

LEGISLATURE OF NEBRASKA
 ONE HUNDRED THIRD LEGISLATURE
 FIRST SESSION
LEGISLATIVE BILL 543

Introduced by Chambers, 11.

Read first time January 23, 2013

Committee: Judiciary

A BILL

1 FOR AN ACT relating to crimes and offenses; to amend sections
 2 23-3406, 24-1106, 25-1140.09, 28-104, 28-303, 29-1602,
 3 29-1822, 29-2004, 29-2005, 29-2006, 29-2020, 29-2027,
 4 29-2282, 29-2407, 29-2519, 29-2521, 29-2523, 29-2801,
 5 29-3205, 29-3920, 29-3928, 29-3929, 29-3930, 55-480, and
 6 83-1,110.02, Reissue Revised Statutes of Nebraska, and
 7 sections 28-105, 29-1603, 29-2204, 29-2522, 29-2524,
 8 29-3922, and 83-4,143, Revised Statutes Cumulative
 9 Supplement, 2012; to state findings and intent; to change
 10 a penalty from death to life imprisonment without
 11 possibility of parole; to eliminate a homicide-case
 12 report, provisions on capital punishment, proportionality
 13 review provisions, and obsolete provisions; to provide
 14 for retroactive applicability of a penalty change; to
 15 change provisions relating to restitution; to harmonize
 16 provisions; to repeal the original sections; and to
 17 outright repeal sections 24-1105, 28-105.01, 29-2521.01,

1 29-2521.03, 29-2521.04, 29-2524.01, 29-2524.02, 29-2525,
2 29-2527, 29-2528, 29-2811, and 83-1,132, Reissue Revised
3 Statutes of Nebraska, and sections 29-2521.02, 29-2524,
4 29-2537, 29-2538, 29-2539, 29-2540, 29-2541, 29-2542,
5 29-2543, 29-2546, 83-1,105.01, 83-964, 83-965, 83-966,
6 83-967, 83-968, 83-969, 83-970, 83-971, and 83-972,
7 Revised Statutes Cumulative Supplement, 2012.

8 Be it enacted by the people of the State of Nebraska,

1 Section 1. The Legislature finds that:

2 (1) Life is the most valuable possession of a human
3 being. The State of Nebraska should exercise utmost care to protect
4 its residents' lives from homicide, accident, and arbitrary taking by
5 this state;

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

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

16 (4) The history of attempts to carry out the death
17 penalty in Nebraska demonstrates an inordinate burden on the justice
18 system and on the lives of the innocent families and associates of
19 both the victims and the convicted parties;

20 (5) A maximum sentence of life imprisonment without
21 possibility of parole, subject only to the constitutional power of
22 the Board of Pardons, is preferable to the current capital punishment
23 scheme. Such a maximum sentence reflects this state's desire to
24 ensure the safety of its citizens, assist victims' families when
25 possible, and yet preserve this state's values of human life, uniform

1 fairness, and basic decency;

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

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

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

16 23-3406 (1) The contract negotiated between the county
17 board and the contracting attorney shall specify the categories of
18 cases in which the contracting attorney is to provide services.

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

23 (3) The contract between the county board and the
24 contracting attorney may specify a maximum allowable caseload for
25 each full-time or part-time attorney who handles cases under the

1 contract. Caseloads shall allow each lawyer to give every client the
2 time and effort necessary to provide effective representation.

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

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

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

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

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

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

1 education of the contracting attorney in the area of criminal law.

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

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

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

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

25 (2) Any party to a case appealed to the Court of Appeals

1 may file a petition in the Supreme Court to bypass the review by the
2 Court of Appeals and for direct review by the Supreme Court. The
3 procedure and time for filing the petition shall be as provided by
4 rules of the Supreme Court. In deciding whether to grant the
5 petition, the Supreme Court may consider one or more of the following
6 factors:

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

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

11 (c) Whether the case raises a question of law regarding
12 the validity of a statute;

13 (d) Whether the case involves issues upon which there is
14 an inconsistency in the decisions of the Court of Appeals or of the
15 Supreme Court; and

16 (e) Whether the case is one of significant public
17 interest.

