

AMENDMENTS TO LB 377

Introduced by Judiciary

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

3 Section 1. The Legislature finds that:

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

8 (2) The Legislature remains troubled by the lack of any
9 meaningful procedure in the courts to ensure uniform application of
10 the death penalty throughout the state despite the Legislature's
11 express finding in 1978 of a radical lack of uniformity and a
12 legislatively sponsored study in 2001 finding inequalities related
13 to social and economic status;

14 (3) A sentence of life imprisonment without parole,
15 subject only to the constitutional power of the Board of Pardons,
16 will almost always be preferable to the current capital punishment
17 scheme. The only purpose of executing an individual who can safely
18 be incarcerated is revenge. This practice does not deter murder nor
19 protect society and imposes both social and financial costs on the
20 state without commensurate benefits; and

21 (4) Nebraska's existing capital punishment scheme does
22 not allow the jury to consider whether or not execution is
23 necessary to protect society in a given case, while prosecutors

1 have discretion to decide that a life sentence will protect society
2 from a murderer through the indictment process and plea agreements.
3 It should be the policy of the State of Nebraska that unless a
4 jury determines beyond a reasonable doubt that no reasonable and
5 effective measures other than execution are available to protect
6 the safety of its citizens, a sentence of life imprisonment without
7 parole should be imposed.

8 Sec. 2. Section 28-105, Revised Statutes Cumulative
9 Supplement 2006, is amended to read:

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

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

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

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

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

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

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

25 Sec. 3. Section 28-105.01, Revised Statutes Cumulative
26 Supplement, 2006, is amended to read:

27 28-105.01 (1) Notwithstanding any other provision of law,

1 the death penalty shall not be imposed upon any person who was
2 under the age of eighteen years at the time of the commission of
3 the crime.

4 (2) Notwithstanding any other provision of law, the
5 death penalty shall not be imposed upon any person with mental
6 retardation.

7 (3) As used in subsection (2) of this section, mental
8 retardation means significantly subaverage general intellectual
9 functioning existing concurrently with deficits in adaptive
10 behavior. An intelligence quotient of seventy or below on
11 a reliably administered intelligence quotient test shall be
12 presumptive evidence of mental retardation.

13 (4) If (a) a jury renders a verdict finding in favor of
14 the state on the effective security issue and a verdict finding the
15 existence of one or more aggravating circumstances as provided in
16 section 29-2520 or ~~(b)-(i)~~ (b) the information contains a notice of
17 aggravation as provided in section 29-1603 and ~~(ii)~~ the defendant
18 waives his or her right to a jury determination of the effective
19 security issue and the alleged aggravating circumstances, the
20 court shall hold a hearing prior to any sentencing determination
21 proceeding as provided in section 29-2521 upon a verified motion
22 of the defense requesting a ruling that the penalty of death
23 be precluded under subsection (2) of this section. If the court
24 finds, by a preponderance of the evidence, that the defendant is
25 a person with mental retardation, the death sentence shall not be
26 imposed. A ruling by the court that the evidence of diminished
27 intelligence introduced by the defendant does not preclude the

1 death penalty under subsection (2) of this section shall not
2 restrict the defendant's opportunity to introduce such evidence
3 at the sentencing determination proceeding as provided in section
4 29-2521 or to argue that such evidence should be given mitigating
5 significance.

6 Sec. 4. Section 29-2204, Revised Statutes Cumulative
7 Supplement, 2006, is amended to read:

8 29-2204 (1) Except when a term of life imprisonment
9 ~~without parole~~ without parole is required by law, in imposing an
10 indeterminate sentence upon an offender the court shall:

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

16 (ii) Beginning July 1, 1998:

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

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

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

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

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

22 (2) (a) When the court is of the opinion that imprisonment
23 may be appropriate but desires more detailed information as a
24 basis for determining the sentence to be imposed than has been
25 provided by the presentence report required by section 29-2261, the
26 court shall commit an offender to the Department of Correctional
27 Services for a period not exceeding ninety days. The department

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

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

25 (3) Except when a term of life is required by law,
26 whenever the defendant was under eighteen years of age at the time
27 he or she committed the crime for which he or she was convicted,

1 the court may, in its discretion, instead of imposing the penalty
2 provided for the crime, make such disposition of the defendant
3 as the court deems proper under the Nebraska Juvenile Code. Prior
4 to making a disposition which commits the juvenile to the Office
5 of Juvenile Services, the court shall order the juvenile to be
6 evaluated by the office if the juvenile has not had an evaluation
7 within the past twelve months.

