

LEGISLATURE OF NEBRASKA
ONE HUNDRED EIGHTH LEGISLATURE
FIRST SESSION

LEGISLATIVE BILL 34

Introduced by Dungan, 26.

Read first time January 05, 2023

Committee: Judiciary

1 A BILL FOR AN ACT relating to the administration of justice; to amend
2 section 29-2204.02, Reissue Revised Statutes of Nebraska, and
3 sections 29-2204 and 43-245, Revised Statutes Cumulative Supplement,
4 2022; to provide a presumption of disposition under the Nebraska
5 Juvenile Code for crimes committed by defendants under eighteen
6 years of age; to change the definition of juvenile under the
7 Nebraska Juvenile Code; and to repeal the original sections.
8 Be it enacted by the people of the State of Nebraska,

1 Section 1. Section 29-2204, Revised Statutes Cumulative Supplement,
2 2022, is amended to read:

3 29-2204 (1) Except when a term of life imprisonment is required by
4 law, in imposing a sentence upon an offender for any class of felony
5 other than a Class III, IIIA, or IV felony, the court shall fix the
6 minimum and the maximum terms of the sentence to be served within the
7 limits provided by law. The maximum term shall not be greater than the
8 maximum limit provided by law, and:

9 (a) The minimum term fixed by the court shall be any term of years
10 less than the maximum term imposed by the court; or

11 (b) The minimum term shall be the minimum limit provided by law.

12 (2) When a maximum term of life is imposed by the court for a Class
13 IB felony, the minimum term fixed by the court shall be:

14 (a) Any term of years not less than the minimum limit provided by
15 law; or

16 (b) A term of life imprisonment.

17 (3) When a maximum term of life is imposed by the court for a Class
18 IA felony, the minimum term fixed by the court shall be:

19 (a) A term of life imprisonment; or

20 (b) Any term of years not less than the minimum limit provided by
21 law after consideration of the mitigating factors in section 28-105.02,
22 if the defendant was under eighteen years of age at the time he or she
23 committed the crime for which he or she was convicted.

24 (4) When the court is of the opinion that imprisonment may be
25 appropriate but desires more detailed information as a basis for
26 determining the sentence to be imposed than has been provided by the
27 presentence report required by section 29-2261, the court may commit an
28 offender to the Department of Correctional Services. During that time,
29 the department shall conduct a complete study of the offender as provided
30 in section 29-2204.03.

31 (5)(a) ~~(5)~~ Except as provided in subdivision (5)(b) of this section

1 ~~when a term of life is required by law~~, whenever the defendant was under
2 eighteen years of age at the time he or she committed the crime for which
3 he or she was convicted, the court shall ~~may, in its discretion,~~ instead
4 of imposing the penalty provided for the crime, make such disposition of
5 the defendant as the court deems proper under the Nebraska Juvenile Code.

6 (b) Subdivision (5)(a) of this section does not apply if:

7 (i) A term of life is required by law;

8 (ii) The defendant has been deemed a habitual criminal pursuant to
9 section 29-2221;

10 (iii) There are substantial and compelling reasons why such
11 disposition cannot effectively and safely be made for the defendant,
12 including, but not limited to, the criteria listed in section 43-276; or

13 (iv) The defendant is also being sentenced for an offense committed
14 when the defendant was eighteen years of age or older or to which
15 subdivision (5)(b)(i), (ii), or (iii) of this section applies.

16 (c) In a case described in subdivision (5)(a) of this section, if
17 the court does not make disposition under the Nebraska Juvenile Code, the
18 court shall state its reasoning on the record, advise the defendant of
19 his or her right to appeal the sentence, and impose a sentence as
20 otherwise provided in this section.

21 (6)(a) When imposing an indeterminate sentence upon an offender
22 under this section, the court shall:

23 (i) Advise the offender on the record the time the offender will
24 serve on his or her minimum term before attaining parole eligibility
25 assuming that no good time for which the offender will be eligible is
26 lost; and

27 (ii) Advise the offender on the record the time the offender will
28 serve on his or her maximum term before attaining mandatory release
29 assuming that no good time for which the offender will be eligible is
30 lost.

31 (b) If any discrepancy exists between the statement of the minimum

1 limit of the sentence and the statement of parole eligibility or between
2 the statement of the maximum limit of the sentence and the statement of
3 mandatory release, the statements of the minimum limit and the maximum
4 limit shall control the calculation of the offender's term.