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

20 (3) The Supreme Court shall by rule provide for the
21 removal of a case from the Court of Appeals to the Supreme Court for
22 decision by the Supreme Court at any time before a final decision has
23 been made on the case by the Court of Appeals. The removal may be on
24 the recommendation of the Court of Appeals or on motion of the
25 Supreme Court. Cases may be removed from the Court of Appeals for

1 decision by the Supreme Court for any one or more of the reasons set
2 forth in subsection (2) of this section or in order to regulate the
3 caseload existing in either the Court of Appeals or the Supreme
4 Court. The Chief Judge of the Court of Appeals and the Chief Justice
5 of the Supreme Court shall regularly inform each other of the number
6 and nature of cases docketed in the respective court.

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

9 25-1140.09 On the application of the county attorney or
10 any party to a suit in which a record of the proceedings has been
11 made, ~~upon receipt of the notice provided in section 29-2525,~~ or upon
12 the filing of a praecipe for a bill of exceptions by an appealing
13 party in the office of the clerk of the district court as provided in
14 section 25-1140, the court reporter shall prepare a transcribed copy
15 of the proceedings so recorded or any part thereof. The reporter
16 shall be entitled to receive, in addition to his or her salary, a
17 per-page fee as prescribed by the Supreme Court for the original copy
18 and each additional copy, to be paid by the party requesting the same
19 except as otherwise provided in this section.

20 When the transcribed copy of the proceedings is required
21 by the county attorney, the fee therefor shall be paid by the county
22 in the same manner as other claims are paid. When the defendant in a
23 criminal case, after conviction, makes an affidavit that he or she is
24 unable by reason of his or her poverty to pay for such copy, the
25 court or judge thereof may, by order endorsed on such affidavit,

1 direct delivery of such transcribed copy to such defendant, and the
2 fee shall be paid by the county in the same manner as other claims
3 are allowed and paid. ~~When such copy is prepared in any criminal case~~
4 ~~in which the sentence adjudged is capital, the fees therefor shall be~~
5 ~~paid by the county in the same manner as other claims are allowed or~~
6 ~~paid.~~

7 The fee for preparation of a bill of exceptions and the
8 procedure for preparation, settlement, signature, allowance,
9 certification, filing, and amendment of a bill of exceptions shall be
10 regulated and governed by rules of practice prescribed by the Supreme
11 Court. The fee paid shall be taxed, by the clerk of the district
12 court, to the party against whom the judgment or decree is rendered
13 except as otherwise ordered by the presiding district judge.

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

16 28-104 The terms offense and crime are synonymous as used
17 in this code and mean a violation of, or conduct defined by, any
18 statute for which a fine, or imprisonment, ~~or death~~ may be imposed.

19 Sec. 6. Section 28-105, Revised Statutes Cumulative
20 Supplement, 2012, is amended to read:

21 28-105 (1) For purposes of the Nebraska Criminal Code and
22 any statute passed by the Legislature after the date of passage of
23 the code, felonies are divided into nine classes which are
24 distinguished from one another by the following penalties which are
25 authorized upon conviction:

1	Class I felony	Death
2	<u>Class I felony</u>	<u>Life imprisonment without possibility of parole</u>
3	Class IA felony	Life imprisonment
4	Class IB felony	Maximum - life imprisonment
5		Minimum - twenty years imprisonment
6	Class IC felony	Maximum - fifty years imprisonment
7		Mandatory minimum - five years imprisonment
8	Class ID felony	Maximum - fifty years imprisonment
9		Mandatory minimum - three years imprisonment
10	Class II felony	Maximum - fifty years imprisonment
11		Minimum - one year imprisonment
12	Class III felony	Maximum - twenty years imprisonment, or
13		twenty-five thousand dollars fine, or both
14		Minimum - one year imprisonment
15	Class IIIA felony	Maximum - five years imprisonment, or
16		ten thousand dollars fine, or both
17		Minimum - none
18	Class IV felony	Maximum - five years imprisonment, or
19		ten thousand dollars fine, or both
20		Minimum - none
21		(2) <u>(2)(a)</u> All sentences of imprisonment for Class <u>I, IA,</u>
22		IB, IC, ID, II, and III felonies and sentences of one year or more

1 for Class IIIA and IV felonies shall be served in institutions under
2 the jurisdiction of the Department of Correctional Services.

