

E AND R AMENDMENTS TO LB 173

Introduced by Hansen, 26, Chairman Enrollment and Review

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		Minimum Mandatory minimum – five years imprisonment
15	Class ID felony	Maximum – fifty years imprisonment
16		Minimum Mandatory minimum – 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 29-2204, Revised Statutes Cumulative Supplement,
20 2014, is amended to read:

21 29-2204 (1) Except when a term of life imprisonment is required by
22 law, in imposing an indeterminate sentence upon an offender the court
23 shall:

24 ~~(a)(i) Until July 1, 1998, fix the minimum and maximum limits of the~~
25 ~~sentence to be served within the limits provided by law, except that when~~
26 ~~a maximum limit of life is imposed by the court for a Class IB felony,~~
27 ~~the minimum limit may be any term of years not less than the statutory~~
28 ~~mandatory minimum; and~~

29 ~~(ii) Beginning July 1, 1998:~~

30 ~~(a)(i) (A) Fix the minimum and maximum limits of the sentence to be~~

1 served within the limits provided by law for any class of felony other
2 than a Class IV felony, except that when a maximum limit of life is
3 imposed by the court for a Class IB felony, the minimum limit may be any
4 term of years not less than the statutory ~~mandatory~~ minimum. If the
5 criminal offense is a Class IV felony, the court shall fix the minimum
6 and maximum limits of the sentence, but the minimum limit fixed by the
7 court shall not be less than the minimum provided by law nor more than
8 one-third of the maximum term and the maximum limit shall not be greater
9 than the maximum provided by law; or

10 (ii B) Impose a definite term of years, in which event the maximum
11 term of the sentence shall be the term imposed by the court and the
12 minimum term shall be the minimum sentence provided by law;

13 (b) Advise the offender on the record the time the offender will
14 serve on his or her minimum term before attaining parole eligibility
15 assuming that no good time for which the offender will be eligible is
16 lost; and

17 (c) Advise the offender on the record the time the offender will
18 serve on his or her maximum term before attaining mandatory release
19 assuming that no good time for which the offender will be eligible is
20 lost.

21 If any discrepancy exists between the statement of the minimum limit
22 of the sentence and the statement of parole eligibility or between the
23 statement of the maximum limit of the sentence and the statement of
24 mandatory release, the statements of the minimum limit and the maximum
25 limit shall control the calculation of the offender's term. If the court
26 imposes more than one sentence upon an offender or imposes a sentence
27 upon an offender who is at that time serving another sentence, the court
28 shall state whether the sentences are to be concurrent or consecutive.

29 (2)(a) When the court is of the opinion that imprisonment may be
30 appropriate but desires more detailed information as a basis for
31 determining the sentence to be imposed than has been provided by the

1 presentence report required by section 29-2261, the court shall commit an
2 offender to the Department of Correctional Services for a period not
3 exceeding ninety days. The department shall conduct a complete study of
4 the offender during that time, inquiring into such matters as his or her
5 previous delinquency or criminal experience, social background,
6 capabilities, and mental, emotional, and physical health and the
7 rehabilitative resources or programs which may be available to suit his
8 or her needs. By the expiration of the period of commitment or by the
9 expiration of such additional time as the court shall grant, not
10 exceeding a further period of ninety days, the offender shall be returned
11 to the court for sentencing and the court shall be provided with a
12 written report of the results of the study, including whatever
13 recommendations the department believes will be helpful to a proper
14 resolution of the case. After receiving the report and the
15 recommendations, the court shall proceed to sentence the offender in
16 accordance with subsection (1) of this section. The term of the sentence
17 shall run from the date of original commitment under this subsection.

18 (b) In order to encourage the use of this procedure in appropriate
19 cases, all costs incurred during the period the defendant is held in a
20 state institution under this subsection shall be a responsibility of the
21 state and the county shall be liable only for the cost of delivering the
22 defendant to the institution and the cost of returning him or her to the
23 appropriate court for sentencing or such other disposition as the court
24 may then deem appropriate.