8 Sec. 5. Section 29-2261, Revised Statutes Cumulative
9 Supplement, 2006, is amended to read:

10 29-2261 (1) Unless it is impractical to do so, when an
11 offender has been convicted of a felony other than murder in the
12 first degree, the court shall not impose sentence without first
13 ordering a presentence investigation of the offender and according
14 due consideration to a written report of such investigation. When
15 an offender has been convicted of murder in the first degree and
16 (a) a jury renders a verdict in favor of the state on the effective
17 security issue and a verdict finding the existence of one or more
18 aggravating circumstances as provided in section 29-2520 or ~~(b)-(i)~~
19 (b) the information contains a notice of aggravation as provided
20 in section 29-1603 and ~~(ii)~~ the offender waives his or her right
21 to a jury determination of the effective security issue and the
22 alleged aggravating circumstances, the court shall not commence
23 the sentencing determination proceeding as provided in section
24 29-2521 without first ordering a presentence investigation of the
25 offender and according due consideration to a written report of
26 such investigation.

27 (2) A court may order a presentence investigation in any

1 case, except in cases in which an offender has been convicted
2 of a Class IIIA misdemeanor, a Class IV misdemeanor, a Class V
3 misdemeanor, a traffic infraction, or any corresponding city or
4 village ordinance.

5 (3) The presentence investigation and report shall
6 include, when available, an analysis of the circumstances attending
7 the commission of the crime, the offender's history of delinquency
8 or criminality, physical and mental condition, family situation and
9 background, economic status, education, occupation, and personal
10 habits, and any other matters that the probation officer deems
11 relevant or the court directs to be included. All local and state
12 police agencies and Department of Correctional Services adult
13 correctional facilities shall furnish to the probation officer
14 copies of such criminal records, in any such case referred to
15 the probation officer by the court of proper jurisdiction, as the
16 probation officer shall require without cost to the court or the
17 probation officer.

18 Such investigation shall also include:

19 (a) Any written statements submitted to the county
20 attorney by a victim; and

21 (b) Any written statements submitted to the probation
22 officer by a victim.

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

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

26 (b) If he or she has contacted the victim, such officer
27 offered to accept the written statements of the victim or to reduce

1 such victim's oral statements to writing.

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

4 (5) Before imposing sentence, the court may order the
5 offender to submit to psychiatric observation and examination for
6 a period of not exceeding sixty days or such longer period as the
7 court determines to be necessary for that purpose. The offender
8 may be remanded for this purpose to any available clinic or mental
9 hospital, or the court may appoint a qualified psychiatrist to make
10 the examination. The report of the examination shall be submitted
11 to the court.

12 (6) Any presentence report or psychiatric examination
13 shall be privileged and shall not be disclosed directly or
14 indirectly to anyone other than a judge, probation officers
15 to whom an offender's file is duly transferred, the probation
16 administrator or his or her designee, or others entitled by law
17 to receive such information, including personnel and mental health
18 professionals for the Nebraska State Patrol specifically assigned
19 to sex offender registration and community notification for the
20 sole purpose of using such report or examination for assessing
21 risk and for community notification of registered sex offenders.
22 For purposes of this subsection, mental health professional means

23 (a) a practicing physician licensed to practice medicine in this
24 state under the provisions of section 71-102, (b) a practicing
25 psychologist licensed to engage in the practice of psychology in
26 this state as provided in section 71-1,206.14, or (c) a practicing
27 mental health professional licensed or certified in this state as

1 provided in section 71-1,333. The court may permit inspection of
2 the report or examination of parts thereof by the offender or his
3 or her attorney, or other person having a proper interest therein,
4 whenever the court finds it is in the best interest of a particular
5 offender. The court may allow fair opportunity for an offender to
6 provide additional information for the court's consideration.

