

LEGISLATURE OF NEBRASKA
ONE HUNDRED FOURTH LEGISLATURE
SECOND SESSION

LEGISLATIVE BILL 984

Introduced by Schumacher, 22.

Read first time January 14, 2016

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, as amended by Laws
4 2015, LB605, section 6; to change provisions relating to mandatory
5 minimum sentencing and sentencing of habitual criminals; to provide
6 for three-judge panel sentencing hearings as prescribed; to
7 harmonize provisions; and to repeal the original sections.
8 Be it enacted by the people of the State of Nebraska,

1 Section 1. Section 28-105, Revised Statutes Cumulative Supplement,
2 2014, as amended by Laws 2015, LB605, section 6, 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 ten 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		Mandatory minimum – five years imprisonment
13	Class ID felony	Maximum – fifty years imprisonment
14		Mandatory minimum – three years imprisonment
15	Class II felony	Maximum – fifty years imprisonment
16		Minimum – one year imprisonment
17	Class IIA felony	Maximum – twenty years imprisonment
18		Minimum – none
19	Class III felony	Maximum – four years imprisonment and two years
20		post-release supervision or
21		twenty-five thousand dollars fine, or both
22		Minimum – none for imprisonment and nine months
23		post-release supervision if imprisonment is imposed
24	Class IIIA felony	Maximum – three years imprisonment
25		and eighteen months post-release supervision or
26		ten thousand dollars fine, or both
27		Minimum – none for imprisonment and nine months
28		post-release supervision if imprisonment is imposed
29	Class IV felony	Maximum – two years imprisonment and twelve
30		months post-release supervision or

1 ten thousand dollars fine, or both
2 Minimum – none for imprisonment and nine months
3 post-release supervision if imprisonment is imposed

4 (2) All sentences for maximum terms of imprisonment for one year or
5 more for felonies shall be served in institutions under the jurisdiction
6 of the Department of Correctional Services. All sentences for maximum
7 terms of imprisonment of less than one year shall be served in the county
8 jail.

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

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

14 (5) If the sentencing judge, upon review of a presentence
15 investigation, finds that the imposition of a mandatory minimum sentence
16 as prescribed in sections 28-319, 28-319.01, 28-320.01, 29-2221, 29-4011,
17 and 53-180.05, and as otherwise authorized by statute, would result in a
18 sentence which, when considering the crime, the criminal record and
19 evaluations of the defendant, and the public good to be attained by
20 imposition of a mandatory minimum sentence would not serve the public
21 interest, the sentencing judge may ask that a three-judge panel,
22 consisting of the sentencing judge and two additional active district
23 court judges named at random by the Chief Justice, review the case. If at
24 least two of the three judges on the panel determine that a mandatory
25 minimum sentence is not appropriate, then a mandatory minimum sentence
26 shall not be imposed and the mandatory minimum sentence shall be minimum
27 but not mandatory.

28 (~~6~~ 5) All sentences of post-release supervision shall be served
29 under the jurisdiction of the Office of Probation Administration and
30 shall be subject to conditions imposed pursuant to section 29-2262 and
31 subject to sanctions authorized pursuant to section 29-2266.

1 (~~7~~ 6) Any person who is sentenced to imprisonment for a Class I, IA,
2 IB, IC, ID, II, or IIA felony and sentenced concurrently or consecutively
3 to imprisonment for a Class III, IIIA, or IV felony shall not be subject
4 to post-release supervision pursuant to subsection (1) of this section.

5 (~~8~~ 7) The changes made to the penalties for Class III, IIIA, and IV
6 felonies by Laws 2015, LB605, do not apply to any offense committed prior
7 to August 30, 2015, as provided in section 28-116.

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

10 29-2221 (1) Whoever has been twice convicted of a crime, sentenced,
11 and committed to prison, in this or any other state or by the United
12 States or once in this state and once at least in any other state or by
13 the United States, for terms of not less than one year each shall, upon
14 conviction of a felony committed in this state, be deemed to be a
15 habitual criminal and shall be punished by imprisonment in a Department
16 of Correctional Services adult correctional facility for a mandatory
17 minimum term of ten years and a maximum term of not more than sixty
18 years, except that:

19 (a) If the felony committed is in violation of section 28-303,
20 28-304, 28-308, 28-313, 28-319, 28-319.01, 28-502, 28-929, or 28-1222,
21 and at least one of the habitual criminal's prior felony convictions was
22 for a violation of one of the sections listed in this subdivision or of a
23 similar statute in another state or of the United States, the mandatory
24 minimum term shall be twenty-five years and the maximum term not more
25 than sixty years;

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

1 in violation of subsection (3) of section 28-306, the mandatory minimum
2 term shall be twenty-five years and the maximum term not more than sixty
3 years; and

4 (c) If a greater punishment is otherwise provided by statute, the
5 law creating the greater punishment shall govern.