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

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

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

17 Sec. 7. Section 28-303, Reissue Revised Statutes of
18 Nebraska, is amended to read:

19 28-303 A person commits murder in the first degree if he
20 or she kills another person (1) purposely and with deliberate and
21 premeditated malice, or (2) in the perpetration of or attempt to
22 perpetrate any sexual assault in the first degree, arson, robbery,
23 kidnapping, hijacking of any public or private means of
24 transportation, or burglary, or (3) by administering poison or
25 causing the same to be done. ~~; or if by willful and corrupt perjury~~

1 ~~or subornation of the same he or she purposely procures the~~
2 ~~conviction and execution of any innocent person.~~ The determination of
3 whether murder in the first degree shall be punished as a Class I or
4 Class IA felony shall be made pursuant to sections 29-2519 to
5 ~~29-2524.~~ 29-2523.

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

8 29-1602 All informations shall be filed in the court
9 having jurisdiction of the offense specified ~~therein,~~ in the
10 informations, by the prosecuting attorney of the proper county as
11 informant. The prosecuting attorney shall subscribe his or her name
12 thereto and endorse thereon the names of the witnesses known to him
13 or her at the time of filing. After the information has been filed,
14 the prosecuting attorney shall endorse on the information the names
15 of such other witnesses as shall then be known to him or her as the
16 court in its discretion may prescribe, except that if a notice of
17 aggravation is contained in the information as provided in section
18 29-1603, the prosecuting attorney may endorse additional witnesses at
19 any time up to and including the thirtieth day prior to the trial of
20 guilt.

21 Sec. 9. Section 29-1603, Revised Statutes Cumulative
22 Supplement, 2012, is amended to read:

23 29-1603 (1) All informations shall be in writing and
24 signed by the county attorney, complainant, or some other person, and
25 the offenses charged ~~therein~~ in the informations shall be stated with

1 the same fullness and precision in matters of substance as is
2 required in indictments in like cases.

3 (2)(a) Any information charging a violation of section
4 28-303 and in which ~~the death penalty~~ life imprisonment without
5 possibility of parole is sought shall contain a notice of aggravation
6 which alleges one or more aggravating circumstances, as such
7 aggravating circumstances are provided in section 29-2523. The notice
8 of aggravation shall be filed as provided in section 29-1602. It
9 shall constitute sufficient notice to describe the alleged
10 aggravating circumstances in the language provided in section
11 29-2523.

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

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

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

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

1 29-1822 A person who becomes mentally incompetent after
2 the commission of a crime or misdemeanor shall not be tried for the
3 offense during the continuance of the incompetency. If, after the
4 verdict of guilty and before judgment is pronounced, such person
5 becomes mentally incompetent, then no judgment shall be given while
6 such incompetency ~~shall continue; and if, after judgment and before~~
7 ~~execution of the sentence, such person shall become mentally~~
8 ~~incompetent, then in case the punishment be capital, the execution~~
9 ~~thereof shall be stayed until the recovery of such person from the~~
10 ~~incompetency.~~ continues.

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

13 29-2004 (1) All parties may stipulate that the jury may
14 be selected up to thirty-one days prior to the date of trial. The
15 stipulation must be unanimous among all parties and evidenced by a
16 joint stipulation to the county court.

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

1 challenge as such jurors, except that each party shall be allowed one
2 peremptory challenge to each alternate juror. The alternate jurors
3 shall take the proper oath or affirmation, ~~and~~ shall be seated near
4 the regular jurors with equal facilities for seeing and hearing the
5 proceedings in the cause, and shall attend at all times upon the
6 trial of the cause in company with the regular jurors. They shall
7 obey all orders and admonitions of the court, and if the regular
8 jurors are ordered to be kept in the custody of an officer during the
9 trial of the cause, the alternate jurors shall also be kept with the
10 other jurors and, except as hereinafter provided, shall be discharged
11 upon the final submission of the cause to the jury. If an information
12 charging a violation of section 28-303 and in which the ~~death penalty~~
13 sentence of life imprisonment without possibility of parole is sought
14 contains a notice of aggravation, the alternate jurors shall be
15 retained as provided in section 29-2520. If, before the final
16 submission of the cause a regular juror dies or is discharged, the
17 court shall order the alternate juror, if there is but one, to take
18 his or her place in the jury box. If there are two alternate jurors,
19 the court shall select one by lot, who shall then take his or her
20 place in the jury box. After an alternate juror is in the jury box,
21 he or she shall be subject to the same rules as a regular juror.

