

LEGISLATURE OF NEBRASKA
ONE HUNDRED SEVENTH LEGISLATURE
FIRST SESSION

LEGISLATIVE BILL 484

Introduced by Cavanaugh, J., 9.

Read first time January 15, 2021

Committee: Judiciary

1 A BILL FOR AN ACT relating to crimes and offenses; to amend sections
2 28-204, 28-518, and 29-2204.02, Reissue Revised Statutes of
3 Nebraska, and sections 28-105, 28-201, and 83-1,122.01, Revised
4 Statutes Cumulative Supplement, 2020; to provide for a new felony
5 classification; to change penalties; to harmonize provisions; and to
6 repeal the original sections.

7 Be it enacted by the people of the State of Nebraska,

1 Section 1. Section 28-105, Revised Statutes Cumulative Supplement,
2 2020, 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 eleven ~~ten~~ classes which are distinguished from
6 one another by the following penalties which are authorized upon
7 conviction:

8	Class I felony	Death
9	Class IA felony	Life imprisonment
10	Class IB felony	Maximum—life imprisonment
11		Minimum—twenty years imprisonment
12	Class IC felony	Maximum—fifty years imprisonment
13		Mandatory minimum—five years imprisonment
14	Class ID felony	Maximum—fifty years imprisonment
15		Mandatory minimum—three years imprisonment
16	Class II felony	Maximum—fifty years imprisonment
17		Minimum—one year imprisonment
18	Class IIA felony	Maximum—twenty years imprisonment
19		Minimum—none
20	<u>Class IIB felony</u>	<u>Maximum—ten years imprisonment</u>
21		<u>Minimum—none</u>
22	Class III felony	Maximum—four years imprisonment and two years
23		post-release supervision or
24		twenty-five thousand dollars fine, or both
25		Minimum—none for imprisonment and nine months
26		post-release supervision if imprisonment is imposed
27	Class IIIA felony	Maximum—three years imprisonment
28		and eighteen months post-release supervision or
29		ten thousand dollars fine, or both
30		Minimum—none for imprisonment and nine months

1 post-release supervision if imprisonment is imposed
2 Class IV felony Maximum—two years imprisonment and twelve
3 months post-release supervision or
4 ten thousand dollars fine, or both
5 Minimum—none for imprisonment and none for
6 post-release supervision

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

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

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

17 (5) All sentences of post-release supervision shall be served under
18 the jurisdiction of the Office of Probation Administration and shall be
19 subject to conditions imposed pursuant to section 29-2262 and subject to
20 sanctions authorized pursuant to section 29-2266.02.

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

26 (7) Any person who is sentenced to imprisonment for a Class III,
27 IIIA, or IV felony committed prior to August 30, 2015, and sentenced
28 concurrently or consecutively to imprisonment for a Class III, IIIA, or
29 IV felony committed on or after August 30, 2015, shall not be subject to
30 post-release supervision pursuant to subsection (1) of this section.

31 (8) The changes made to the penalties for Class III, IIIA, and IV

1 felonies by Laws 2015, LB605, do not apply to any offense committed prior
2 to August 30, 2015, as provided in section 28-116.

3 Sec. 2. Section 28-201, Revised Statutes Cumulative Supplement,
4 2020, is amended to read:

5 28-201 (1) A person shall be guilty of an attempt to commit a crime
6 if he or she:

7 (a) Intentionally engages in conduct which would constitute the
8 crime if the attendant circumstances were as he or she believes them to
9 be; or

10 (b) Intentionally engages in conduct which, under the circumstances
11 as he or she believes them to be, constitutes a substantial step in a
12 course of conduct intended to culminate in his or her commission of the
13 crime.

14 (2) When causing a particular result is an element of the crime, a
15 person shall be guilty of an attempt to commit the crime if, acting with
16 the state of mind required to establish liability with respect to the
17 attendant circumstances specified in the definition of the crime, he or
18 she intentionally engages in conduct which is a substantial step in a
19 course of conduct intended or known to cause such a result.

20 (3) Conduct shall not be considered a substantial step under this
21 section unless it is strongly corroborative of the defendant's criminal
22 intent.

23 (4) Criminal attempt is:

24 (a) A Class II felony when the crime attempted is a Class I, IA, IB,
25 IC, or ID felony;

26 (b) A Class IIA felony when the crime attempted is a Class II
27 felony;

28 (c) A Class IIIA felony when the crime attempted is a Class IIA or
29 IIB felony;

30 (d) A Class IV felony when the crime attempted is a Class III or
31 IIIA felony;

1 (e) A Class I misdemeanor when the crime attempted is a Class IV
2 felony;

3 (f) A Class II misdemeanor when the crime attempted is a Class I
4 misdemeanor; and

5 (g) A Class III misdemeanor when the crime attempted is a Class II
6 misdemeanor.

