

AMENDMENTS TO LB173

Introduced by Judiciary.

1 1. Insert the following new sections:

2 Section 1. 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 nine classes which are distinguished from one
7 another by the following penalties which are authorized upon 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 ~~Minimum Mandatory minimum~~ – five years imprisonment

14 Class ID felony Maximum – fifty years imprisonment

15 ~~Minimum Mandatory minimum~~ – three years imprisonment

16 Class II felony Maximum – fifty years imprisonment

17 Minimum – one year imprisonment

18 Class III felony Maximum – twenty years imprisonment, or

19 twenty-five thousand dollars fine, or both

20 Minimum – one year imprisonment

21 Class IIIA felony Maximum – five years imprisonment, or

22 ten thousand dollars fine, or both

23 Minimum – none

24 Class IV felony Maximum – five years imprisonment, or

25 ten thousand dollars fine, or both

26 Minimum – none

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

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

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

18 Sec. 2. Section 29-2204, Revised Statutes Cumulative Supplement,
19 2014, is amended to read:

20 29-2204 (1) Except when a term of life imprisonment is required by
21 law, in imposing an indeterminate sentence upon an offender the court
22 shall:

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

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

29 ~~(a)(i) (A) Fix the minimum and maximum limits of the sentence to be~~
30 ~~served within the limits provided by law for any class of felony other~~
31 ~~than a Class IV felony, except that when a maximum limit of life is~~

1 imposed by the court for a Class IB felony, the minimum limit may be any
2 term of years not less than the statutory ~~mandatory~~ minimum. If the
3 criminal offense is a Class IV felony, the court shall fix the minimum
4 and maximum limits of the sentence, but the minimum limit fixed by the
5 court shall not be less than the minimum provided by law nor more than
6 one-third of the maximum term and the maximum limit shall not be greater
7 than the maximum provided by law; or

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

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

15 (c) Advise the offender on the record the time the offender will
16 serve on his or her maximum term before attaining mandatory release
17 assuming that no good time for which the offender will be eligible is
18 lost.

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

27 (2)(a) When the court is of the opinion that imprisonment may be
28 appropriate but desires more detailed information as a basis for
29 determining the sentence to be imposed than has been provided by the
30 presentence report required by section 29-2261, the court shall commit an
31 offender to the Department of Correctional Services for a period not

1 exceeding ninety days. The department shall conduct a complete study of
2 the offender during that time, inquiring into such matters as his or her
3 previous delinquency or criminal experience, social background,
4 capabilities, and mental, emotional, and physical health and the
5 rehabilitative resources or programs which may be available to suit his
6 or her needs. By the expiration of the period of commitment or by the
7 expiration of such additional time as the court shall grant, not
8 exceeding a further period of ninety days, the offender shall be returned
9 to the court for sentencing and the court shall be provided with a
10 written report of the results of the study, including whatever
11 recommendations the department believes will be helpful to a proper
12 resolution of the case. After receiving the report and the
13 recommendations, the court shall proceed to sentence the offender in
14 accordance with subsection (1) of this section. The term of the sentence
15 shall run from the date of original commitment under this subsection.

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

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

1 months.

2 Sec. 4. Section 83-1,105.01, Reissue Revised Statutes of Nebraska,
3 is amended to read:

4 83-1,105.01 Except when a term of life imprisonment is required by
5 law, in imposing an indeterminate sentence upon an offender the court
6 shall:

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

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

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

1 exceeding a further period of ninety days, the offender shall be returned
2 to the court for sentencing and the court shall be provided with a
3 written report of the results of the study, including whatever
4 recommendations the department believes will be helpful to a proper
5 resolution of the case. After receiving the report and the
6 recommendations, the court shall proceed to sentence the offender in
7 accordance with any applicable provision of law. The term of the sentence
8 shall run from the date of original commitment under this subdivision.

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

16 2. Renumber the remaining sections and correct the repealer
17 accordingly.