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

24 29-2005 Every person arraigned for any crime punishable
25 ~~with death,~~ by imprisonment for life without possibility of parole or

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

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

20 29-2006 (1) The following shall be good causes for
 21 challenge to any person called as a juror or alternate juror, on the
 22 trial of any indictment:

23 ~~(1)~~ (a) That he or she was a member of the grand jury
 24 which found the indictment;

25 ~~(2) that he~~ (b) That he or she has formed or expressed an

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

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

23 ~~(5) that he~~ (d) That he or she has served on the petit
24 jury which was sworn in the same cause against the same defendant and
25 which jury either rendered a verdict which was set aside or was

1 discharged, after hearing the evidence;

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

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

6 ~~(8) that he (g) That he or she is a habitual drunkard. ;~~

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

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

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

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

21 29-2027 In all trials for murder the jury before whom
22 such trial is had, if they find the prisoner guilty thereof, shall
23 ascertain in their verdict whether it is murder in the first or
24 second degree or manslaughter. If ; ~~and if~~ such person is convicted
25 by confession in open court, the court shall proceed by examination

1 of witnesses in open court, to determine the degree of the crime, and
2 shall pronounce sentence accordingly or as provided in sections
3 29-2519 to ~~29-2524~~ 29-2523 for murder in the first degree.

4 Sec. 16. Section 29-2204, Revised Statutes Cumulative
5 Supplement, 2012, is amended to read:

6 29-2204 (1) Except when a ~~term of life imprisonment is~~
7 ~~required by law, the defendant is found guilty of a Class I or Class~~
8 IA felony, in imposing an indeterminate sentence upon an offender,
9 the court shall:

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

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

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

1 by law; or

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

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

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

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

23 (2)(a) When the court is of the opinion that imprisonment
24 may be appropriate but desires more detailed information as a basis
25 for determining the sentence to be imposed than has been provided by

1 the presentence report required by section 29-2261, the court shall
2 commit an offender to the Department of Correctional Services for a
3 period not exceeding ninety days. The department shall conduct a
4 complete study of the offender during that time, inquiring into such
5 matters as his or her previous delinquency or criminal experience,
6 social background, capabilities, and mental, emotional, and physical
7 health and the rehabilitative resources or programs which may be
8 available to suit his or her needs. By the expiration of the period
9 of commitment or by the expiration of such additional time as the
10 court shall grant, not exceeding a further period of ninety days, the
11 offender shall be returned to the court for sentencing and the court
12 shall be provided with a written report of the results of the study,
13 including whatever recommendations the department believes will be
14 helpful to a proper resolution of the case. After receiving the
15 report and the recommendations, the court shall proceed to sentence
16 the offender in accordance with subsection (1) of this section. The
17 term of the sentence shall run from the date of original commitment
18 under this subsection.

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

1 (3) ~~Except when a term of life is required by law, the~~
2 defendant is found guilty of a Class I or Class IA felony, whenever
3 the defendant was under eighteen years of age at the time he or she
4 committed the crime for which he or she was convicted, the court may,
5 in its discretion, instead of imposing the penalty provided for the
6 crime, make such disposition of the defendant as the court deems
7 proper under the Nebraska Juvenile Code. Prior to making a
8 disposition which commits the juvenile to the Office of Juvenile
9 Services, the court shall order the juvenile to be evaluated by the
10 office if the juvenile has not had an evaluation within the past
11 twelve months.

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

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

1 victim caused by the offense, for the cost of any medical care prior
2 to death, and for funeral and burial expenses.

