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

FOR AN ACT relating to crimes and offenses; to amend sections
23-3406, 24-1106, 25-1140.09, 28-104, 28-303, 29-1602,
29-2282, 29-2407, 29-2519, 29-2521, 29-2523, 29-2801,
29-3205, 29-3920, 29-3928, 29-3929, 29-3930, 55-480, and
83-1,110.02, Reissue Revised Statutes of Nebraska, and
sections 28-105, 29-1603, 29-2204, 29-2522, 29-2524,
29-3922, and 83-4,143, Revised Statutes Cumulative
Supplement, 2012; to state findings and intent; to change
a penalty from death to life imprisonment without
possibility of parole; to eliminate a homicide-case
report, provisions on capital punishment, proportionality
review provisions, and obsolete provisions; to provide
for retroactive applicability of a penalty change; to
change provisions relating to restitution; to harmonize
provisions; to repeal the original sections; and to
outright repeal sections 24-1105, 28-105.01, 29-2521.01,
Be it enacted by the people of the State of Nebraska,
Section 1. The Legislature finds that:

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(6) The contract between the contracting attorney and the
county board shall provide that the contracting attorney shall
receive at least ten hours of continuing legal education annually in
the area of criminal law. The contract between the county board and
the contracting attorney shall provide funds for the continuing legal
education of the contracting attorney in the area of criminal law.  
(7) The contract between the county board and the contracting attorney shall require that the contracting attorney provide legal counsel to all clients in a professional, skilled manner consistent with minimum standards set forth by the American Bar Association and the Canons of Ethics for Attorneys in the State of Nebraska. The contract between the county board and the contracting attorney shall provide that the contracting attorney shall be available to eligible defendants upon their request, or the request of someone acting on their behalf, at any time the Constitution of the United States or the Constitution of Nebraska requires the appointment of counsel.  
(8) The contract between the county board and the contracting attorney shall provide for reasonable compensation over and above the normal contract price for cases which require an extraordinary amount of time and preparation, including capital cases.  
Sec. 3. Section 24-1106, Reissue Revised Statutes of Nebraska, is amended to read:  
24-1106 (1) In cases which were appealable to the Supreme Court before September 6, 1991, the appeal, if taken, shall be to the Court of Appeals except in capital cases, cases in which life imprisonment without possibility of parole has been imposed, and cases involving the constitutionality of a statute.  
(2) Any party to a case appealed to the Court of Appeals
may file a petition in the Supreme Court to bypass the review by the
Court of Appeals and for direct review by the Supreme Court. The
procedure and time for filing the petition shall be as provided by
rules of the Supreme Court. In deciding whether to grant the
petition, the Supreme Court may consider one or more of the following
factors:

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

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

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

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

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

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

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

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

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

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

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

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

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

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

28-105 (1) For purposes of the Nebraska Criminal Code and any statute passed by the Legislature after the date of passage of the code, felonies are divided into nine classes which are distinguished from one another by the following penalties which are authorized upon conviction:
1 Class I felony  Death
2 Class I felony  Life imprisonment without possibility of parole
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

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

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

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

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

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

28-303 A person commits murder in the first degree if he
or she kills another person (1) purposely and with deliberate and
premeditated malice, or (2) in the perpetration of or attempt to
perpetrate any sexual assault in the first degree, arson, robbery,
kidnapping, hijacking of any public or private means of
transportation, or burglary, or (3) by administering poison or
causing the same to be done, or if by willful and corrupt perjury
or subornation of the same he or she purposely procures the
conviction and execution of any innocent person. The determination of
whether murder in the first degree shall be punished as a Class I or
Class IA felony shall be made pursuant to sections 29-2519 to
29-2524. 29-2523.

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

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

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

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

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

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

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

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

Sec. 10. Section 29-1822, Reissue Revised Statutes of Nebraska, is amended to read:
29-1822 A person who becomes mentally incompetent after the commission of a crime or misdemeanor shall not be tried for the offense during the continuance of the incompetency. If, after the verdict of guilty and before judgment is pronounced, such person becomes mentally incompetent, then no judgment shall be given while such incompetency shall continue; and if, after judgment and before execution of the sentence, such person shall become mentally incompetent, then in case the punishment be capital, the execution thereof shall be stayed until the recovery of such person from the incompetency continues.