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

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

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

1 Sec. 6. Section 29-2282, Reissue Revised Statutes of
2 Nebraska, is amended to read:

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

18 Sec. 7. Section 29-2519, Revised Statutes Cumulative
19 Supplement, 2006, is amended to read:

20 29-2519 (1) The Legislature hereby finds that it is
21 reasonable and necessary to establish mandatory standards for
22 the imposition of the sentence of death; that the imposition of
23 the death penalty in every instance of the commission of the
24 crimes specified in section 28-303 fails to allow for mitigating
25 factors which may dictate against the penalty of death; and
26 that the rational imposition of the death sentence requires the
27 establishment of specific legislative guidelines to be applied in

1 individual cases by the court. The Legislature therefor determines
2 that the death penalty should be imposed only for the crimes
3 set forth in section 28-303 and, in addition, that it shall only
4 be imposed in those instances when the aggravating circumstances
5 existing in connection with the crime outweigh the mitigating
6 circumstances, as set forth in sections 29-2520 to 29-2524.

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

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

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

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

21 (d) The aggravating circumstances defined in section
22 29-2523 have been determined by the United States Supreme
23 Court to be "functional equivalents of elements of a greater
24 offense" for purposes of the defendant's Sixth Amendment right,
25 as applied to the states under the Fourteenth Amendment, to a
26 jury determination of such aggravating circumstances, but the
27 aggravating circumstances are not intended to constitute elements

1 of the crime generally unless subsequently so required by the state
2 or federal constitution; and

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

10 (3) The Legislature further finds and declares that:

11 (a) A sentence of death is appropriate only when
12 necessary to protect society, therefor, no person shall be
13 sentenced to death or executed unless the finder of fact has
14 determined that such person poses a present and substantial risk
15 to the lives of others that cannot reasonably and effectively be
16 controlled by institutional security measures; and

17 (b) To the extent that such can be applied in accordance
18 with state and federal constitutional requirements, it is the
19 intent of the Legislature that the changes to the murder in the
20 first degree sentencing process made by this legislative bill to
21 sections 28-105.01, 29-2261, 29-2282, 29-2519, 29-2520, 29-2521,
22 and 29-2521.05, shall apply to any murder in the first degree
23 sentencing proceeding commencing on or after the effective date of
24 this act.

25 Sec. 8. Section 29-2520, Revised Statutes Cumulative
26 Supplement, 2006, is amended to read:

27 29-2520 (1) Whenever any person is found guilty of a

1 violation of section 28-303 and the information contains a notice
2 of aggravation as provided in section 29-1603, the district court
3 shall, as soon as practicable, fix a date for ~~an aggravation a~~
4 hearing to determine the alleged aggravating circumstances, whether
5 such person poses a present and substantial risk to the lives
6 of others that cannot reasonably and effectively be controlled
7 by institutional security measures. This determination shall be
8 referred to as the effective security issue. The hearing shall also
9 determine the alleged aggravating circumstances, if appropriate.
10 If no notice of aggravation has been filed, the district court
11 shall enter a sentence of life imprisonment ~~without parole.~~ without
12 parole.

13 (2) Unless the defendant waives his or her right to a
14 jury determination of the effective security issue and alleged
15 aggravating circumstances, such determination shall be made by:

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

17 (b) A jury impaneled for purposes of the determination of
18 the effective security issue and alleged aggravating circumstances
19 if:

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

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

25 A jury required by subdivision (2)(b) of this section
26 shall be impaneled in the manner provided in sections 29-2004 to
27 29-2010.