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

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

17 Sec. 19. A sentence of life imprisonment without
18 possibility of parole imposed for a Class I felony means that,
19 subject only to the constitutional power of the Board of Pardons in
20 Article IV, section 13, of the Constitution of Nebraska to modify
21 such sentence by commutation, a person so sentenced shall not under
22 any circumstances whatsoever be paroled. A sentence of life
23 imprisonment imposed for a Class IA felony means that a person so
24 sentenced shall be eligible for consideration of parole only under
25 the conditions prescribed by sections 83-192 and 83-1,106 to

1 83-1,125.

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

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

13 Sec. 22. Section 29-2519, Reissue Revised Statutes of
14 Nebraska, is amended to read:

15 29-2519 (1)—The Legislature hereby finds that it is
16 reasonable and necessary to establish mandatory standards for the
17 imposition of the sentence of ~~death;~~life imprisonment without
18 possibility of parole; that the imposition of ~~the death penalty~~life
19 imprisonment without possibility of parole in every instance of the
20 commission of the crimes specified in section 28-303 fails to allow
21 for mitigating factors which may dictate against the penalty of
22 ~~death;~~life imprisonment without possibility of parole; and that the
23 rational imposition of the ~~death~~sentence of life imprisonment
24 without possibility of parole requires the establishment of specific
25 legislative guidelines to be applied in individual cases by the

1 court. The Legislature therefor determines that the ~~death penalty~~
2 sentence of life imprisonment without possibility of parole should be
3 imposed only for the crimes set forth in section 28-303 and, in
4 addition, that it shall only be imposed in those instances when the
5 aggravating circumstances existing in connection with the crime
6 outweigh the mitigating circumstances, as set forth in sections
7 29-2520 to ~~29-2524~~. 29-2523.

8 ~~(2) The Legislature hereby finds and declares that:~~

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

14 ~~(b) The changes made by Laws 2002, LB 1, Ninety seventh~~
15 ~~Legislature, Third Special Session, are intended to be procedural~~
16 ~~only in nature and ameliorative of the state's prior procedures for~~
17 ~~determination of aggravating circumstances in the sentencing process~~
18 ~~for murder in the first degree;~~

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

22 ~~(d) The aggravating circumstances defined in section~~
23 ~~29-2523 have been determined by the United States Supreme Court to be~~
24 ~~"functional equivalents of elements of a greater offense" for~~
25 ~~purposes of the defendant's Sixth Amendment right, as applied to the~~

1 ~~states under the Fourteenth Amendment, to a jury determination of~~
2 ~~such aggravating circumstances, but the aggravating circumstances are~~
3 ~~not intended to constitute elements of the crime generally unless~~
4 ~~subsequently so required by the state or federal constitution; and~~

5 ~~(c) To the extent that such can be applied in accordance~~
6 ~~with state and federal constitutional requirements, it is the intent~~
7 ~~of the Legislature that the changes to the murder in the first degree~~
8 ~~sentencing process made by Laws 2002, LB 1, Ninety seventh~~
9 ~~Legislature, Third Special Session, shall apply to any murder in the~~
10 ~~first degree sentencing proceeding commencing on or after November~~
11 ~~23, 2002.~~

12 Sec. 23. Section 29-2521, Reissue Revised Statutes of
13 Nebraska, is amended to read:

14 29-2521 (1) When a person has been found guilty of murder
15 in the first degree and (a) a jury renders a verdict finding the
16 existence of one or more aggravating circumstances as provided in
17 section 29-2520 or (b)(i) the information contains a notice of
18 aggravation as provided in section 29-1603 and (ii) such person
19 waives his or her right to a jury determination of the alleged
20 aggravating circumstances, the sentence of such person shall be
21 determined by:

22 (a) A panel of three judges, including the judge who
23 presided at the trial of guilt or who accepted the plea and two
24 additional active district court judges named at random by the Chief
25 Justice of the Supreme Court. The judge who presided at the trial of

1 guilt or who accepted the plea shall act as the presiding judge for
2 the sentencing determination proceeding under this section; or

3 (b) If the Chief Justice of the Supreme Court has
4 determined that the judge who presided at the trial of guilt or who
5 accepted the plea is disabled or disqualified after receiving a
6 suggestion of such disability or disqualification from the clerk of
7 the court in which the finding of guilty was entered, a panel of
8 three active district court judges named at random by the Chief
9 Justice of the Supreme Court. The Chief Justice of the Supreme Court
10 shall name one member of the panel at random to act as the presiding
11 judge for the sentencing determination proceeding under this section.

