

# **Informational Pamphlet**

**Referendum Measure No. 426**

**Appearing on the 2016 General Election Ballot**



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This pamphlet is intended to provide the voters of Nebraska with additional information about a measure proposed by the referendum petition process that will appear on the General Election ballot, Tuesday, November 8, 2016.

The measure contains three portions: the text of the measure, the language which will appear on the ballot in November, and arguments supporting and opposing the measure. The arguments are derived from information received from supporters and opponents of this measure provided to the Secretary of State.

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## Ballot Language for Referendum Measure 426

Referendum ordered by Petition of the People

Referendum No. 426

*A vote to “Retain” will eliminate the death penalty and change the maximum penalty for the crime of murder in the first degree to life imprisonment by retaining Legislative Bill 268, passed in 2015 by the First Session of the 104<sup>th</sup> Nebraska Legislature.*

*A vote to “Repeal” will keep the death penalty as a possible penalty for the crime of murder in the first degree by repealing Legislative Bill 268, passed in 2015 by the First Session of the 104<sup>th</sup> Nebraska Legislature.*

The purpose of Legislative Bill 268, passed by the First Session of the 104<sup>th</sup> Nebraska Legislature in 2015, is to eliminate the death penalty and change the maximum penalty for the crime of murder in the first degree to life imprisonment. Shall Legislative Bill 268 be repealed?

- Retain
- Repeal

## Text of LB 268 (2015)

### Legislation subject to Referendum Measure 426

#### Proposed Referendum to Repeal LB 268 (2015)

Title and text of LB 268 (underscoring indicates language added by LB 268 and strike through indicates language that was removed by LB 268):

A BILL FOR AN ACT relating to crimes and offenses; to amend sections 23-3406, 23-3408, 24-1106, 25-1140.09, 28-104, 28-202, 28-303, 29-1602, 29-1822, 29-2004, 29-2005, 29-2006, 29-2020, 29-2027, 29-2407, 29-2801, 29-3205, 29-3920, 29-3928, 29-3929, 29-3930, 55-480, 83-1,110.02, and 83-4,143, Reissue Revised Statutes of Nebraska, and sections 28-105, 28-201, 28-1356, 29-1603, 29-2204, 29-2261, and 29-3922, Revised Statutes Cumulative Supplement, 2014; to eliminate the death penalty; to change and eliminate provisions relating to murder in the first degree, presentence reports, indeterminate sentences, the Commission on Public Advocacy, and the authority of courts and the Department of Correctional Services; to state intent; to eliminate a homicide-case report, provisions on capital punishment, proportionality review provisions, and obsolete provisions; to harmonize provisions; to repeal the original sections; and to outright repeal sections 24-1105, 29-2519, 29-2521, 29-2521.01, 29-2521.03, 29-2521.04, 29-2521.05, 29-2523, 29-2524.01, 29-2524.02, 29-2525, 29-2527, 29-2528, 29-2811, 83-1,105.01, 83-1,132, 83-964, 83-965, 83-966, 83-967, 83-968, 83-969, 83-970, 83-971, and 83-972, Reissue Revised Statutes of Nebraska, and sections 28-105.01, 29-2520, 29-2521.02, 29-2522, 29-2524, 29-2537, 29-2538, 29-2539, 29-2540, 29-2541, 29-2542, 29-2543, and 29-2546, Revised Statutes Cumulative Supplement, 2014.

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

Section 1. 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. 2. Section 23-3408, Reissue Revised Statutes of Nebraska, is amended to read: 23-3408 In the event that the contracting attorney is appointed to represent an individual charged with a ~~Class I or Class IA~~ felony, the contracting attorney shall immediately apply to the district court for appointment of a second attorney to assist in the case. Upon application from the contracting attorney, the district court shall appoint another attorney with substantial felony trial experience to assist the contracting attorney in the case. Application for fees for the attorney appointed by the district court shall be made to the district court judge who shall allow reasonable fees. Once approved by the court, such fees shall be paid by the county board.

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 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, 2014, 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 eight ~~nine~~ classes which are distinguished from one another by the following penalties which are authorized upon conviction: ~~Class I felony Death~~ Class IA