7 Sec. 3. Section 28-204, Reissue Revised Statutes of Nebraska, is
8 amended to read:

9 28-204 (1) A person is guilty of being an accessory to felony if
10 with intent to interfere with, hinder, delay, or prevent the discovery,
11 apprehension, prosecution, conviction, or punishment of another for an
12 offense, he or she:

13 (a) Harbors or conceals the other;

14 (b) Provides or aids in providing a weapon, transportation,
15 disguise, or other means of effecting escape or avoiding discovery or
16 apprehension;

17 (c) Conceals or destroys evidence of the crime or tampers with a
18 witness, informant, document, or other source of information, regardless
19 of its admissibility in evidence;

20 (d) Warns the other of impending discovery or apprehension other
21 than in connection with an effort to bring another into compliance with
22 the law;

23 (e) Volunteers false information to a peace officer; or

24 (f) By force, intimidation, or deception, obstructs anyone in the
25 performance of any act which might aid in the discovery, detection,
26 apprehension, prosecution, conviction, or punishment of such person.

27 (2)(a) Accessory to felony is a Class IIA felony if the actor
28 violates subdivision (1)(a), (1)(b), or (1)(c) of this section, the actor
29 knows of the conduct of the other, and the conduct of the other
30 constitutes a Class I, IA, IB, IC, or ID felony.

31 (b) Accessory to felony is a Class IIIA felony if the actor violates

1 subdivision (1)(a), (1)(b), or (1)(c) of this section, the actor knows of
2 the conduct of the other, and the conduct of the other constitutes a
3 Class II ~~or IIA, or IIB~~ felony.

4 (c) Accessory to felony is a Class IV felony if the actor violates
5 subdivision (1)(a), (1)(b), or (1)(c) of this section, the actor knows of
6 the conduct of the other, and the conduct of the other constitutes a
7 Class III or Class IIIA felony.

8 (d) Accessory to felony is a Class I misdemeanor if the actor
9 violates subdivision (1)(a), (1)(b), or (1)(c) of this section, the actor
10 knows of the conduct of the other, and the conduct of the other
11 constitutes a Class IV felony.

12 (e) Accessory to felony is a Class IV felony if the actor violates
13 subdivision (1)(d), (1)(e), or (1)(f) of this section, the actor knows of
14 the conduct of the other, and the conduct of the other constitutes a
15 felony of any class other than a Class IV felony.

16 (f) Accessory to felony is a Class I misdemeanor if the actor
17 violates subdivision (1)(d), (1)(e), or (1)(f) of this section, the actor
18 knows of the conduct of the other, and the conduct of the other
19 constitutes a Class IV felony.

20 Sec. 4. Section 28-518, Reissue Revised Statutes of Nebraska, is
21 amended to read:

22 28-518 (1) Theft constitutes a Class IIA felony when the value of
23 the thing involved is ten ~~five~~ thousand dollars or more.

24 (2) Theft constitutes a Class IIB felony when the value of the thing
25 involved is five thousand dollars or more but less than ten thousand
26 dollars.

27 (3) ~~(2)~~ Theft constitutes a Class IV felony when the value of the
28 thing involved is one thousand five hundred dollars or more but less than
29 five thousand dollars.

30 (4) ~~(3)~~ Theft constitutes a Class I misdemeanor when the value of
31 the thing involved is more than five hundred dollars but less than one

1 thousand five hundred dollars.

2 ~~(5)~~ ~~(4)~~ Theft constitutes a Class II misdemeanor when the value of
3 the thing involved is five hundred dollars or less.

4 ~~(6)~~ ~~(5)~~ For any second or subsequent conviction under subsection ~~(4)~~
5 ~~(3)~~ of this section, any person so offending shall be guilty of a Class
6 IV felony.

7 ~~(7)~~ ~~(6)~~ For any second conviction under subsection ~~(5)~~ ~~(4)~~ of this
8 section, any person so offending shall be guilty of a Class I
9 misdemeanor, and for any third or subsequent conviction under subsection
10 ~~(5)~~ ~~(4)~~ of this section, the person so offending shall be guilty of a
11 Class IV felony.

12 ~~(8)~~ ~~(7)~~ Amounts taken pursuant to one scheme or course of conduct
13 from one or more persons may be aggregated in the indictment or
14 information in determining the classification of the offense, except that
15 amounts may not be aggregated into more than one offense.

16 ~~(9)~~ ~~(8)~~ In any prosecution for theft under sections 28-509 to
17 28-518, value shall be an essential element of the offense that must be
18 proved beyond a reasonable doubt.

19 Sec. 5. Section 29-2204.02, Reissue Revised Statutes of Nebraska, is
20 amended to read:

21 29-2204.02 (1) Except when a term of probation is required by law as
22 provided in subsection (2) of this section or except as otherwise
23 provided in subsection (4) of this section, in imposing a sentence upon
24 an offender for a Class III, IIIA, or IV felony, the court shall:

25 (a) Impose a determinate sentence of imprisonment within the
26 applicable range in section 28-105; and

27 (b) Impose a sentence of post-release supervision, under the
28 jurisdiction of the Office of Probation Administration, within the
29 applicable range in section 28-105.