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

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

(2) In all cases, except as may be otherwise expressly provided, the accused shall be tried by a jury drawn, summoned, and impaneled according to provisions of the code of civil procedure, except that whenever in the opinion of the court the trial is likely to be a protracted one, the court may, immediately after the jury is impaneled and sworn, direct the calling of one or two additional jurors, to be known as alternate jurors. Such jurors shall be drawn from the same source and in the same manner, and have the same qualifications as regular jurors, and be subject to examination and
challenge as such jurors, except that each party shall be allowed one peremptory challenge to each alternate juror. The alternate jurors shall take the proper oath or affirmation and shall be seated near the regular jurors with equal facilities for seeing and hearing the proceedings in the cause, and shall attend at all times upon the trial of the cause in company with the regular jurors. They shall obey all orders and admonitions of the court, and if the regular jurors are ordered to be kept in the custody of an officer during the trial of the cause, the alternate jurors shall also be kept with the other jurors and, except as hereinafter provided, shall be discharged upon the final submission of the cause to the jury. If an information charging a violation of section 28-303 and in which the death penalty sentence of life imprisonment without possibility of parole is sought contains a notice of aggravation, the alternate jurors shall be retained as provided in section 29-2520. If, before the final submission of the cause a regular juror dies or is discharged, the court shall order the alternate juror, if there is but one, to take his or her place in the jury box. If there are two alternate jurors, the court shall select one by lot who shall then take his or her place in the jury box. After an alternate juror is in the jury box, he or she shall be subject to the same rules as a regular juror.

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

29-2005 Every person arraigned for any crime punishable with death, by imprisonment for life without possibility of parole or
imprisonment for life, shall be admitted on his or her trial to a
peremptory challenge of twelve jurors. Every, and no more, every
person arraigned for any offense that may be punishable by
imprisonment for a term exceeding eighteen months and less than life,
shall be admitted to a peremptory challenge of six jurors. In, and
in all other criminal trials, the defendant shall be allowed a
peremptory challenge of three jurors. The attorney prosecuting on
behalf of the state shall be admitted to a peremptory challenge of
twelve jurors in all cases when the offense is punishable with death
by imprisonment for life without possibility of parole or
imprisonment for life, six jurors when the offense is punishable by
imprisonment for a term exceeding eighteen months and less than life,
and three jurors in all other cases. In each case for which, provided, that in all cases where alternate jurors are called, as
provided in section 29-2004, then in that case both the defendant and
the attorney prosecuting for the state shall each be allowed one
added peremptory challenge to each alternate juror.

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

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

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

(2) that he or she has formed or expressed an
opinion as to the guilt or innocence of the accused. However, if a juror or alternate juror shall state that he or she has formed or expressed an opinion as to the guilt or innocence of the accused, the court shall thereupon proceed to examine, on oath, such juror or alternate juror as to the ground of such opinion; and if it appears to have been founded upon reading newspaper statements, communications, comments or reports, or upon rumor or hearsay, and not upon conversations with witnesses of the transactions or reading reports of their testimony or hearing them testify, and the juror or alternate juror shall say on oath that he or she feels able, notwithstanding such opinion, to render an impartial verdict upon the law and the evidence, the court, if satisfied that such juror or alternate juror is impartial and will render such verdict, may, in its discretion, admit such juror or alternate juror as competent to serve in such case;

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

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

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

(7) that he or she has been in good faith subpoenaed as a witness in the case; or

(8) that he or she is a habitual drunkard;

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

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

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

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

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

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

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

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

(ii) Beginning July 1, 1998:

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

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

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

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

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

(2)(a) When the court is of the opinion that imprisonment
may be appropriate but desires more detailed information as a basis
for determining the sentence to be imposed than has been provided by
the presentence report required by section 29-2261, the court shall
commit an offender to the Department of Correctional Services for a
period not exceeding ninety days. The department shall conduct a
complete study of the offender during that time, inquiring into such
matters as his or her previous delinquency or criminal experience,
social background, capabilities, and mental, emotional, and physical
health and the rehabilitative resources or programs which may be
available to suit his or her needs. By the expiration of the period
of commitment or by the expiration of such additional time as the
court shall grant, not exceeding a further period of ninety days, the
offender shall be returned to the court for sentencing and the court
shall be provided with a written report of the results of the study,
including whatever recommendations the department believes will be
helpful to a proper resolution of the case. After receiving the
report and the recommendations, the court shall proceed to sentence
the offender in accordance with subsection (1) of this section. The
term of the sentence shall run from the date of original commitment
under this subsection.