felony Life imprisonment Class IB felony Maximum — life imprisonment Minimum — twenty years imprisonment Class IC felony Maximum — fifty years imprisonment Mandatory minimum — five years imprisonment Class ID felony Maximum — fifty years imprisonment Mandatory minimum — three years imprisonment Class II felony Maximum — fifty years imprisonment Minimum — one year imprisonment Class III felony Maximum — twenty years imprisonment, or twenty-five thousand dollars fine, or both Minimum — one year imprisonment Class IIIA felony Maximum — five years imprisonment, or ten thousand dollars fine, or both Minimum — none Class IV felony Maximum — five years imprisonment, or ten thousand dollars fine, or both Minimum — none (2) (a) All sentences of imprisonment for Class 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 28-201, Revised Statutes Cumulative Supplement, 2014, is amended to read: 28-201 (1) A person shall be guilty of an attempt to commit a crime if he or she: (a) Intentionally engages in conduct which would constitute the crime if the attendant circumstances were as he or she believes them to be; or (b) Intentionally engages in conduct which, under the circumstances as he or she believes them to be, constitutes a substantial step in a course of conduct intended to culminate in his or her commission of the crime. (2) When causing a particular result is an element of the crime, a person shall be guilty of an attempt to commit the crime if, acting with the state of mind required to establish liability with respect to the attendant circumstances specified in the definition of the crime, he or she intentionally engages in conduct which is a substantial step in a course of conduct intended or known to cause such a result. (3) Conduct shall not be considered a substantial step under this section unless it is strongly corroborative of the defendant's criminal intent. (4) Criminal attempt is: (a) A Class II felony when the crime attempted is a Class I, IA, IB, IC, or ID felony; (b) A Class III felony when the crime attempted is a Class II felony; (c) A Class IIIA felony when the crime attempted is sexual assault in the second degree under section 28-320, a violation of subdivision (2)(b) of section 28-416, incest under section 28-703, or assault by a confined person with a deadly or dangerous weapon under section 28-932; (d) A Class IV felony when the crime attempted is a Class III felony not listed in subdivision (4)(c) of this section; (e) A Class I misdemeanor when the crime attempted is a Class IIIA or Class IV felony; (f) A Class II misdemeanor when the crime attempted is a Class I misdemeanor; and (g) A Class III misdemeanor when the crime attempted is a Class II misdemeanor.

Sec. 8. Section 28-202, Reissue Revised Statutes of Nebraska, is amended to read: 28-202 (1) A person shall be guilty of criminal conspiracy if, with intent to promote or facilitate the commission of a felony: (a) He or she agrees with one or more persons that they or one or more of them shall engage in or solicit the conduct or shall cause or solicit the result specified by the definition of the offense; and (b) He or she or another person with whom he or she conspired commits an overt act in pursuance of the conspiracy.

(2) If a person knows that one with whom he or she conspires to commit a crime has conspired with another person or persons to commit the same crime, he or she is guilty of conspiring to commit such crime with such other person or persons whether or not he or she knows their identity. (3) If a person conspires to commit a number of crimes, he or she is guilty of only one conspiracy so long as such multiple crimes are the object of the same agreement or continuous conspiratorial relationship. (4) Conspiracy is a crime of the same class as the most serious offense which is an object of the conspiracy, except that conspiracy to commit a Class I felony is a Class II felony. A person prosecuted for a criminal conspiracy shall be acquitted if such person proves by a preponderance of the evidence that his or her conduct occurred in response to an entrapment.

Sec. 9. Section 28-303, Reissue Revised Statutes of Nebraska, is amended to read: 28-303 (1) A person commits murder in the first degree if he or she kills another person (a) (4) purposely and with deliberate and premeditated malice, (b) 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 ~~(c) 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. (2) Murder in the first degree is a Class IA felony.~~

Sec. 10. Section 28-1356, Revised Statutes Cumulative Supplement, 2014, is amended to read: 28-1356 (1) A person who violates section 28-1355 shall be guilty of a Class III felony; however, such person shall be guilty of a Class IB felony if the violation is based upon racketeering activity which is punishable as a Class I, IA, or IB felony. (2) In lieu of the fine authorized by section 28-105, any person convicted of engaging in conduct in violation of section 28-1355, through which pecuniary value was derived, or by which personal injury or property damage or other loss was caused, may be sentenced to pay a fine that does not exceed three times the gross value gained or three times the gross loss caused, whichever is greater, plus court costs and the costs of investigation and prosecution reasonably incurred. Any fine collected under this subsection shall be remitted to the State Treasurer for distribution in accordance with Article VII, section 5, of the Constitution of Nebraska.