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

9 Sec. 2. Section 29-2204.02, Reissue Revised Statutes of Nebraska, is
10 amended to read:

11 29-2204.02 (1) Except when a term of probation is required by law as
12 provided in subsection (2) of this section or except as otherwise
13 provided in subsection (4) of this section, in imposing a sentence upon
14 an offender for a Class III, IIIA, or IV felony, the court shall:

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

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

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

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

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

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

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

5 (4) For any sentence of imprisonment for a Class III, IIIA, or IV
6 felony for an offense committed on or after August 30, 2015, imposed
7 consecutively or concurrently with (a) a sentence for a Class III, IIIA,
8 or IV felony for an offense committed prior to August 30, 2015, or (b) a
9 sentence of imprisonment for a Class I, IA, IB, IC, ID, II, or IIA
10 felony, the court shall impose an indeterminate sentence within the
11 applicable range in section 28-105 that does not include a period of
12 post-release supervision, in accordance with the process set forth in
13 section 29-2204.

14 (5) For any sentence of imprisonment for a misdemeanor imposed
15 consecutively or concurrently with a sentence of imprisonment for a Class
16 III, IIIA, or IV felony for an offense committed on or after August 30,
17 2015, the court shall impose a determinate sentence within the applicable
18 range in section 28-106 unless the person is also committed to the
19 Department of Correctional Services in accordance with section 29-2204
20 for (a) a sentence of imprisonment for a Class III, IIIA, or IV felony
21 committed prior to August 30, 2015, or (b) a sentence of imprisonment for
22 a Class I, IA, IB, IC, ID, II, or IIA felony.

23 (6)(a) Except as provided in subdivision (6)(b) of this section, if
24 ~~(6)~~ If the defendant was under eighteen years of age at the time he or
25 she committed the crime for which he or she was convicted, the court
26 shall ~~may, in its discretion,~~ instead of imposing the penalty provided
27 for the crime, make such disposition of the defendant as the court deems
28 proper under the Nebraska Juvenile Code.

29 (b) Subdivision (6)(a) of this section does not apply if:

30 (i) The defendant has been deemed a habitual criminal pursuant to
31 section 29-2221;

1 (ii) There are substantial and compelling reasons why such
2 disposition cannot effectively and safely be made for the defendant,
3 including, but not limited to, the criteria listed in section 43-276; or

4 (iii) The defendant is also being sentenced for an offense committed
5 when the defendant was eighteen years of age or older or to which
6 subdivision (6)(b)(i) or (ii) of this section applies.

7 (c) In a case described in subdivision (6)(a) of this section, if
8 the court does not make disposition under the Nebraska Juvenile Code, the
9 court shall state its reasoning on the record, advise the defendant of
10 his or her right to appeal the sentence, and impose a sentence as
11 otherwise provided in this section.

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

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

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

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

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

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

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

5 Sec. 3. Section 43-245, Revised Statutes Cumulative Supplement,
6 2022, is amended to read:

7 43-245 For purposes of the Nebraska Juvenile Code, unless the
8 context otherwise requires:

9 (1) Abandonment means a parent's intentionally withholding from a
10 child, without just cause or excuse, the parent's presence, care, love,
11 protection, and maintenance and the opportunity for the display of
12 parental affection for the child;

13 (2) Age of majority means nineteen years of age;

14 (3) Alternative to detention means a program or directive that
15 increases supervision of a youth in the community in an effort to ensure
16 the youth attends court and refrains from committing a new law violation.
17 Alternative to detention includes, but is not limited to, electronic
18 monitoring, day and evening reporting centers, house arrest, tracking,
19 family crisis response, and temporary shelter placement. Except for the
20 use of manually controlled delayed egress of not more than thirty
21 seconds, placements that utilize physical construction or hardware to
22 restrain a youth's freedom of movement and ingress and egress from
23 placement are not considered alternatives to detention;

24 (4) Approved center means a center that has applied for and received
25 approval from the Director of the Office of Dispute Resolution under
26 section 25-2909;

27 (5) Civil citation means a noncriminal notice which cannot result in
28 a criminal record and is described in section 43-248.02;

29 (6) Cost or costs means (a) the sum or equivalent expended, paid, or
30 charged for goods or services, or expenses incurred, or (b) the
31 contracted or negotiated price;

1 (7) Criminal street gang means a group of three or more people with
2 a common identifying name, sign, or symbol whose group identity or
3 purposes include engaging in illegal activities;

4 (8) Criminal street gang member means a person who willingly or
5 voluntarily becomes and remains a member of a criminal street gang;

6 (9) Custodian means a nonparental caretaker having physical custody
7 of the juvenile and includes an appointee described in section 43-294;