6 (2) If, after receipt of the written report resulting from the
7 presentence investigation ordered as provided in section 29-2261, it
8 appears to the judge who presided at the trial of guilt or who accepted
9 the plea that there is probable cause to believe that the person
10 convicted is a habitual criminal, then, before sentence is imposed, a
11 hearing shall be held before the judge as to whether such person has been
12 previously convicted of prior felonies as provided in subsection (1) of
13 this section and the nature of the sentences received upon conviction of
14 such felonies. The judge shall fix a time for the hearing, and notice
15 shall be given to the person accused of being a habitual criminal at
16 least three days prior to the hearing. At the hearing, if the judge finds
17 that subsection (1) of this section may be applied with respect to the
18 sentencing of such person and that imposition of a sentence under such
19 subsection may be appropriate, the judge, with the consent of the
20 prosecuting attorney, may invoke subsection (1) of this section. The
21 sentence of such person accused of being a habitual criminal shall then
22 be determined at a sentencing determination proceeding by a panel of
23 three judges, including the judge who presided at the trial of guilt or
24 who accepted the plea and two additional active district court judges
25 named at random by the Chief Justice. The judge who presided at the trial
26 of guilt or who accepted the plea shall act as the presiding judge for
27 the sentencing determination proceeding. The sentencing determination
28 proceeding shall be held as soon as practicable, and the presiding judge
29 shall set forth the general order of procedure at the outset of the
30 sentencing determination proceeding. At the sentencing determination
31 proceeding, evidence may be presented as to any matter that a majority of

1 the panel deems relevant and probative with respect to sentencing and
2 shall include matters relating to the appropriateness of imposing a
3 sentence under subsection (1) of this section and to any sentence
4 excessiveness or disproportionality that may result from the imposition
5 of the sentence. The prosecuting attorney and the defendant or his or her
6 counsel shall be permitted to present arguments for or against imposing
7 sentence pursuant to subsection (1) of this section. The panel shall make
8 written findings of fact based upon the trial of guilt and the sentencing
9 determination proceeding. If the panel reaches a unanimous conclusion
10 that sentencing such person pursuant to subsection (1) of this section is
11 appropriate, the presiding judge shall sentence such person as a habitual
12 criminal. If the panel is unable to reach a unanimous conclusion that
13 sentencing such person pursuant to subsection (1) of this section is
14 appropriate or if subsection (1) of this section has not been invoked,
15 subsection (1) of this section shall not apply and the judge who presided
16 at the trial of guilt or who accepted the plea shall impose sentence as
17 otherwise provided by law. If the judge who presided at the trial of
18 guilt or who accepted the plea dies or is otherwise incapacitated or
19 disqualified, the authority of such judge under this subsection shall
20 transfer to the judge taking over the case ~~When punishment of an accused~~
21 ~~as a habitual criminal is sought, the facts with reference thereto shall~~
22 ~~be charged in the indictment or information which contains the charge of~~
23 ~~the felony upon which the accused is prosecuted, but the fact that the~~
24 ~~accused is charged with being a habitual criminal shall not be an issue~~
25 ~~upon the trial of the felony charge and shall not in any manner be~~
26 ~~disclosed to the jury. If the accused is convicted of a felony, before~~
27 ~~sentence is imposed a hearing shall be had before the court alone as to~~
28 ~~whether such person has been previously convicted of prior felonies. The~~
29 ~~court shall fix a time for the hearing and notice thereof shall be given~~
30 ~~to the accused at least three days prior thereto. At the hearing, if the~~
31 ~~court finds from the evidence submitted that the accused has been~~

1 ~~convicted two or more times of felonies and sentences imposed therefor by~~
2 ~~the courts of this or any other state or by the United States, the court~~
3 ~~shall sentence such person so convicted as a habitual criminal.~~

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

9 Sec. 3. Original section 29-2221, Reissue Revised Statutes of
10 Nebraska, and section 28-105, Revised Statutes Cumulative Supplement,
11 2014, as amended by Laws 2015, LB605, section 6, are repealed.