Sec. 11. 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 in the informations therein, 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. 12. Section 29-1603, Revised Statutes Cumulative Supplement, 2014, 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 in the informations therein 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 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. (2) 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. 13. 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 continues ~~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.~~

Sec. 14. 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 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. 15. Section 29-2005, Reissue Revised Statutes of Nebraska, is amended to read: 29-2005 Every person arraigned for any crime punishable ~~by with death, 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 ~~by with death 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. 16. 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: (a) 4 That he or she was a member of the grand jury which found the indictment; (b) That he or she (2) ~~that he~~ has formed or expressed an opinion as to the guilt or innocence of the accused. ~~However ; Provided,~~ if a juror or alternate juror states 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 shall appear 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 says 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~~ (c) 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; (d) ~~That he or she~~ (5) ~~that he~~ 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; (e) ~~That he or she~~ (6) ~~that he~~ has served as a juror in a civil case brought against the defendant for the same act; (f) ~~That he or she~~ (7) ~~that he~~ has been in good faith subpoenaed as a witness in the case; or (g) ~~That he or she~~ (8) ~~that he~~ is a habitual drunkard. ; (9) (2) In addition, the same challenges as are shall be allowed in criminal prosecutions that are allowed to parties in civil cases shall be allowed in criminal prosecutions.

Sec. 17. Section 29-2020, Reissue Revised Statutes of Nebraska, is amended to read: 29-2020 ~~In 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. 18. 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. 19. Section 29-2204, Revised Statutes Cumulative Supplement, 2014, is amended to read: 29-2204

(1) Except when the defendant is found guilty of a Class IA felony

~~a term of life imprisonment is required by law~~, 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)(i) (A) 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 (ii) (B) 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 the defendant is found guilty of a Class IA felony ~~a term of life is required by law~~, 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. Until October 1, 2013, 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. 20. Section 29-2261, Revised Statutes Cumulative Supplement, 2014, is amended to read: 29-2261

(1) Unless it is impractical to do so, when an offender has been convicted of a felony ~~other than murder in the first degree~~, the court shall not impose sentence without first ordering a presentence investigation of the offender and according due consideration to a written report of such investigation. ~~When an offender has been convicted 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) the offender waives his or her right to a jury determination of the alleged aggravating circumstances, the court shall not commence the sentencing determination proceeding as provided in section 29-2521 without first ordering a presentence investigation of the offender and according due consideration to a written report of such investigation.~~ (2) A court may order a presentence investigation in any case, except in cases in which an offender has been convicted of a Class IIIA misdemeanor, a Class IV misdemeanor, a Class V misdemeanor, a traffic infraction, or any corresponding city or village ordinance. (3) The presentence investigation and report shall include, when available, an analysis of the circumstances attending the commission of the crime, the offender's history of delinquency or criminality, physical and mental condition, family situation and background, economic status, education, occupation, and personal habits, and any other matters that the probation officer deems relevant or the court directs to be included. All local and state police agencies and Department of Correctional Services adult correctional facilities shall furnish to the probation officer copies of such criminal records, in any such case referred to the probation officer by the court of proper jurisdiction, as the probation officer shall require without cost to the court or the probation officer. Such investigation shall also include: (a) Any written statements submitted to the county attorney by a victim; and (b) Any written statements submitted to the probation officer by a victim. (4) If there are no written statements submitted to the probation officer, he or she shall certify to the court that: (a) He or she has attempted to contact the victim; and (b) If he or she has contacted the victim, such officer offered to accept the written statements of the victim or to reduce such victim's oral statements to writing. For purposes of subsections (3) and (4) of this section, the term victim shall be as defined in section 29-119. (5) Before imposing sentence, the court may order the offender to submit to psychiatric observation and examination for a period of not exceeding sixty days or such longer period as the court determines to be necessary for that purpose. The offender may be remanded for this purpose to any available clinic or mental hospital, or the court may appoint a qualified psychiatrist to make the examination. The report of the examination shall be submitted to the court. (6) Any presentence report or psychiatric examination shall be privileged and shall not be disclosed directly or indirectly to anyone other than a judge, probation officers to whom an offender's file is duly transferred, the probation administrator or his or her designee, or others entitled by law to receive such information, including personnel and mental health professionals for the Nebraska State Patrol specifically assigned to sex offender registration and community notification for the sole purpose of using such report or examination for assessing risk and for community notification of registered sex offenders. For purposes of this subsection, mental health professional means (a) a practicing physician licensed to practice medicine in this state under the Medicine and Surgery Practice Act, (b) a practicing psychologist licensed to engage in the practice of psychology in this state as provided in section 38-3111, or (c) a practicing mental health professional licensed or certified in this state as provided in the Mental Health Practice Act. The court may permit inspection of the report or examination of parts thereof by the offender or his or her attorney, or other person having a proper interest therein, whenever the court finds it is in the best interest of a particular offender. The court may allow fair opportunity for an offender to provide additional information for the court's consideration. (7) If an offender is sentenced to imprisonment, a copy of the report of any presentence investigation or psychiatric examination shall be transmitted immediately to the Department of Correctional Services. Upon request, the Board of Parole or the Office of Parole Administration may receive a copy of the report from the department.