(b) In order to encourage the use of this procedure in
appropriate cases, all costs incurred during the period the defendant
is held in a state institution under this subsection shall be a
responsibility of the state and the county shall be liable only for
the cost of delivering the defendant to the institution and the cost
of returning him or her to the appropriate court for sentencing or
such other disposition as the court may then deem appropriate.
(3) Except when a term of life is required by law, the defendant is found guilty of a Class I or Class IA felony, whenever the defendant was under eighteen years of age at the time he or she committed the crime for which he or she was convicted, the court may, in its discretion, instead of imposing the penalty provided for the crime, make such disposition of the defendant as the court deems proper under the Nebraska Juvenile Code. Prior to making a disposition which commits the juvenile to the Office of Juvenile Services, the court shall order the juvenile to be evaluated by the office if the juvenile has not had an evaluation within the past twelve months.

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

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

to death, and for funeral and burial expenses.

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

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

Sec. 19. A sentence of life imprisonment without
possibility of parole imposed for a Class I felony means that,
subject only to the constitutional power of the Board of Pardons in
Article IV, section 13, of the Constitution of Nebraska to modify
such sentence by commutation, a person so sentenced shall not under
any circumstances whatsoever be paroled. A sentence of life
imprisonment imposed for a Class IA felony means that a person so
sentenced shall be eligible for consideration of parole only under
the conditions prescribed by sections 83-192 and 83-1,106 to
Sec. 20. The changes made by this legislative bill shall not (1) limit the discretionary authority of the sentencing court to order restitution as part of any sentence or (2) alter the discretion and authority of the Department of Correctional Services to determine the appropriate security measures and conditions during the confinement of any committed offender.

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

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

29-2519 (1) The Legislature hereby finds that it is reasonable and necessary to establish mandatory standards for the imposition of the sentence of death; life imprisonment without possibility of parole; that the imposition of the death penalty life imprisonment without possibility of parole in every instance of the commission of the crimes specified in section 28-303 fails to allow for mitigating factors which may dictate against the penalty of death; life imprisonment without possibility of parole; and that the rational imposition of the death sentence of life imprisonment without possibility of parole requires the establishment of specific legislative guidelines to be applied in individual cases by the
court. The Legislature therefor determines that the death penalty sentence of life imprisonment without possibility of parole should be imposed only for the crimes set forth in section 28-303 and, in addition, that it shall only be imposed in those instances when the aggravating circumstances existing in connection with the crime outweigh the mitigating circumstances, as set forth in sections 29-2520 to 29-2524.

(2) The Legislature hereby finds and declares that:

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

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

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

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

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

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

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

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

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

(2) In the sentencing determination proceeding before a panel of judges when the right to a jury determination of the alleged aggravating circumstances has been waived, the panel shall, as soon as practicable after receipt of the written report resulting from the presentence investigation ordered as provided in section 29-2261, hold a hearing. At such hearing, evidence may be presented as to any matter that the presiding judge deems relevant to sentence and shall include matters relating to the aggravating circumstances alleged in the information, to any of the mitigating circumstances set forth in section 29-2523, and to sentence excessiveness or disproportionality. The Nebraska Evidence Rules shall apply to evidence relating to aggravating circumstances. Each aggravating circumstance shall be proved beyond a reasonable doubt. Any evidence at the sentencing determination proceeding which the presiding judge deems to have
probative value may be received. The state and the defendant or his or her counsel shall be permitted to present argument for or against the sentence of death—life imprisonment without possibility of parole. The presiding judge shall set forth the general order of procedure at the outset of the sentencing determination proceeding. The panel shall make written findings of fact based upon the trial of guilt and the sentencing determination proceeding, identifying which, if any, of the alleged aggravating circumstances have been proven to exist beyond a reasonable doubt. Each finding of fact with respect to each alleged aggravating circumstance shall be unanimous. If the panel is unable to reach a unanimous finding of fact with respect to an aggravating circumstance, such aggravating circumstance shall not be weighed in the sentencing determination proceeding. After the presentation and receipt of evidence and argument, the panel shall determine an appropriate sentence as provided in section 29-2522.