30 (2) If the criminal offense is a Class IV felony, the court shall
31 impose a sentence of probation unless:

1 (a) The defendant is concurrently or consecutively sentenced to
2 imprisonment for any felony other than another Class IV felony;

3 (b) The defendant has been deemed a habitual criminal pursuant to
4 section 29-2221; or

5 (c) There are substantial and compelling reasons why the defendant
6 cannot effectively and safely be supervised in the community, including,
7 but not limited to, the criteria in subsections (2) and (3) of section
8 29-2260. Unless other reasons are found to be present, that the offender
9 has not previously succeeded on probation is not, standing alone, a
10 substantial and compelling reason.

11 (3) If a sentence of probation is not imposed, the court shall state
12 its reasoning on the record, advise the defendant of his or her right to
13 appeal the sentence, and impose a sentence as provided in subsection (1)
14 of this section.

15 (4) For any sentence of imprisonment for a Class III, IIIA, or IV
16 felony for an offense committed on or after August 30, 2015, imposed
17 consecutively or concurrently with (a) a sentence for a Class III, IIIA,
18 or IV felony for an offense committed prior to August 30, 2015, or (b) a
19 sentence of imprisonment for a Class I, IA, IB, IC, ID, II, ~~or~~ IIA, or
20 IIB felony, the court shall impose an indeterminate sentence within the
21 applicable range in section 28-105 that does not include a period of
22 post-release supervision, in accordance with the process set forth in
23 section 29-2204.

24 (5) For any sentence of imprisonment for a misdemeanor imposed
25 consecutively or concurrently with a sentence of imprisonment for a Class
26 III, IIIA, or IV felony for an offense committed on or after August 30,
27 2015, the court shall impose a determinate sentence within the applicable
28 range in section 28-106 unless the person is also committed to the
29 Department of Correctional Services in accordance with section 29-2204
30 for (a) a sentence of imprisonment for a Class III, IIIA, or IV felony
31 committed prior to August 30, 2015, or (b) a sentence of imprisonment for

1 a Class I, IA, IB, IC, ID, II, ~~or~~ IIA, or IIB felony.

2 (6) If the defendant was under eighteen years of age at the time he
3 or she committed the crime for which he or she was convicted, the court
4 may, in its discretion, instead of imposing the penalty provided for the
5 crime, make such disposition of the defendant as the court deems proper
6 under the Nebraska Juvenile Code.

7 (7)(a) When imposing a determinate sentence upon an offender under
8 this section, the court shall:

9 (i) Advise the offender on the record the time the offender will
10 serve on his or her term of imprisonment before his or her term of post-
11 release supervision assuming that no good time for which the offender
12 will be eligible is lost;

13 (ii) Advise the offender on the record the time the offender will
14 serve on his or her term of post-release supervision; and

15 (iii) When imposing a sentence following revocation of post-release
16 supervision, advise the offender on the record the time the offender will
17 serve on his or her term of imprisonment, including credit for time
18 served, assuming that no good time for which the offender will be
19 eligible is lost.

20 (b) If a period of post-release supervision is required but not
21 imposed by the sentencing court, the term of post-release supervision
22 shall be the minimum provided by law.

23 (c) If the court imposes more than one sentence upon an offender or
24 imposes a sentence upon an offender who is at that time serving another
25 sentence, the court shall state whether the sentences are to be
26 concurrent or consecutive.

27 (d) If the offender has been sentenced to two or more determinate
28 sentences and one or more terms of post-release supervision, the offender
29 shall serve all determinate sentences before being released on post-
30 release supervision.

31 Sec. 6. Section 83-1,122.01, Revised Statutes Cumulative Supplement,

1 2020, is amended to read:

2 83-1,122.01 (1) Except as provided in subsection (3) of this
3 section, the board does not have jurisdiction over a person who is
4 committed to the department in accordance with section 29-2204.02 for a
5 Class III, IIIA, or IV felony committed on or after August 30, 2015,
6 unless the person is also committed to the department in accordance with
7 section 29-2204 for (a) a sentence of imprisonment for a Class III, IIIA,
8 or IV felony committed prior to August 30, 2015, or (b) a sentence of
9 imprisonment for a Class I, IA, IB, IC, ID, II, ~~or IIA,~~ or IIB felony.

10 (2) Except as provided in subsection (3) of this section, the board
11 does not have jurisdiction over a person committed to the department for
12 a misdemeanor sentence imposed consecutively or concurrently with a Class
13 III, IIIA, or IV felony sentence for an offense committed on or after
14 August 30, 2015, unless the person is also committed to the department in
15 accordance with section 29-2204 for (a) a sentence of imprisonment for a
16 Class III, IIIA, or IV felony committed prior to August 30, 2015, or (b)
17 a sentence of imprisonment for a Class I, IA, IB, IC, ID, II, ~~or IIA,~~ or
18 IIB felony.

19 (3) This section does not apply to medical parole under section
20 83-1,110.02.

21 Sec. 7. Original sections 28-204, 28-518, and 29-2204.02, Reissue
22 Revised Statutes of Nebraska, and sections 28-105, 28-201, and
23 83-1,122.01, Revised Statutes Cumulative Supplement, 2020, are repealed.