3 29-2407 Judgments for fines and costs in criminal cases
4 shall be a lien upon all the property of the defendant within the
5 county from the time of docketing the case by the clerk of the
6 proper court, and judgments upon forfeited recognizance shall be a
7 like lien from the time of forfeiture. No property of any convict
8 shall be exempt from execution issued upon any such judgment as
9 set out in this section against such convict except in cases when
10 the convict is sentenced to a Department of Correctional Services
11 adult correctional facility for a period of more than two years, ~~or~~
12 ~~to suffer death,~~ in which cases there shall be the same exemptions
13 as at the time may be provided by law for civil cases. The lien
14 on real estate of any such judgment for costs shall terminate as
15 provided in section 25-1716.

16 Sec. 19. A sentence of life imprisonment without
17 possibility of parole imposed for a Class IA felony means that,
18 subject only to the constitutional power of the Board of Pardons in
19 Article IV, section 13, of the Constitution of Nebraska to modify
20 such sentence by commutation, a person so sentenced shall not under
21 any circumstances whatsoever be paroled.

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

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

6 Sec. 22. Section 29-2801, Reissue Revised Statutes of
7 Nebraska, is amended to read:

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

27 Sec. 23. Section 29-3205, Reissue Revised Statutes of

1 Nebraska, is amended to read:

2 29-3205 ~~Sections 29-3201 to 29-3210~~ de The Uniform
3 Rendition of Prisoners as Witnesses in Criminal Proceedings Act
4 does not apply to any person in this state confined as mentally
5 ill, ~~or under sentence of death.~~

6 Sec. 24. Section 29-3920, Reissue Revised Statutes of
7 Nebraska, is amended to read:

8 29-3920 The Legislature finds that:

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

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

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

23 (4) Property tax relief in the form of state assistance
24 to the counties of Nebraska in providing for indigent defense
25 services will also improve inconsistent and inadequate funding of
26 indigent defense services by the counties;

27 (5) Property tax relief in the form of state assistance

1 to the counties of Nebraska in providing for indigent defense
2 services will also lessen the impact on county property taxpayers
3 of the cost of a high profile ~~death penalty~~ first-degree murder
4 case which can significantly affect the finances of the counties;
5 and

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

12 Sec. 25. Section 29-3922, Revised Statutes Cumulative
13 Supplement, 2012, is amended to read:

14 29-3922 For purposes of the County Revenue Assistance
15 Act:

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

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

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

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

26 (5) Court-appointed attorney means an attorney other than
27 a contracting attorney or a public defender appointed by the court

1 to represent an indigent person;

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

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

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

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

16 Sec. 26. Section 29-3928, Reissue Revised Statutes of
17 Nebraska, is amended to read:

18 29-3928 The commission shall appoint a chief counsel. The
19 responsibilities and duties of the chief counsel shall be defined
20 by the commission and shall include the overall supervision of
21 the workings of the various divisions of the commission. The chief
22 counsel shall be qualified for his or her position, shall have been
23 licensed to practice law in the State of Nebraska for at least five
24 years prior to the effective date of the appointment, and shall
25 be experienced in the practice of criminal defense, including the
26 defense of ~~capital~~ first-degree murder cases. The chief counsel
27 shall serve at the pleasure of the commission. The salary of the

1 chief counsel shall be set by the commission.

2 Sec. 27. Section 29-3929, Reissue Revised Statutes of
3 Nebraska, is amended to read:

4 29-3929 The primary duties of the chief counsel shall be
5 to provide direct legal services to indigent defendants, and the
6 chief counsel shall:

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

10 (2) Prepare a budget and disburse funds for the
11 operations of the commission;

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

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

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

19 (6) Establish and administer projects and programs for
20 the operation of the commission;

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

23 (8) Adopt and promulgate rules and regulations for the
24 management and administration of policies of the commission and the
25 conduct of employees of the commission;

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

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

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

6 Sec. 28. Section 29-3930, Reissue Revised Statutes of
7 Nebraska, is amended to read:

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

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

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

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

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

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

1 Sec. 29. Section 55-480, Reissue Revised Statutes of
2 Nebraska, is amended to read:

3 55-480 Though not specifically mentioned in ~~this code~~,
4 the Nebraska Code of Military Justice, all disorders and neglects
5 to the prejudice of good order and discipline in the armed forces,
6 all conduct of a nature to bring discredit upon the armed forces,
7 and all crimes and offenses ~~not capital~~, of which persons subject
8 to ~~this~~ the code may be guilty, shall be taken cognizance of by a
9 court-martial, according to the nature and degree of the offense,
10 and shall be punished at the discretion of that court.