1 (3) The defendant may waive his or her right to a
2 jury determination of the effective security issue and alleged
3 aggravating circumstances. The court shall accept the waiver after
4 determining that it is made freely, voluntarily, and knowingly. If
5 the defendant waives his or her right to a jury determination of
6 the effective security issue and alleged aggravating circumstances,
7 such determination shall be made by a panel of judges as a part
8 of the sentencing determination proceeding as provided in section
9 29-2521.

10 (4) (a) At ~~an aggravation~~ a hearing before a jury for
11 the determination of the effective security issue and alleged
12 aggravating circumstances, the state may present evidence as to
13 the existence of the effective security issue and aggravating
14 circumstances alleged in the information. The Nebraska Evidence
15 Rules shall apply at the ~~aggravation~~ hearing.

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

23 (c) If the jury serving at the ~~aggravation~~ hearing is the
24 jury which determined the defendant's guilt, the jury may consider
25 evidence received at the trial of guilt for purposes of reaching
26 its verdict as to the effective security issue and the existence
27 or nonexistence of aggravating circumstances in addition to the

1 evidence received at the ~~aggravation~~ hearing.

2 (d) After the presentation and receipt of evidence at
3 the ~~aggravation~~ hearing, the state and the defendant or his or
4 her counsel may present arguments before the jury as to the
5 effective security issue and existence or nonexistence of the
6 alleged aggravating circumstances.

7 (e) The court shall instruct the members of the jury as
8 to their duty as jurors, the manner in which they shall determine
9 the effective security issue, the definitions of the aggravating
10 circumstances alleged in the information, and the state's burden
11 to prove the existence of each that the offender poses a present
12 and substantial risk to the lives of others that cannot reasonably
13 and effectively be controlled by institutional security measures
14 and the existence of each aggravating circumstance alleged in the
15 information beyond a reasonable doubt.

16 (f) The jury at the ~~aggravation~~ hearing shall deliberate
17 and return a verdict as to the effective security issue and the
18 existence or nonexistence of each alleged aggravating circumstance.
19 If the jury unanimously finds beyond a reasonable doubt that the
20 offender poses a present and substantial risk to the lives of
21 others that cannot reasonably and effectively be controlled by
22 institutional security measures, it shall then proceed to consider
23 the existence of aggravating circumstances. If the jury does not
24 unanimously find beyond a reasonable doubt in favor of the state
25 on the effective security issue, it shall report its verdict and
26 be discharged and the court shall sentence the defendant to life
27 imprisonment without parole. Each aggravating circumstance shall be

1 proved beyond a reasonable doubt. Each verdict with respect to each
2 alleged aggravating circumstance shall be unanimous. If the jury is
3 unable to reach a unanimous verdict with respect to an aggravating
4 circumstance, such aggravating circumstance shall not be weighed
5 in the sentencing determination proceeding as provided in section
6 29-2521.

7 (g) Upon rendering its verdict as to the determination of
8 the effective security issue and the aggravating circumstances, the
9 jury shall be discharged.

10 (h) If no aggravating circumstance is found to exist,
11 the court shall enter a sentence of life imprisonment ~~without~~
12 ~~parole-~~ without parole. If one or more aggravating circumstances
13 are found to exist, the court shall convene a panel of three judges
14 to hold a hearing to receive evidence of mitigation and sentence
15 excessiveness or disproportionality as provided in subsection (3)
16 of section 29-2521.

17 Sec. 9. Section 29-2521, Revised Statutes Cumulative
18 Supplement, 2006, is amended to read:

19 29-2521 (1) When a person has been found guilty of murder
20 in the first degree and (a) a jury renders a verdict finding in
21 favor of the state on the effective security issue and a verdict
22 ~~finding~~ the existence of one or more aggravating circumstances as
23 provided in section 29-2520 or ~~(b)-(i)~~ (b) the information contains
24 a notice of aggravation as provided in section 29-1603 and ~~(ii)~~
25 such person waives his or her right to a jury determination of the
26 effective security issue and the alleged aggravating circumstances,
27 the sentence of such person shall be determined by:

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

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

18 (2) In the sentencing determination proceeding before a
19 panel of judges when the right to a jury determination of the
20 effective security issue and the alleged aggravating circumstances
21 has been waived, the panel shall, as soon as practicable after
22 receipt of the written report resulting from the presentence
23 investigation ordered as provided in section 29-2261, hold a
24 hearing. At such hearing, evidence may be presented as to any
25 matter that the presiding judge deems relevant to sentence and
26 shall include matters relating to the effective security issue and
27 the aggravating circumstances alleged in the information, to any of

1 the mitigating circumstances set forth in section 29-2523, and to
2 sentence excessiveness or disproportionality. The Nebraska Evidence
3 Rules shall apply to evidence relating to the effective security
4 issue and aggravating circumstances. ~~Each~~ The effective security
5 issue and each aggravating circumstance shall be proved beyond
6 a reasonable doubt. Any evidence at the sentencing determination
7 proceeding which the presiding judge deems to have probative value
8 may be received. The state and the defendant or his or her counsel
9 shall be permitted to present argument for or against sentence of
10 death. The presiding judge shall set forth the general order of
11 procedure at the outset of the sentencing determination proceeding.
12 The panel shall make written findings of fact based upon the trial
13 of guilt and the sentencing determination proceeding, identifying
14 its findings on the effective security issue and which, if any,
15 of the alleged aggravating circumstances have been proven to exist
16 beyond a reasonable doubt. Each finding of fact with respect to the
17 effective security issue and each alleged aggravating circumstance
18 shall be unanimous. If the panel is unable to reach a unanimous
19 finding with respect to the effective security issue, the panel
20 shall impose a sentence of life imprisonment without parole. If the
21 panel is unable to reach a unanimous finding of fact with respect
22 to an aggravating circumstance, such aggravating circumstance shall
23 not be weighed in the sentencing determination proceeding. After
24 the presentation and receipt of evidence and argument, the panel
25 shall determine an appropriate sentence as provided in section
26 29-2522.

27 (3) When a jury renders a verdict finding in favor of the

1 state on the effective security issue and the existence of one or
2 more aggravating circumstances as provided in section 29-2520, the
3 panel of judges shall, as soon as practicable after receipt of the
4 written report resulting from the presentence investigation ordered
5 as provided in section 29-2261, hold a hearing to receive evidence
6 of mitigation and sentence excessiveness or disproportionality.
7 Evidence may be presented as to any matter that the presiding
8 judge deems relevant to (a) mitigation, including, but not limited
9 to, the mitigating circumstances set forth in section 29-2523, and
10 (b) sentence excessiveness or disproportionality as provided in
11 subdivision (3) of section 29-2522. Any such evidence which the
12 presiding judge deems to have probative value may be received. The
13 state and the defendant and his or her counsel shall be permitted
14 to present argument for or against sentence of death. The presiding
15 judge shall set forth the general order of procedure at the outset
16 of the sentencing determination proceeding. After the presentation
17 and receipt of evidence and argument, the panel shall determine an
18 appropriate sentence as provided in section 29-2522.

19 Sec. 10. Section 29-2521.05, Revised Statutes Cumulative
20 Supplement, 2006, is amended to read:

21 29-2521.05 The verdict of a jury as to the effective
22 security issue and existence or nonexistence of the alleged
23 aggravating circumstances or, when the right to a jury
24 determination of the effective security issue and alleged
25 aggravating circumstances has been waived, the determination of a
26 panel of judges with respect thereto, shall not be an appealable
27 order or judgment of the district court, and no appeal may be taken

1 directly from such verdict or determination.

2 Sec. 11. Section 29-2522, Revised Statutes Cumulative
3 Supplement, 2006, is amended to read:

4 29-2522 The panel of judges for the sentencing
5 determination proceeding shall either unanimously fix the sentence
6 at death or, if the sentence of death was not unanimously agreed
7 upon by the panel, fix the sentence at life imprisonment ~~without~~
8 ~~parole-~~ without parole. Such sentence determination shall be based
9 upon the following considerations:

10 (1) Whether the aggravating circumstances as determined
11 to exist justify imposition of a sentence of death;

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

15 (3) Whether the sentence of death is excessive or
16 disproportionate to the penalty imposed in similar cases,
17 considering both the crime and the defendant.

