

LEGISLATIVE BILL 529

Approved by the Governor May 4, 1993

Introduced by Pirsch, 10; Beutler, 28

AN ACT relating to criminal procedure; to amend section 29-2204, Reissue Revised Statutes of Nebraska, 1943; to change and eliminate provisions relating to indeterminate sentences; and to repeal the original section, and also section 83-1,105, Reissue Revised Statutes of Nebraska, 1943.

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

Section 1. That section 29-2204, Reissue Revised Statutes of Nebraska, 1943, be amended to read as follows:

29-2204. ~~(1) Except as provided in subsection (2) of this section, in all cases when any person is convicted of any offense by this code declared criminal and made punishable by imprisonment in the Department of Correctional Services adult correctional facility, the court shall declare in its sentence for what period of time, within the respective periods prescribed by law, such convict shall be imprisoned at hard labor in the Department of Correctional Services adult correctional facility and shall determine and declare in its sentence whether any such convict shall be kept in solitary confinement in the cells of the Department of Correctional Services adult correctional facility, without labor, and, if so, for what period of time:~~

(2) (1) Except as provided in subsection (3) of this section and except when a term of life is required by law, in imposing an indeterminate sentence upon an offender, the court shall:

(a) 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 1B felony, the minimum limit may be any term of years not less than the statutory mandatory minimum;

(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) 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.

Sec. 2. That original section 29-2204, Reissue Revised Statutes of Nebraska, 1943, and also section 83-1,105, Reissue Revised Statutes of Nebraska, 1943, are repealed.