

AMENDMENTS TO LB173

Introduced by Coash, 27.

1           1. Strike the original sections and all amendments thereto and  
2 insert the following new sections:

3           Section 1. Section 28-105, Revised Statutes Cumulative Supplement,  
4 2014, is amended to read:

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

- |    |                   |   |
|----|-------------------|---|
| 9  | Class I felony    | Death   |
| 10 | Class IA felony   | Life imprisonment   |
| 11 | Class IB felony   | Maximum – life imprisonment                                     |
| 12 |                   | Minimum – twenty years imprisonment                             |
| 13 | Class IC felony   | Maximum – fifty years imprisonment                              |
| 14 |                   | <del>Minimum Mandatory minimum</del> – five years imprisonment  |
| 15 | Class ID felony   | Maximum – fifty years imprisonment                              |
| 16 |                   | <del>Minimum Mandatory minimum</del> – three years imprisonment |
| 17 | Class II felony   | Maximum – fifty years imprisonment                              |
| 18 |                   | Minimum – one year imprisonment                                 |
| 19 | Class III felony  | Maximum – twenty years imprisonment, or                         |
| 20 |                   | twenty-five thousand dollars fine, or both                      |
| 21 |                   | Minimum – one year imprisonment                                 |
| 22 | Class IIIA felony | Maximum – five years imprisonment, or                           |
| 23 |                   | ten thousand dollars fine, or both                              |
| 24 |                   | Minimum – none  |
| 25 | Class IV felony   | Maximum – five years imprisonment, or                           |
| 26 |                   | ten thousand dollars fine, or both                              |

1 Minimum – none

2 (2) All sentences of imprisonment for Class IA, IB, IC, ID, II, and  
3 III felonies and sentences of one year or more for Class IIIA and IV  
4 felonies shall be served in institutions under the jurisdiction of the  
5 Department of Correctional Services. Sentences of less than one year  
6 shall be served in the county jail except as provided in this subsection.  
7 If the department certifies that it has programs and facilities available  
8 for persons sentenced to terms of less than one year, the court may order  
9 that any sentence of six months or more be served in any institution  
10 under the jurisdiction of the department. Any such certification shall be  
11 given by the department to the State Court Administrator, who shall  
12 forward copies thereof to each judge having jurisdiction to sentence in  
13 felony cases.

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

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

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

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

1 punishment shall govern. ÷

2 ~~(a) If the felony committed is in violation of section 28-303,~~  
3 ~~28-304, 28-308, 28-313, 28-319, 28-319.01, 28-502, 28-929, or 28-1222,~~  
4 ~~and at least one of the habitual criminal's prior felony convictions was~~  
5 ~~for a violation of one of the sections listed in this subdivision or of a~~  
6 ~~similar statute in another state or of the United States, the mandatory~~  
7 ~~minimum term shall be twenty-five years and the maximum term not more~~  
8 ~~than sixty years;~~

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

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

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

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

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

10 Sec. 3. Original section 29-2221, Reissue Revised Statutes of  
11 Nebraska, and section 28-105, Revised Statutes Cumulative Supplement,  
12 2014, are repealed.