11 Sec. 30. Section 83-1,110.02, Reissue Revised Statutes of
12 Nebraska, is amended to read:

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

23 (2) The board shall decide to grant medical parole only
24 after a review of the medical, institutional, and criminal records
25 of the committed offender and such additional medical evidence
26 from board-ordered examinations or investigations as the board in
27 its discretion determines to be necessary. The decision to grant

1 medical parole and to establish conditions of release on medical
2 parole in addition to the conditions stated in subsection (3) of
3 this section is within the sole discretion of the board.

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

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

15 Sec. 31. Section 83-4,143, Revised Statutes Cumulative
16 Supplement, 2012, is amended to read:

17 83-4,143 (1) It is the intent of the Legislature that
18 the court target the felony offender (a) who is eligible and
19 by virtue of his or her criminogenic needs is suitable to be
20 sentenced to intensive supervision probation with placement at the
21 incarceration work camp, (b) for whom the court finds that other
22 conditions of a sentence of intensive supervision probation, in
23 and of themselves, are not suitable, and (c) who, without the
24 existence of an incarceration work camp, would, in all likelihood,
25 be sentenced to prison.

26 (2) When the court is of the opinion that imprisonment is
27 appropriate, but that a brief and intensive period of regimented,

1 structured, and disciplined programming within a secure facility
2 may better serve the interests of society, the court may place an
3 offender in an incarceration work camp for a period not to exceed
4 one hundred eighty days as a condition of a sentence of intensive
5 supervision probation. The court may consider such placement if the
6 offender (a) is a male or female offender convicted of a felony
7 offense in a district court, (b) is medically and mentally fit
8 to participate, with allowances given for reasonable accommodation
9 as determined by medical and mental health professionals, and (c)
10 has not previously been incarcerated for a violent felony crime.
11 Offenders convicted of a crime under ~~sections~~ section 28-303 or
12 28-319 to 28-322.04 ~~or of any capital crime~~ are not eligible to be
13 placed in an incarceration work camp.

14 (3) It is also the intent of the Legislature that the
15 Board of Parole may recommend placement of felony offenders at
16 the incarceration work camp. The offenders recommended by the
17 board shall be offenders currently housed at other Department
18 of Correctional Services adult correctional facilities and shall
19 complete the incarceration work camp programming prior to release
20 on parole.

21 (4) When the Board of Parole is of the opinion that
22 a felony offender currently incarcerated in a Department of
23 Correctional Services adult correctional facility may benefit
24 from a brief and intensive period of regimented, structured, and
25 disciplined programming immediately prior to release on parole, the
26 board may direct placement of such an offender in an incarceration
27 work camp for a period not to exceed one hundred eighty days as

1 a condition of release on parole. The board may consider such
2 placement if the felony offender (a) is medically and mentally fit
3 to participate, with allowances given for reasonable accommodation
4 as determined by medical and mental health professionals, and (b)
5 has not previously been incarcerated for a violent felony crime.
6 Offenders convicted of a crime under ~~sections~~ section 28-303 or
7 28-319 to 28-322.04 ~~or of any capital crime~~ are not eligible to be
8 placed in an incarceration work camp.

9 (5) The Director of Correctional Services may assign a
10 felony offender to an incarceration work camp if he or she believes
11 it is in the best interests of the felony offender and of society,
12 except that offenders convicted of a crime under ~~sections~~ section
13 28-303 or 28-319 to 28-321 ~~or of any capital crime~~ 28-322.04 are
14 not eligible to be assigned to an incarceration work camp pursuant
15 to this subsection.

16 Sec. 32. Original sections 23-3406, 24-1106, 25-1140.09,
17 28-104, 28-303, 29-1602, 29-1822, 29-2004, 29-2005, 29-2006,
18 29-2020, 29-2027, 29-2282, 29-2407, 29-2801, 29-3205, 29-3920,
19 29-3928, 29-3929, 29-3930, 55-480, and 83-1,110.02, Reissue Revised
20 Statutes of Nebraska, and sections 28-105, 29-1603, 29-2204,
21 29-2261, 29-3922, and 83-4,143, Revised Statutes Cumulative
22 Supplement, 2012, are repealed.

23 Sec. 33. The following sections are outright repealed:
24 Sections 24-1105, 28-105.01, 29-2519, 29-2521, 29-2521.01,
25 29-2521.03, 29-2521.04, 29-2521.05, 29-2523, 29-2524.01,
26 29-2524.02, 29-2525, 29-2527, 29-2528, 29-2811, and 83-1,132,
27 Reissue Revised Statutes of Nebraska, and sections 29-2520,

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AM865
LB543
NPN-04/02/2013

- 1 29-2521.02, 29-2522, 29-2524, 29-2537, 29-2538, 29-2539, 29-2540,
- 2 29-2541, 29-2542, 29-2543, 29-2546, 83-1,105.01, 83-964, 83-965,
- 3 83-966, 83-967, 83-968, 83-969, 83-970, 83-971, and 83-972, Revised
- 4 Statutes Cumulative Supplement, 2012.