25 (3) Except when a term of life is required by law, whenever the
26 defendant was under eighteen years of age at the time he or she committed
27 the crime for which he or she was convicted, the court may, in its
28 discretion, instead of imposing the penalty provided for the crime, make
29 such disposition of the defendant as the court deems proper under the
30 Nebraska Juvenile Code. ~~Until October 1, 2013, prior to making a~~
31 ~~disposition which commits the juvenile to the Office of Juvenile~~

1 ~~Services, the court shall order the juvenile to be evaluated by the~~
2 ~~office if the juvenile has not had an evaluation within the past twelve~~
3 ~~months.~~

4 Sec. 3. Section 29-2221, Reissue Revised Statutes of Nebraska, is
5 amended to read:

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

17 (b) For purposes of this section, violent crime means murder in the
18 first degree under section 28-303, murder in the second degree under
19 section 28-304, manslaughter under section 28-305, assault in the first
20 degree under section 28-308, kidnapping under section 28-313, sexual
21 assault in the first degree under section 28-319, sexual assault of a
22 child in the first degree under section 28-319.01, robbery under section
23 28-324, or motor vehicle homicide under subsection (3) of section 28-306.

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

31 ~~(b) If the felony committed is in violation of subsection (3) of~~

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

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

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

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

31 Sec. 4. Section 83-1,105.01, Reissue Revised Statutes of Nebraska,

1 is amended to read:

2 83-1,105.01 Except when a term of life imprisonment is required by
3 law, in imposing an indeterminate sentence upon an offender the court
4 shall:

5 (1) Fix the minimum and maximum limits of the sentence to be served
6 within the limits provided by law for any class of felony other than a
7 Class IV felony, except that when a maximum limit of life is imposed by
8 the court for a Class IB felony, the minimum limit may be any term of
9 years not less than the statutory ~~mandatory~~ minimum. If the criminal
10 offense is a Class IV felony, the court shall fix the minimum and maximum
11 limits of the sentence, but the minimum limit fixed by the court shall
12 not be less than the minimum provided by law nor more than one-third of
13 the maximum term and the maximum limit shall not be greater than the
14 maximum provided by law;

15 (2) Impose a definite term of years, in which event the maximum term
16 of the sentence shall be the term imposed by the court and the minimum
17 term shall be the minimum sentence provided by law; or

18 (3)(a) When the court is of the opinion that imprisonment may be
19 appropriate but desires more detailed information as a basis for
20 determining the sentence to be imposed than has been provided by the
21 presentence report required by section 29-2261, the court shall commit an
22 offender to the Department of Correctional Services for a period not
23 exceeding ninety days. The department shall conduct a complete study of
24 the offender during that time, inquiring into such matters as his or her
25 previous delinquency or criminal experience, social background,
26 capabilities, and mental, emotional, and physical health and the
27 rehabilitative resources or programs which may be available to suit his
28 or her needs. By the expiration of the period of commitment or by the
29 expiration of such additional time as the court shall grant, not
30 exceeding a further period of ninety days, the offender shall be returned
31 to the court for sentencing and the court shall be provided with a

1 written report of the results of the study, including whatever
2 recommendations the department believes will be helpful to a proper
3 resolution of the case. After receiving the report and the
4 recommendations, the court shall proceed to sentence the offender in
5 accordance with any applicable provision of law. The term of the sentence
6 shall run from the date of original commitment under this subdivision.

7 (b) In order to encourage the use of this procedure in appropriate
8 cases, all costs incurred during the period the offender is held in a
9 state institution under this subdivision shall be the responsibility of
10 the state and the county shall be liable only for the cost of delivering
11 the offender to the institution and the cost of returning him or her to
12 the appropriate court for sentencing or such other disposition as the
13 court may then deem appropriate.

14 Sec. 5. Original sections 29-2221 and 83-1,105.01, Reissue Revised
15 Statutes of Nebraska, and sections 28-105 and 29-2204, Revised Statutes
16 Cumulative Supplement, 2014, are repealed.

17 2. On page 1, strike beginning with "section" in line 1 through line
18 4 and insert "sections 29-2221 and 83-1,105.01, Reissue Revised Statutes
19 of Nebraska, and sections 28-105 and 29-2204, Revised Statutes Cumulative
20 Supplement, 2014; to eliminate certain mandatory minimum penalties; to
21 change provisions relating to habitual criminals; to define a term; to
22 eliminate obsolete provisions; to harmonize provisions; and to repeal the
23 original sections."