12 (2) In the sentencing determination proceeding before a
13 panel of judges when the right to a jury determination of the alleged
14 aggravating circumstances has been waived, the panel shall, as soon
15 as practicable after receipt of the written report resulting from the
16 presentence investigation ordered as provided in section 29-2261,
17 hold a hearing. At such hearing, evidence may be presented as to any
18 matter that the presiding judge deems relevant to sentence and shall
19 include matters relating to the aggravating circumstances alleged in
20 the information, to any of the mitigating circumstances set forth in
21 section 29-2523, and to sentence excessiveness or disproportionality.
22 The Nebraska Evidence Rules shall apply to evidence relating to
23 aggravating circumstances. Each aggravating circumstance shall be
24 proved beyond a reasonable doubt. Any evidence at the sentencing
25 determination proceeding which the presiding judge deems to have

1 probative value may be received. The state and the defendant or his
2 or her counsel shall be permitted to present argument for or against
3 the sentence of death.—life imprisonment without possibility of
4 parole. The presiding judge shall set forth the general order of
5 procedure at the outset of the sentencing determination proceeding.
6 The panel shall make written findings of fact based upon the trial of
7 guilt and the sentencing determination proceeding, identifying which,
8 if any, of the alleged aggravating circumstances have been proven to
9 exist beyond a reasonable doubt. Each finding of fact with respect to
10 each alleged aggravating circumstance shall be unanimous. If the
11 panel is unable to reach a unanimous finding of fact with respect to
12 an aggravating circumstance, such aggravating circumstance shall not
13 be weighed in the sentencing determination proceeding. After the
14 presentation and receipt of evidence and argument, the panel shall
15 determine an appropriate sentence as provided in section 29-2522.

16 (3) When a jury renders a verdict finding the existence
17 of one or more aggravating circumstances as provided in section
18 29-2520, the panel of judges shall, as soon as practicable after
19 receipt of the written report resulting from the presentence
20 investigation ordered as provided in section 29-2261, hold a hearing
21 to receive evidence of mitigation and sentence excessiveness or
22 disproportionality. Evidence may be presented as to any matter that
23 the presiding judge deems relevant to (a) mitigation, including, but
24 not limited to, the mitigating circumstances set forth in section
25 29-2523, and (b) sentence excessiveness or disproportionality as

1 provided in subdivision (3) of section 29-2522. Any such evidence
2 which the presiding judge deems to have probative value may be
3 received. The state and the defendant and his or her counsel shall be
4 permitted to present argument for or against the sentence of death-
5 life imprisonment without possibility of parole. The presiding judge
6 shall set forth the general order of procedure at the outset of the
7 sentencing determination proceeding. After the presentation and
8 receipt of evidence and argument, the panel shall determine an
9 appropriate sentence as provided in section 29-2522.

10 Sec. 24. Section 29-2522, Revised Statutes Cumulative
11 Supplement, 2012, is amended to read:

12 29-2522 The panel of judges for the sentencing
13 determination proceeding shall either unanimously fix the sentence at
14 ~~death~~life imprisonment without possibility of parole or, if the
15 sentence of ~~death~~life imprisonment without possibility of parole was
16 not unanimously agreed upon by the panel, fix the sentence at life
17 imprisonment. Such sentence determination shall be based upon the
18 following considerations:

19 (1) Whether the aggravating circumstances as determined
20 to exist justify imposition of a sentence of ~~death~~life imprisonment
21 without possibility of parole;

22 (2) Whether sufficient mitigating circumstances exist
23 which approach or exceed the weight given to the aggravating
24 circumstances; or

25 (3) Whether the sentence of ~~death~~life imprisonment

1 without possibility of parole is excessive or disproportionate to the
2 penalty imposed in similar cases, considering both the crime and the
3 defendant.

4 In each case, the determination of the panel of judges
5 shall be in writing and refer to the aggravating and mitigating
6 circumstances weighed in the determination of the panel.