8 (10) Guardian means a person, other than a parent, who has qualified
9 by law as the guardian of a juvenile pursuant to testamentary or court
10 appointment, but excludes a person who is merely a guardian ad litem;

11 (11) Juvenile means:

12 (a) Any ~~any~~ person under the age of eighteen;

13 (b) Any person who is adjudicated under the Nebraska Juvenile Code
14 following a transfer under section 29-1816; or

15 (c) Any person for whom disposition under the Nebraska Juvenile Code
16 is made under subsection (5) of section 29-2204 or subsection (6) of
17 section 29-2204.02;

18 (12) Juvenile court means the separate juvenile court where it has
19 been established pursuant to sections 43-2,111 to 43-2,127 and the county
20 court sitting as a juvenile court in all other counties. Nothing in the
21 Nebraska Juvenile Code shall be construed to deprive the district courts
22 of their habeas corpus, common-law, or chancery jurisdiction or the
23 county courts and district courts of jurisdiction of domestic relations
24 matters as defined in section 25-2740;

25 (13) Juvenile detention facility has the same meaning as in section
26 83-4,125;

27 (14) Legal custody has the same meaning as in section 43-2922;

28 (15) Mental health facility means a treatment facility as defined in
29 section 71-914 or a government, private, or state hospital which treats
30 mental illness;

31 (16) Nonoffender means a juvenile who is subject to the jurisdiction

1 of the juvenile court for reasons other than legally prohibited conduct,
2 including, but not limited to, juveniles described in subdivision (3)(a)
3 of section 43-247;

4 (17) Parent means one or both parents or stepparents when the
5 stepparent is married to a parent who has physical custody of the
6 juvenile as of the filing of the petition;

7 (18) Parties means the juvenile as described in section 43-247 and
8 his or her parent, guardian, or custodian;

9 (19) Physical custody has the same meaning as in section 43-2922;

10 (20) Except in proceedings under the Nebraska Indian Child Welfare
11 Act, relative means father, mother, grandfather, grandmother, brother,
12 sister, stepfather, stepmother, stepbrother, stepsister, uncle, aunt,
13 first cousin, nephew, or niece;

14 (21) Restorative justice means practices, programs, or services that
15 emphasize repairing the harm caused to victims and the community by
16 persons who have caused the harm or committed an offense. Restorative
17 justice practices may include, but are not limited to, victim youth
18 conferencing, victim-offender mediation, youth or community dialogue,
19 panels, circles, and truancy mediation;

20 (22) Restorative justice facilitator means a qualified individual
21 who has been trained to facilitate restorative justice practices. A
22 qualified individual shall be approved by the referring county attorney,
23 city attorney, or juvenile or county court judge. Factors for approval
24 may include, but are not limited to, an individual's education and
25 training in restorative justice principles and practices; experience in
26 facilitating restorative justice sessions; understanding of the necessity
27 to do no harm to either the victim or the person who harmed the victim;
28 and proven commitment to ethical practices;

29 (23) Seal a record means that a record shall not be available to the
30 public except upon the order of a court upon good cause shown;

31 (24) Secure detention means detention in a highly structured,

1 residential, hardware-secured facility designed to restrict a juvenile's
2 movement;

3 (25) Staff secure juvenile facility means a juvenile residential
4 facility operated by a political subdivision (a) which does not include
5 construction designed to physically restrict the movements and activities
6 of juveniles who are in custody in the facility, (b) in which physical
7 restriction of movement or activity of juveniles is provided solely
8 through staff, (c) which may establish reasonable rules restricting
9 ingress to and egress from the facility, and (d) in which the movements
10 and activities of individual juvenile residents may, for treatment
11 purposes, be restricted or subject to control through the use of
12 intensive staff supervision. Staff secure juvenile facility does not
13 include any institution operated by the Department of Correctional
14 Services;

15 (26) Status offender means a juvenile who has been charged with or
16 adjudicated for conduct which would not be a crime if committed by an
17 adult, including, but not limited to, juveniles charged under subdivision
18 (3)(b) of section 43-247 and sections 53-180.01 and 53-180.02;

19 (27) Traffic offense means any nonfelonious act in violation of a
20 law or ordinance regulating vehicular or pedestrian travel, whether
21 designated a misdemeanor or a traffic infraction; and

22 (28) Young adult means an individual older than eighteen years of
23 age but under twenty-one years of age.

24 Sec. 4. Original section 29-2204.02, Reissue Revised Statutes of
25 Nebraska, and sections 29-2204 and 43-245, Revised Statutes Cumulative
26 Supplement, 2022, are repealed.