

LEGISLATURE OF NEBRASKA
ONE HUNDRED FOURTH LEGISLATURE
FIRST SESSION

LEGISLATIVE BILL 172

Introduced by Chambers, 11; Campbell, 25; Coash, 27; Davis, 43; Harr, 8;
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 83-1,105.01, Reissue Revised Statutes of Nebraska, and sections
3 28-105 and 29-2204, Revised Statutes Cumulative Supplement, 2014; to
4 eliminate certain mandatory minimum penalties; to harmonize
5 provisions; 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 29-2204, Revised Statutes Cumulative Supplement,
14 2014, is amended to read:

15 29-2204 (1) Except when a term of life imprisonment is required by
16 law, in imposing an indeterminate sentence upon an offender the court
17 shall:

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

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

24 (a A)(i) Fix the minimum and maximum limits of the sentence to be
25 served within the limits provided by law for any class of felony other
26 than a Class IV felony, except that when a maximum limit of life is
27 imposed by the court for a Class IB felony, the minimum limit may be any
28 term of years not less than the statutory ~~mandatory~~ minimum. If the
29 criminal offense is a Class IV felony, the court shall fix the minimum
30 and maximum limits of the sentence, but the minimum limit fixed by the
31 court shall not be less than the minimum provided by law nor more than

1 one-third of the maximum term and the maximum limit shall not be greater
2 than the maximum provided by law; or

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

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

10 (c) Advise the offender on the record the time the offender will
11 serve on his or her maximum term before attaining mandatory release
12 assuming that no good time for which the offender will be eligible is
13 lost.

14 If any discrepancy exists between the statement of the minimum limit
15 of the sentence and the statement of parole eligibility or between the
16 statement of the maximum limit of the sentence and the statement of
17 mandatory release, the statements of the minimum limit and the maximum
18 limit shall control the calculation of the offender's term. If the court
19 imposes more than one sentence upon an offender or imposes a sentence
20 upon an offender who is at that time serving another sentence, the court
21 shall state whether the sentences are to be concurrent or consecutive.

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

1 or her needs. By the expiration of the period of commitment or by the
2 expiration of such additional time as the court shall grant, not
3 exceeding a further period of ninety days, the offender shall be returned
4 to the court for sentencing and the court shall be provided with a
5 written report of the results of the study, including whatever
6 recommendations the department believes will be helpful to a proper
7 resolution of the case. After receiving the report and the
8 recommendations, the court shall proceed to sentence the offender in
9 accordance with subsection (1) of this section. The term of the sentence
10 shall run from the date of original commitment under this subsection.

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

18 (3) Except when a term of life is required by law, whenever the
19 defendant was under eighteen years of age at the time he or she committed
20 the crime for which he or she was convicted, the court may, in its
21 discretion, instead of imposing the penalty provided for the crime, make
22 such disposition of the defendant as the court deems proper under the
23 Nebraska Juvenile Code. ~~Until October 1, 2013, prior to making a~~
24 ~~disposition which commits the juvenile to the Office of Juvenile~~
25 ~~Services, the court shall order the juvenile to be evaluated by the~~
26 ~~office if the juvenile has not had an evaluation within the past twelve~~
27 ~~months.~~

28 Sec. 3. Section 83-1,105.01, Reissue Revised Statutes of Nebraska,
29 is amended to read:

30 83-1,105.01 Except when a term of life imprisonment is required by
31 law, in imposing an indeterminate sentence upon an offender the court

1 shall:

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

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

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

1 recommendations, the court shall proceed to sentence the offender in
2 accordance with any applicable provision of law. The term of the sentence
3 shall run from the date of original commitment under this subdivision.

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

11 Sec. 4. Original section 83-1,105.01, Reissue Revised Statutes of
12 Nebraska, and sections 28-105 and 29-2204, Revised Statutes Cumulative
13 Supplement, 2014, are repealed.