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

10 Sec. 25. Section 29-2523, Reissue Revised Statutes of
11 Nebraska, is amended to read:

12 29-2523 The aggravating and mitigating circumstances
13 referred to in sections 29-2519 to ~~29-2524~~29-2523 shall be as
14 follows:

15 (1) Aggravating Circumstances:

16 (a) The offender was previously convicted of another
17 murder or a crime involving the use or threat of violence to the
18 person, or has a substantial prior history of serious assaultive or
19 terrorizing criminal activity;

20 (b) The murder was committed in an effort to conceal the
21 commission of a crime, or to conceal the identity of the perpetrator
22 of such crime;

23 (c) The murder was committed for hire, or for pecuniary
24 gain, or the defendant hired another to commit the murder for the
25 defendant;

1 (d) The murder was especially heinous, atrocious, cruel,
2 or manifested exceptional depravity by ordinary standards of morality
3 and intelligence;

4 (e) At the time the murder was committed, the offender
5 also committed another murder;

6 (f) The offender knowingly created a great risk of death
7 to at least several persons;

8 (g) The victim was a public servant having lawful custody
9 of the offender or another in the lawful performance of his or her
10 official duties and the offender knew or should have known that the
11 victim was a public servant performing his or her official duties;

12 (h) The murder was committed knowingly to disrupt or
13 hinder the lawful exercise of any governmental function or the
14 enforcement of the laws; or

15 (i) The victim was a law enforcement officer engaged in
16 the lawful performance of his or her official duties as a law
17 enforcement officer and the offender knew or reasonably should have
18 known that the victim was a law enforcement officer.

19 (2) Mitigating Circumstances:

20 (a) The offender has no significant history of prior
21 criminal activity;

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

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

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

2 (e) The offender was an accomplice in the crime committed
3 by another person and his or her participation was relatively minor;

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

6 (g) At the time of the crime, the capacity of the
7 defendant to appreciate the wrongfulness of his or her conduct or to
8 conform his or her conduct to the requirements of law was impaired as
9 a result of mental illness, mental defect, or intoxication.

10 Sec. 26. Section 29-2801, Reissue Revised Statutes of
11 Nebraska, is amended to read:

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

1 shall be issued forthwith by the clerk of the district court, or by
2 the county judge, as the case may require, under the seal of the
3 court whereof the person allowing such writ is a judge, directed to
4 the proper officer, person, or persons who ~~detains~~detain such
5 prisoner.

6 Sec. 27. Section 29-3205, Reissue Revised Statutes of
7 Nebraska, is amended to read:

8 29-3205 ~~Sections 29-3201 to 29-3210 do~~ The Uniform
9 Rendition of Prisoners as Witnesses in Criminal Proceedings Act shall
10 not apply to any person in this state confined as mentally ill, ~~or~~
11 ~~under sentence of death.~~

12 Sec. 28. Section 29-3920, Reissue Revised Statutes of
13 Nebraska, is amended to read:

14 29-3920 The Legislature finds that:

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

19 (2) Property tax relief can be accomplished if the state
20 begins to assist the counties with the obligation of providing
21 indigent defense services required by state laws establishing crimes
22 and penalties;

23 (3) Property tax relief in the form of state assistance
24 to the counties of Nebraska in providing for indigent defense
25 services will also increase accountability because the state, which

1 is the governmental entity responsible for passing criminal statutes,
2 will likewise be responsible for paying some of the costs;

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

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

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

18 Sec. 29. Section 29-3922, Revised Statutes Cumulative
19 Supplement, 2012, is amended to read:

20 29-3922 For purposes of the County Revenue Assistance
21 Act:

22 (1) Chief counsel means an attorney appointed to be the
23 primary administrative officer of the commission pursuant to section
24 29-3928;

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

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

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

7 (5) Court-appointed attorney means an attorney other than
8 a contracting attorney or a public defender appointed by the court to
9 represent an indigent person;

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

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

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

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

23 Sec. 30. Section 29-3928, Reissue Revised Statutes of
24 Nebraska, is amended to read:

25 29-3928 The commission shall appoint a chief counsel. The

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

11 Sec. 31. Section 29-3929, Reissue Revised Statutes of
12 Nebraska, is amended to read:

13 29-3929 The primary duties of the chief counsel shall be
14 to provide direct legal services to indigent defendants, and the
15 chief counsel shall:

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

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

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

25 (4) Convene or contract for conferences and training

1 seminars related to criminal defense;

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

3 (6) Establish and administer projects and programs for
4 the operation of the commission;

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

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

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

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

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

17 Sec. 32. Section 29-3930, Reissue Revised Statutes of
18 Nebraska, is amended to read:

19 29-3930 The following divisions are established within
20 the commission:

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

25 (2) The appellate division shall be available to

1 prosecute appeals to the Court of Appeals and the Supreme Court,
2 subject to caseload standards of the commission;

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

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

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

14 Sec. 33. Section 55-480, Reissue Revised Statutes of
15 Nebraska, is amended to read:

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

24 Sec. 34. Section 83-1,110.02, Reissue Revised Statutes of
25 Nebraska, is amended to read:

1 83-1,110.02 (1) A committed offender who is otherwise
2 eligible for parole, who is not under sentence of ~~death—life~~
3 imprisonment without possibility of parole or of life imprisonment,
4 and who because of an existing medical or physical condition is
5 determined by the department to be terminally ill or permanently
6 incapacitated may be considered for medical parole by the board. A
7 committed offender may be eligible for medical parole in addition to
8 any other parole. The department shall identify committed offenders
9 who may be eligible for medical parole based upon their medical
10 records.

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

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

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

4 Sec. 35. Section 83-4,143, Revised Statutes Cumulative
5 Supplement, 2012, is amended to read:

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

15 (2) When the court is of the opinion that imprisonment is
16 appropriate, but that a brief and intensive period of regimented,
17 structured, and disciplined programming within a secure facility may
18 better serve the interests of society, the court may place an
19 offender in an incarceration work camp for a period not to exceed one
20 hundred eighty days as a condition of a sentence of intensive
21 supervision probation. The court may consider such placement if the
22 offender (a) is a male or female offender convicted of a felony
23 offense in a district court, (b) is medically and mentally fit to
24 participate, with allowances given for reasonable accommodation as
25 determined by medical and mental health professionals, and (c) has

1 not previously been incarcerated for a violent felony crime.
2 Offenders convicted of a crime under ~~sections~~ section 28-303 or
3 28-319 to 28-322.04 ~~or of any capital crime~~ are not eligible to be
4 placed in an incarceration work camp.

5 (3) It is also the intent of the Legislature that the
6 Board of Parole may recommend placement of felony offenders at the
7 incarceration work camp. The offenders recommended by the board shall
8 be offenders currently housed at other Department of Correctional
9 Services adult correctional facilities and shall complete the
10 incarceration work camp programming prior to release on parole.

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

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

8 Sec. 36. Original sections 23-3406, 24-1106, 25-1140.09,
9 28-104, 28-303, 29-1602, 29-1822, 29-2004, 29-2005, 29-2006, 29-2020,
10 29-2027, 29-2282, 29-2407, 29-2519, 29-2521, 29-2523, 29-2801,
11 29-3205, 29-3920, 29-3928, 29-3929, 29-3930, 55-480, and 83-1,110.02,
12 Reissue Revised Statutes of Nebraska, and sections 28-105, 29-1603,
13 29-2204, 29-2522, 29-2524, 29-3922, and 83-4,143, Revised Statutes
14 Cumulative Supplement, 2012, are repealed.

15 Sec. 37. The following sections are outright repealed:
16 Sections 24-1105, 28-105.01, 29-2521.01, 29-2521.03, 29-2521.04,
17 29-2524.01, 29-2524.02, 29-2525, 29-2527, 29-2528, 29-2811, and
18 83-1,132, Reissue Revised Statutes of Nebraska, and sections
19 29-2521.02, 29-2524, 29-2537, 29-2538, 29-2539, 29-2540, 29-2541,
20 29-2542, 29-2543, 29-2546, 83-1,105.01, 83-964, 83-965, 83-966,
21 83-967, 83-968, 83-969, 83-970, 83-971, and 83-972, Revised Statutes
22 Cumulative Supplement, 2012.