

LEGISLATURE OF NEBRASKA
ONE HUNDRED FOURTH LEGISLATURE
FIRST SESSION

LEGISLATIVE BILL 483

Introduced by Pansing Brooks, 28.

Read first time January 20, 2015

Committee: Judiciary

- 1 A BILL FOR AN ACT relating to criminal procedure; to amend section
- 2 83-1,105.01, Reissue Revised Statutes of Nebraska, and section
- 3 29-2204, Revised Statutes Cumulative Supplement, 2014; to change
- 4 provisions relating to indeterminate sentencing; and to repeal the
- 5 original sections.
- 6 Be it enacted by the people of the State of Nebraska,

1 Section 1. Section 29-2204, Revised Statutes Cumulative Supplement,
2 2014, is amended to read:

3 29-2204 (1) Except when a term of life imprisonment is required by
4 law, in imposing an indeterminate sentence upon an offender the court
5 shall:

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

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

12 ~~(a A)(i) Fix the minimum and maximum limits of the sentence to be~~
13 ~~served within the limits provided by law for any class of felony—other~~
14 ~~than a Class IV felony, except that when a maximum limit of life is~~
15 ~~imposed by the court for a Class IB felony, the minimum limit may be any~~
16 ~~term of years not less than the statutory mandatory minimum. The ~~If the~~~~
17 ~~criminal offense is a Class IV felony, the court shall fix the minimum~~
18 ~~and maximum limits of the sentence, but the minimum limit fixed by the~~
19 ~~court shall not be less than the minimum provided by law nor more than~~
20 ~~one-third of the maximum term and the maximum limit shall not be greater~~
21 ~~than the maximum provided by law; or~~

22 ~~(ii B) Impose a definite term of years, in which event the maximum~~
23 ~~term of the sentence shall be the term imposed by the court and the~~
24 ~~minimum term shall be the minimum sentence provided by law;~~

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

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

1 lost.

2 If any discrepancy exists between the statement of the minimum limit
3 of the sentence and the statement of parole eligibility or between the
4 statement of the maximum limit of the sentence and the statement of
5 mandatory release, the statements of the minimum limit and the maximum
6 limit shall control the calculation of the offender's term. If the court
7 imposes more than one sentence upon an offender or imposes a sentence
8 upon an offender who is at that time serving another sentence, the court
9 shall state whether the sentences are to be concurrent or consecutive.

10 (2)(a) When the court is of the opinion that imprisonment may be
11 appropriate but desires more detailed information as a basis for
12 determining the sentence to be imposed than has been provided by the
13 presentence report required by section 29-2261, the court shall commit an
14 offender to the Department of Correctional Services for a period not
15 exceeding ninety days. The department shall conduct a complete study of
16 the offender during that time, inquiring into such matters as his or her
17 previous delinquency or criminal experience, social background,
18 capabilities, and mental, emotional, and physical health and the
19 rehabilitative resources or programs which may be available to suit his
20 or her needs. By the expiration of the period of commitment or by the
21 expiration of such additional time as the court shall grant, not
22 exceeding a further period of ninety days, the offender shall be returned
23 to the court for sentencing and the court shall be provided with a
24 written report of the results of the study, including whatever
25 recommendations the department believes will be helpful to a proper
26 resolution of the case. After receiving the report and the
27 recommendations, the court shall proceed to sentence the offender in
28 accordance with subsection (1) of this section. The term of the sentence
29 shall run from the date of original commitment under this subsection.

30 (b) In order to encourage the use of this procedure in appropriate
31 cases, all costs incurred during the period the defendant is held in a

1 state institution under this subsection shall be a responsibility of the
2 state and the county shall be liable only for the cost of delivering the
3 defendant to the institution and the cost of returning him or her to the
4 appropriate court for sentencing or such other disposition as the court
5 may then deem appropriate.

6 (3) Except when a term of life is required by law, whenever the
7 defendant was under eighteen years of age at the time he or she committed
8 the crime for which he or she was convicted, the court may, in its
9 discretion, instead of imposing the penalty provided for the crime, make
10 such disposition of the defendant as the court deems proper under the
11 Nebraska Juvenile Code. Until October 1, 2013, prior to making a
12 disposition which commits the juvenile to the Office of Juvenile
13 Services, the court shall order the juvenile to be evaluated by the
14 office if the juvenile has not had an evaluation within the past twelve
15 months.

16 Sec. 2. Section 83-1,105.01, Reissue Revised Statutes of Nebraska,
17 is amended to read:

18 83-1,105.01 Except when a term of life imprisonment is required by
19 law, in imposing an indeterminate sentence upon an offender the court
20 shall:

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

31 (2) Impose a definite term of years, in which event the maximum term

1 of the sentence shall be the term imposed by the court and the minimum
2 term shall be the minimum sentence provided by law; or

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

23 (b) In order to encourage the use of this procedure in appropriate
24 cases, all costs incurred during the period the offender is held in a
25 state institution under this subdivision shall be the responsibility of
26 the state and the county shall be liable only for the cost of delivering
27 the offender to the institution and the cost of returning him or her to
28 the appropriate court for sentencing or such other disposition as the
29 court may then deem appropriate.

30 Sec. 3. Original section 83-1,105.01, Reissue Revised Statutes of
31 Nebraska, and section 29-2204, Revised Statutes Cumulative Supplement,

1 2014, are repealed.