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

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

24 Sec. 12. The changes made by this legislative bill to
25 sections 28-105.01, 29-2261, 29-2282, 29-2519, 29-2520, 29-2521,
26 and 29-2521.05 shall not (1) limit the discretionary authority
27 of the sentencing court to order restitution as part of any

1 sentence other than death or life imprisonment without parole
2 or (2) alter the discretion and authority of the Department
3 of Correctional Services to determine the appropriate security
4 measures and conditions during the confinement of any committed
5 offender.

6 Sec. 13. Section 29-2524, Revised Statutes Cumulative
7 Supplement, 2006, is amended to read:

8 29-2524 (1) Nothing in sections 25-1140.09, 28-303,
9 28-313, and 29-2519 to 29-2546 and sections 1 and 12 of this
10 act shall be in any way deemed to repeal or limit existing
11 procedures for automatic review of capital cases, nor shall they in
12 any way limit the right of the Supreme Court to reduce a sentence
13 of death to a sentence of life imprisonment ~~without parole~~ without
14 ~~parole~~ in accordance with the provisions of section 29-2308, nor
15 shall they limit the right of the Board of Pardons to commute
16 any sentence of death to a sentence of life imprisonment ~~without~~
17 ~~parole.~~ without parole.

18 (2) The changes made in this legislative bill to sections
19 28-105, 29-2204, 29-2520, 29-2522, 29-2524, and 83-1,105.01 in
20 which the language "without parole" that was rendered void by the
21 decision of the Nebraska Supreme Court in State v. Conover is
22 reinstated, are not intended to be a substantive change to the
23 minimum penalty for first degree murder, but are intended only
24 to clarify and explain to the public that the minimum penalty
25 of life imprisonment currently in statute does not allow parole
26 eligibility.

27 Sec. 14. Section 83-1,105.01, Revised Statutes Cumulative

1 Supplement, 2006, is amended to read:

2 83-1,105.01 Except when a term of life imprisonment
3 ~~without parole~~ without parole is required by law, in imposing an
4 indeterminate sentence upon an offender the court shall:

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

16 (2) Impose a definite term of years, in which event the
17 maximum term of the sentence shall be the term imposed by the court
18 and the minimum term shall be the minimum sentence provided by law;
19 or

20 (3) (a) When the court is of the opinion that imprisonment
21 may be appropriate but desires more detailed information as a
22 basis for determining the sentence to be imposed than has been
23 provided by the presentence report required by section 29-2261, the
24 court shall commit an offender to the Department of Correctional
25 Services for a period not exceeding ninety days. The department
26 shall conduct a complete study of the offender during that time,
27 inquiring into such matters as his or her previous delinquency or

1 criminal experience, social background, capabilities, and mental,
2 emotional, and physical health and the rehabilitative resources
3 or programs which may be available to suit his or her needs. By
4 the expiration of the period of commitment or by the expiration
5 of such additional time as the court shall grant, not exceeding
6 a further period of ninety days, the offender shall be returned
7 to the court for sentencing and the court shall be provided
8 with a written report of the results of the study, including
9 whatever recommendations the department believes will be helpful to
10 a proper resolution of the case. After receiving the report and the
11 recommendations, the court shall proceed to sentence the offender
12 in accordance with any applicable provision of law. The term of the
13 sentence shall run from the date of original commitment under this
14 subdivision.

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

23 Sec. 15. Original section 29-2282, Reissue Revised
24 Statutes of Nebraska, and sections 28-105, 28-105.01, 29-2204,
25 29-2261, 29-2519, 29-2520, 29-2521, 29-2521.05, 29-2522, 29-2524,
26 and 83-1,105.01, Revised Statutes Cumulative Supplement, 2006, are
27 repealed.