

LEGISLATURE OF NEBRASKA
ONE HUNDRED FOURTH LEGISLATURE
FIRST SESSION

LEGISLATIVE BILL 173

FINAL READING

Introduced by Chambers, 11; Campbell, 25; Coash, 27; Davis, 43; Howard, 9; Kolowski, 31; Krist, 10; Schilz, 47; Schumacher, 22; Seiler, 33; Smith, 14; Ebke, 32.

Read first time January 12, 2015

Committee: Judiciary

- 1 A BILL FOR AN ACT relating to crimes and offenses; to amend section
- 2 29-2221, Reissue Revised Statutes of Nebraska, and section 28-105,
- 3 Revised Statutes Cumulative Supplement, 2014; to eliminate certain
- 4 mandatory minimum penalties; to change provisions relating to
- 5 habitual criminals; and to repeal the original sections.
- 6 Be it enacted by the people of the State of Nebraska,

1 Section 1. Section 28-105, Revised Statutes Cumulative Supplement,
2 2014, is amended to read:

3 28-105 (1) For purposes of the Nebraska Criminal Code and any
4 statute passed by the Legislature after the date of passage of the code,
5 felonies are divided into nine classes which are distinguished from one
6 another by the following penalties which are authorized upon conviction:

- | | | |
|----|-------------------|---|
| 7 | Class I felony | Death |
| 8 | Class IA felony | Life imprisonment |
| 9 | Class IB felony | Maximum – life imprisonment |
| 10 | | Minimum – twenty years imprisonment |
| 11 | Class IC felony | Maximum – fifty years imprisonment |
| 12 | | Minimum Mandatory minimum – five years imprisonment |
| 13 | Class ID felony | Maximum – fifty years imprisonment |
| 14 | | Minimum Mandatory minimum – three years imprisonment |
| 15 | Class II felony | Maximum – fifty years imprisonment |
| 16 | | Minimum – one year imprisonment |
| 17 | Class III felony | Maximum – twenty years imprisonment, or |
| 18 | | twenty-five thousand dollars fine, or both |
| 19 | | Minimum – one year imprisonment |
| 20 | Class IIIA felony | Maximum – five years imprisonment, or |
| 21 | | ten thousand dollars fine, or both |
| 22 | | Minimum – none |
| 23 | Class IV felony | Maximum – five years imprisonment, or |
| 24 | | ten thousand dollars fine, or both |
| 25 | | Minimum – none |

26 (2) All sentences of imprisonment for Class IA, IB, IC, ID, II, and
27 III felonies and sentences of one year or more for Class IIIA and IV
28 felonies shall be served in institutions under the jurisdiction of the
29 Department of Correctional Services. Sentences of less than one year
30 shall be served in the county jail except as provided in this subsection.

1 If the department certifies that it has programs and facilities available
2 for persons sentenced to terms of less than one year, the court may order
3 that any sentence of six months or more be served in any institution
4 under the jurisdiction of the department. Any such certification shall be
5 given by the department to the State Court Administrator, who shall
6 forward copies thereof to each judge having jurisdiction to sentence in
7 felony cases.

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

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

13 Sec. 2. Section 29-2221, Reissue Revised Statutes of Nebraska, is
14 amended to read:

15 29-2221 (1) Whoever has been twice convicted of a crime, sentenced,
16 and committed to prison, in this or any other state or by the United
17 States or once in this state and once at least in any other state or by
18 the United States, for terms of not less than one year each shall, upon
19 conviction of a felony committed in this state, other than a Class III or
20 a Class IV felony, be deemed to be a habitual criminal and shall be
21 punished by imprisonment in a Department of Correctional Services adult
22 correctional facility for a mandatory minimum term of ten years and a
23 maximum term of not more than sixty years, except that if a greater
24 punishment is otherwise provided by statute, the law creating the greater
25 punishment shall govern. ÷

26 ~~(a) If the felony committed is in violation of section 28-303,~~
27 ~~28-304, 28-308, 28-313, 28-319, 28-319.01, 28-502, 28-929, or 28-1222,~~
28 ~~and at least one of the habitual criminal's prior felony convictions was~~
29 ~~for a violation of one of the sections listed in this subdivision or of a~~
30 ~~similar statute in another state or of the United States, the mandatory~~
31 ~~minimum term shall be twenty-five years and the maximum term not more~~

1 ~~than sixty years;~~

2 ~~(b) If the felony committed is in violation of subsection (3) of~~
3 ~~section 28-306 and at least one of the prior convictions is in violation~~
4 ~~of subsection (3) of section 28-306 and the other is in violation of one~~
5 ~~of the sections set forth in subdivision (a) of this subsection or if the~~
6 ~~felony committed is in violation of one of the sections set forth in~~
7 ~~subdivision (a) of this subsection and both of the prior convictions are~~
8 ~~in violation of subsection (3) of section 28-306, the mandatory minimum~~
9 ~~term shall be twenty-five years and the maximum term not more than sixty~~
10 ~~years; and~~

11 ~~(c) If a greater punishment is otherwise provided by statute, the~~
12 ~~law creating the greater punishment shall govern.~~

13 (2) When punishment of an accused as a habitual criminal is sought,
14 the facts with reference thereto shall be charged in the indictment or
15 information which contains the charge of the felony upon which the
16 accused is prosecuted, but the fact that the accused is charged with
17 being a habitual criminal shall not be an issue upon the trial of the
18 felony charge and shall not in any manner be disclosed to the jury. If
19 the accused is convicted of a felony, other than a Class III or a Class
20 IV felony, before sentence is imposed, a hearing shall be had before the
21 court alone as to whether such person has been previously convicted of
22 prior felonies. The court shall fix a time for the hearing and notice
23 thereof shall be given to the accused at least three days prior thereto.
24 At the hearing, if the court finds from the evidence submitted that the
25 accused has been convicted two or more times of felonies and sentences
26 imposed therefor by the courts of this or any other state or by the
27 United States, the court shall sentence such person so convicted as a
28 habitual criminal.

29 (3) If the person so convicted shows to the satisfaction of the
30 court before which the conviction was had that he or she was released
31 from imprisonment upon either of such sentences upon a pardon granted for

1 the reason that he or she was innocent, such conviction and sentence
2 shall not be considered as such under this section and section 29-2222.

3 Sec. 3. Original section 29-2221, Reissue Revised Statutes of
4 Nebraska, and section 28-105, Revised Statutes Cumulative Supplement,
5 2014, are repealed.