

LEGISLATURE OF NEBRASKA
ONE HUNDRED FOURTH LEGISLATURE
FIRST SESSION

LEGISLATIVE BILL 173

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

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; to change provisions
- 3 relating to habitual criminals; to define a term; to harmonize
- 4 provisions; and to repeal the original section.
- 5 Be it enacted by the people of the State of Nebraska,

1 Section 1. Section 29-2221, Reissue Revised Statutes of Nebraska, is
2 amended to read:

3 29-2221 (1)(a) Whoever has been twice convicted of a violent crime
4 and ~~7~~ sentenced~~7~~ and committed to prison, in this or any other state or
5 by the United States or once in this state and once at least in any other
6 state or by the United States, for terms of not less than one year each
7 shall, upon conviction of an additional violent crime ~~a felony~~ committed
8 in this state, be deemed to be a habitual criminal and shall be punished
9 by imprisonment in a Department of Correctional Services adult
10 correctional facility for a ~~mandatory~~ minimum term of ten years and a
11 maximum term of not more than sixty years, except that if a greater
12 punishment is otherwise provided by statute, the law creating the greater
13 punishment shall govern. ÷

14 (b) For purposes of this section, violent crime means murder in the
15 first degree under section 28-303, murder in the second degree under
16 section 28-304, manslaughter under section 28-305, assault in the first
17 degree under section 28-308, kidnapping under section 28-313, sexual
18 assault in the first degree under section 28-319, sexual assault of a
19 child in the first degree under section 28-319.01, robbery under section
20 28-324, or motor vehicle homicide under subsection (3) of section 28-306.

21 ~~(a) If the felony committed is in violation of section 28-303,~~
22 ~~28-304, 28-308, 28-313, 28-319, 28-319.01, 28-502, 28-929, or 28-1222,~~
23 ~~and at least one of the habitual criminal's prior felony convictions was~~
24 ~~for a violation of one of the sections listed in this subdivision or of a~~
25 ~~similar statute in another state or of the United States, the mandatory~~
26 ~~minimum term shall be twenty five years and the maximum term not more~~
27 ~~than sixty years;~~

28 ~~(b) If the felony committed is in violation of subsection (3) of~~
29 ~~section 28-306 and at least one of the prior convictions is in violation~~
30 ~~of subsection (3) of section 28-306 and the other is in violation of one~~
31 ~~of the sections set forth in subdivision (a) of this subsection or if the~~

1 ~~felony committed is in violation of one of the sections set forth in~~
2 ~~subdivision (a) of this subsection and both of the prior convictions are~~
3 ~~in violation of subsection (3) of section 28-306, the mandatory minimum~~
4 ~~term shall be twenty-five years and the maximum term not more than sixty~~
5 ~~years; and~~

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

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

23 (3) If the person so convicted shows to the satisfaction of the
24 court before which the conviction was had that he or she was released
25 from imprisonment upon either of such sentences upon a pardon granted for
26 the reason that he or she was innocent, such conviction and sentence
27 shall not be considered as such under this section and section 29-2222.

28 Sec. 2. Original section 29-2221, Reissue Revised Statutes of
29 Nebraska, is repealed.