(3) When a jury renders a verdict finding the existence of one or more aggravating circumstances as provided in section 29-2520, the panel of judges shall, as soon as practicable after receipt of the written report resulting from the presentence investigation ordered as provided in section 29-2261, hold a hearing to receive evidence of mitigation and sentence excessiveness or disproportionality. Evidence may be presented as to any matter that the presiding judge deems relevant to (a) mitigation, including, but not limited to, the mitigating circumstances set forth in section 29-2523, and (b) sentence excessiveness or disproportionality as
provided in subdivision (3) of section 29-2522. Any such evidence which the presiding judge deems to have probative value may be received. The state and the defendant and his or her counsel shall be permitted to present argument for or against the sentence of death. life imprisonment without possibility of parole. The presiding judge shall set forth the general order of procedure at the outset of the sentencing determination proceeding. After the presentation and receipt of evidence and argument, the panel shall determine an appropriate sentence as provided in section 29-2522.

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

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

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

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

(3) Whether the sentence of death life imprisonment
without possibility of parole is excessive or disproportionate to the penalty imposed in similar cases, considering both the crime and the defendant.

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

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

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

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

(1) Aggravating Circumstances:

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

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

(c) The murder was committed for hire, or for pecuniary gain, or the defendant hired another to commit the murder for the defendant;
(d) The murder was especially heinous, atrocious, cruel, or manifested exceptional depravity by ordinary standards of morality and intelligence;

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

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

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

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

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

(2) Mitigating Circumstances:

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

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

(c) The crime was committed while the offender was under the influence of extreme mental or emotional disturbance;
(d) The age of the defendant at the time of the crime;
(e) The offender was an accomplice in the crime committed by another person and his or her participation was relatively minor;
(f) The victim was a participant in the defendant's conduct or consented to the act; or
(g) At the time of the crime, the capacity of the defendant to appreciate the wrongfulness of his or her conduct or to conform his or her conduct to the requirements of law was impaired as a result of mental illness, mental defect, or intoxication.

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

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

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

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

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

29-3920 The Legislature finds that:

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(4) Convene or contract for conferences and training
(5) Perform other duties as directed by the commission;

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

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

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

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

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

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

Sec. 32. Section 29-3930, Reissue Revised Statutes of Nebraska, is amended to read:
29-3930 The following divisions are established within the commission:

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

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

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

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

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

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

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

Sec. 34. Section 83-1,110.02, Reissue Revised Statutes of Nebraska, is amended to read:
83-1,110.02 (1) A committed offender who is otherwise eligible for parole, who is not under sentence of death or life imprisonment without possibility of parole or of life imprisonment, and who because of an existing medical or physical condition is determined by the department to be terminally ill or permanently incapacitated may be considered for medical parole by the board. A committed offender may be eligible for medical parole in addition to any other parole. The department shall identify committed offenders who may be eligible for medical parole based upon their medical records.

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

(3) As conditions of release on medical parole, the board shall require that the committed offender agree to placement for medical treatment and that he or she be placed for a definite or indefinite period of time in a hospital, a hospice, or another housing accommodation suitable to his or her medical condition, including, but not limited to, his or her family's home, as specified by the board.
(4) The parole term of a medical parolee shall be for the remainder of his or her sentence as reduced by any adjustment for good conduct pursuant to the Nebraska Treatment and Corrections Act.

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

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

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

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

(4) When the Board of Parole is of the opinion that a felony offender currently incarcerated in a Department of Correctional Services adult correctional facility may benefit from a brief and intensive period of regimented, structured, and disciplined programming immediately prior to release on parole, the board may direct placement of such an offender in an incarceration work camp for a period not to exceed one hundred eighty days as a condition of release on parole. The board may consider such placement if the felony offender (a) is medically and mentally fit to participate, with allowances given for reasonable accommodation as determined by medical and mental health professionals, and (b) has not previously been incarcerated for a violent felony crime. Offenders convicted of a crime under sections 28-303 or 28-319 to 28-322.04 or of any capital crime are not eligible to be placed in an incarceration work camp.
(5) The Director of Correctional Services may assign a felony offender to an incarceration work camp if he or she believes it is in the best interests of the felony offender and of society, except that offenders convicted of a crime under sections 28-303 or 28-319 to 28-321 or of any capital crime 28-322.04 are not eligible to be assigned to an incarceration work camp pursuant to this subsection.
