

AMENDMENTS TO LB605

(Amendments to E and R amendments, ER81)

Introduced by Harr, 8.

- 1 1. Strike sections 6 and 61 and insert the following new sections:
- 2 Sec. 6. Section 28-105, Revised Statutes Cumulative Supplement,
3 2014, is amended to read:

4 28-105 (1) For purposes of the Nebraska Criminal Code and any
5 statute passed by the Legislature after the date of passage of the code,
6 felonies are divided into ten nine classes which are distinguished from
7 one another by the following penalties which are authorized upon
8 conviction:

9 Class I felony Death
10 Class IA felony Life imprisonment
11 Class IB felony Maximum – life imprisonment and ninety days post-
12 release supervision for each year of imprisonment
13 Minimum – twenty years imprisonment
14 Class IC felony Maximum – fifty years imprisonment and ninety days
15 post-release supervision for each year of
16 imprisonment
17 Mandatory minimum – five years imprisonment
18 Class ID felony Maximum – fifty years imprisonment and ninety days
19 post-release supervision for each year of
20 imprisonment
21 Mandatory minimum – three years imprisonment
22 Class II felony Maximum – fifty years imprisonment and ninety days
23 post-release supervision for each year of
24 imprisonment
25 Minimum – one year imprisonment

1 Class IIA felony Maximum – twenty years imprisonment and ninety days
2 post-release supervision for each year of
3 imprisonment
4 Minimum – none
5 Class III felony Maximum – four years imprisonment and two years
6 post-release supervision or
7 twenty-five thousand dollars fine, or both
8 Minimum – none for imprisonment and nine months
9 post-release supervision if imprisonment is imposed
10 Class IIIA felony Maximum – three years imprisonment
11 and eighteen months post-release supervision or
12 ten thousand dollars fine, or both
13 Minimum – none for imprisonment and nine months
14 post-release supervision if imprisonment is imposed
15 Class IV felony Maximum – two years imprisonment and twelve
16 months post-release supervision or
17 ten thousand dollars fine, or both
18 Minimum – none for imprisonment and nine months
19 post-release supervision if imprisonment is imposed
20 Class III felony Maximum – twenty years imprisonment, or
21 twenty-five thousand dollars fine, or both
22 Minimum – one year imprisonment
23 Class IIIA felony Maximum – five years imprisonment, or
24 ten thousand dollars fine, or both
25 Minimum – none
26 Class IV felony Maximum – five years imprisonment, or
27 ten thousand dollars fine, or both
28 Minimum – none
29 (2) All sentences of imprisonment for Class IA, IB, IC, ID, II, and

1 III felonies and sentences of one year or more for Class IIIA and IV
2 felonies shall be served in institutions under the jurisdiction of the
3 Department of Correctional Services. All sentences of imprisonment
4 Sentences of less than one year shall be served in the county jail except
5 as provided in this subsection. If the department certifies that it has
6 programs and facilities available for persons sentenced to terms of less
7 than one year, the court may order that any sentence of six months or
8 more be served in any institution under the jurisdiction of the
9 department. Any such certification shall be given by the department to
10 the State Court Administrator, who shall forward copies thereof to each
11 judge having jurisdiction to sentence in felony cases.

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, shall be
19 subject to conditions imposed pursuant to section 29-2262 and subject to
20 sanctions authorized pursuant to section 29-2266, and may be concurrent
21 with or consecutive to parole supervision.

22 Sec. 61. Section 29-2204, Revised Statutes Cumulative Supplement,
23 2014, is amended to read:

24 29-2204 (1) Except when a term of life imprisonment is required by
25 law, in imposing an indeterminate sentence upon an offender for a Class
26 IB, IC, ID, II, or IIA felony:

27 (a) The the court shall fix the minimum and the maximum terms of the
28 sentence to be served within the limits provided by law. The maximum term
29 shall not be greater than the maximum limit provided by law, and the
30 minimum term shall not be less than the minimum limit provided by law;
31 and ÷

1 (b) In fixing the minimum term, the minimum term shall not be more
2 than one-third of the maximum term imposed by the court or the length of
3 time between the minimum term and the maximum term shall be at least
4 three years, whichever results in the shorter length of time between the
5 minimum term and the maximum term.

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

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

10 (b) A term of life imprisonment.

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

13 (a) A term of life imprisonment; or

14 (b) Any term of years not less than the minimum limit provided by
15 law whenever the defendant was under eighteen years of age at the time he
16 or she committed the crime for which he or she was convicted.

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

22 (ii) Beginning July 1, 1998:

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

1 maximum provided by law; or

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

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

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

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

21 (4) (2)(a) When the court is of the opinion that imprisonment may be
22 appropriate but desires more detailed information as a basis for
23 determining the sentence to be imposed than has been provided by the
24 presentence report required by section 29-2261, the court may shall
25 commit an offender to the Department of Correctional Services for a
26 period not exceeding ninety days. During that time, the The department
27 shall conduct a complete study of the offender as provided in section 63
28 of this act 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 (5 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 (6)(a) When imposing an indeterminate sentence upon an offender
29 under this section, the court shall:

30 (i) Advise the offender on the record the time the offender will
31 serve on his or her minimum term before attaining parole eligibility

1 assuming that no good time for which the offender will be eligible is
2 lost; and

3 (ii) Advise the offender on the record the time the offender will
4 serve on his or her maximum term before attaining mandatory release
5 assuming that no good time for which the offender will be eligible is
6 lost.

7 (b) If any discrepancy exists between the statement of the minimum
8 limit of the sentence and the statement of parole eligibility or between
9 the statement of the maximum limit of the sentence and the statement of
10 mandatory release, the statements of the minimum limit and the maximum
11 limit shall control the calculation of the offender's term.

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

16 2. On page 12, line 13, strike "one hundred dollars fine", show as
17 stricken, and insert "none".

18 3. On page 70, after line 14, insert:

19 "(6) The court shall state whether post-release supervision shall be
20 concurrent with or consecutive to parole supervision.".