

LEGISLATURE OF NEBRASKA

ONE HUNDRED SECOND LEGISLATURE

FIRST SESSION

**LEGISLATIVE BILL 203**

Introduced by Council, 11; Avery, 28; Harr, 8.

Read first time January 07, 2011

Committee: Judiciary

A BILL

1 FOR AN ACT relating to crimes and offenses; to amend section  
2 28-105.01, Reissue Revised Statutes of Nebraska, and  
3 section 28-101, Revised Statutes Cumulative Supplement,  
4 2010; to change sentencing requirements with respect to  
5 certain minors; to harmonize provisions; and to repeal  
6 the original sections.

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

1           Section 1. Section 28-101, Revised Statutes Cumulative  
2 Supplement, 2010, is amended to read:

3           28-101 Sections 28-101 to 28-1356 and section 3 of this  
4 act shall be known and may be cited as the Nebraska Criminal Code.

5           Sec. 2. Section 28-105.01, Reissue Revised Statutes of  
6 Nebraska, is amended to read:

7           28-105.01 ~~(1) Notwithstanding any other provision of law,~~  
8 ~~the death penalty shall not be imposed upon any person who was under~~  
9 ~~the age of eighteen years at the time of the commission of the crime.~~

10           ~~(2)~~(1) Notwithstanding any other provision of law, the  
11 death penalty shall not be imposed upon any person with mental  
12 retardation.

13           ~~(3)~~(2) As used in subsection ~~(2)~~(1) of this section,  
14 mental retardation means significantly subaverage general  
15 intellectual functioning existing concurrently with deficits in  
16 adaptive behavior. An intelligence quotient of seventy or below on a  
17 reliably administered intelligence quotient test shall be presumptive  
18 evidence of mental retardation.

19           ~~(4)~~(3) If (a) a jury renders a verdict finding the  
20 existence of one or more aggravating circumstances as provided in  
21 section 29-2520 or (b)(i) the information contains a notice of  
22 aggravation as provided in section 29-1603 and (ii) the defendant  
23 waives his or her right to a jury determination of the alleged  
24 aggravating circumstances, the court shall hold a hearing prior to  
25 any sentencing determination proceeding as provided in section

1 29-2521 upon a verified motion of the defense requesting a ruling  
2 that the penalty of death be precluded under subsection ~~(2)~~(1) of  
3 this section. If the court finds, by a preponderance of the evidence,  
4 that the defendant is a person with mental retardation, the death  
5 sentence shall not be imposed. A ruling by the court that the  
6 evidence of diminished intelligence introduced by the defendant does  
7 not preclude the death penalty under subsection ~~(2)~~(1) of this  
8 section shall not restrict the defendant's opportunity to introduce  
9 such evidence at the sentencing determination proceeding as provided  
10 in section 29-2521 or to argue that such evidence should be given  
11 mitigating significance.

12           Sec. 3. (1) Notwithstanding any other provision of law,  
13 any person convicted of a Class I or Class IA felony, who, at the  
14 time of the commission of the crime, was at least sixteen years of  
15 age but under eighteen years of age, shall be sentenced to fifty  
16 years to life imprisonment.

17           (2) Notwithstanding any other provision of law, any  
18 person convicted of a Class I or Class IA felony, who, at the time of  
19 the commission of the crime, was under sixteen years of age, shall be  
20 sentenced to forty years to life imprisonment.

21           (3) Notwithstanding any other provision of law, the  
22 minimum sentence of any person convicted of a Class IB felony, who,  
23 at the time of the commission of the crime, was under eighteen years  
24 of age, shall not exceed forty years imprisonment.

25           Sec. 4. Original section 28-105.01, Reissue Revised

- 1 Statutes of Nebraska, and section 28-101, Revised Statutes Cumulative
- 2 Supplement, 2010, are repealed.