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

Sec. 21. 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. 22. 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. 23. It is the intent of the Legislature that in any criminal proceeding in which the death penalty has been imposed but not carried out prior to the effective date of this act, such penalty shall be changed to life imprisonment.

Sec. 24. 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 ~~is shall be~~ unlawfully deprived of his or her liberty, and ~~makes shall make~~ application, either by ~~himself him~~ 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 is the duty of the judge 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 detains~~ such prisoner.

Sec. 25. Section 29-3205, Reissue Revised Statutes of Nebraska, is amended to read: 29-3205 The Uniform Rendition of Prisoners as Witnesses in Criminal Proceedings Act shall ~~Sections 29-3201 to 29-3210 do not apply to any person in this state confined as mentally ill or under sentence of death.~~

Sec. 26. 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 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 first-degree murder death penalty 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. 27. Section 29-3922, Revised Statutes Cumulative Supplement, 2014, 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 first-degree murder capital-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 first-degree murder capital 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. 28. 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 first-degree murder capital 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. 29. 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 first-degree murder capital 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 seminars related to criminal defense; (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. 30. Section 29-3930, Reissue Revised Statutes of Nebraska, is amended to read: 29-3930 The following divisions are established within the commission: (1) The first-degree murder capital litigation division shall be available to assist in the defense of first-degree murder capital 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. 31. Section 55-480, Reissue Revised Statutes of Nebraska, is amended to read: 55-480 Though not specifically mentioned in the Nebraska Code of Military Justice this code, 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 the 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. 32. 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 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. 33. Section 83-4,143, Reissue Revised Statutes of Nebraska, 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 section 28-303 or sections 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 section 28-303 or sections 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 section 28-303 or sections 28-319 to 28-322.04 ~~28-324 or of any capital crime~~ are not eligible to be assigned to an incarceration work camp pursuant to this subsection.

Sec. 34. Original sections 23-3406, 23-3408, 24-1106, 25-1140.09, 28-104, 28-202, 28-303, 29-1602, 29-1822, 29-2004, 29-2005, 29-2006, 29-2020, 29-2027, 29-2407, 29-2801, 29-3205, 29-3920, 29-3928, 29-3929, 29-3930, 55-480, 83-1,110.02, and 83-4,143, Reissue Revised Statutes of Nebraska, and sections 28-105, 28-201, 28-1356, 29-1603, 29-2204, 29-2261, and 29-3922, Revised Statutes Cumulative Supplement, 2014, are repealed.

Sec. 35. The following sections are outright repealed: Sections 24-1105, 29-2519, 29-2521, 29-2521.01, 29-2521.03, 29-2521.04, 29-2521.05, 29-2523, 29-2524.01, 29-2524.02, 29-2525, 29-2527, 29-2528, 29-2811, 83-1,105.01, 83-1,132, 83-964, 83-965, 83-966, 83-967, 83-968, 83-969, 83-970, 83-971, and 83-972, Reissue Revised Statutes of Nebraska, and sections 28-105.01, 29-2520, 29-2521.02, 29-2522, 29-2524, 29-2537, 29-2538, 29-2539, 29-2540, 29-2541, 29-2542, 29-2543, and 29-2546, Revised Statutes Cumulative Supplement, 2014.

## **ARGUMENTS FOR AND AGAINST REFERENDUM MEASURE 426**

### **SUPPORTERS CONTEND:**

The death penalty is a just punishment, sparingly used for the most heinous crimes committed by depraved criminals. The death penalty protects communities and families from the most dangerous in our society and protects those who protect us – members of law enforcement. The death penalty provides prosecutors with a needed tool to secure tougher prison sentences for violent criminals and reduce costly murder trials. The death penalty is a deterrent that saves innocent lives. The Legislative Fiscal Office reported there is little added cost for having the death penalty. A life sentence doesn't guarantee life imprisonment as Courts, the Legislature and the Pardons Board can modify or commute a prison sentence. If the system is broken then it should be fixed. Other states have done so.

### **OPPONENTS CONTEND:**

A bipartisan majority of senators ended the death penalty citing the inability to fix its many problems. Nationally, 156 innocent people have been released from death rows due to evidence of innocence. In Nebraska, the wrongfully convicted Beatrice Six spent a combined 77 years in prison before being exonerated by DNA. The National Academy of Sciences examined 30 years of studies and found no evidence the death penalty reduces murder rates. Despite efforts from pro-death penalty forces, Nebraska's last execution was in 1997. Nebraska murder victims' families have said the wait and uncertainty associated with the death penalty causes harm. Creighton economist Dr. Ernie Goss calculated the death penalty costs Nebraska \$14.6 million annually. LB 268 leaves in place life imprisonment, with no chance of parole.