

LEGISLATURE OF NEBRASKA  
ONE HUNDRED FIFTH LEGISLATURE  
FIRST SESSION

**LEGISLATIVE BILL 53**

Introduced by Schumacher, 22.

Read first time January 05, 2017

Committee: Judiciary

1 A BILL FOR AN ACT relating to crimes and offenses; to amend sections  
2 28-105 and 29-2221, Reissue Revised Statutes of Nebraska; to change  
3 provisions relating to mandatory minimum sentencing and sentencing  
4 of habitual criminals; to provide for three-judge panel sentencing  
5 hearings as prescribed; to harmonize provisions; and to repeal the  
6 original sections.

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

1 Section 1. Section 28-105, Reissue Revised Statutes of Nebraska, is  
2 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 ten classes which are distinguished from one  
6 another by the following penalties which are authorized upon conviction:

- |    |                   |   |
|----|-------------------|---|
| 7  | Class I felony    | Death   |
| 8  | Class IA felony   | Life imprisonment                                   |
| 9  | Class IB felony   | Maximum – life imprisonment                         |
| 10 |                   | Minimum – twenty years imprisonment                 |
| 11 | Class IC felony   | Maximum – fifty years imprisonment                  |
| 12 |                   | Mandatory minimum – five years imprisonment         |
| 13 | Class ID felony   | Maximum – fifty years imprisonment                  |
| 14 |                   | Mandatory minimum – three years imprisonment        |
| 15 | Class II felony   | Maximum – fifty years imprisonment                  |
| 16 |                   | Minimum – one year imprisonment                     |
| 17 | Class IIA felony  | Maximum – twenty years imprisonment                 |
| 18 |                   | Minimum – none                                      |
| 19 | Class III felony  | Maximum – four years imprisonment and two years     |
| 20 |                   | post-release supervision or                         |
| 21 |                   | twenty-five thousand dollars fine, or both          |
| 22 |                   | Minimum – none for imprisonment and nine months     |
| 23 |                   | post-release supervision if imprisonment is imposed |
| 24 | Class IIIA felony | Maximum – three years imprisonment                  |
| 25 |                   | and eighteen months post-release supervision or     |
| 26 |                   | ten thousand dollars fine, or both                  |
| 27 |                   | Minimum – none for imprisonment and nine months     |
| 28 |                   | post-release supervision if imprisonment is imposed |
| 29 | Class IV felony   | Maximum – two years imprisonment and twelve         |
| 30 |                   | months post-release supervision or                  |

1                   ten thousand dollars fine, or both  
2                   Minimum – none for imprisonment and nine months  
3                   post-release supervision if imprisonment is imposed

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

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

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

14           (5) If the sentencing judge, upon review of a presentence  
15 investigation, finds that the imposition of a mandatory minimum sentence  
16 as prescribed for a violation of section 28-416 or for a violation of  
17 section 28-202 with a violation of section 28-416 as the underlying  
18 offense would result in a sentence which, when considering the crime, the  
19 criminal record and evaluations of the defendant, and the public good to  
20 be attained by imposition of a mandatory minimum sentence would not serve  
21 the public interest, the sentencing judge may order that a three-judge  
22 panel, consisting of the sentencing judge and two additional active  
23 district court judges named at random by the Chief Justice, review the  
24 case. If at least two of the three judges on the panel determine that a  
25 mandatory minimum sentence is not appropriate, then a mandatory minimum  
26 sentence shall not be imposed and the mandatory minimum sentence shall be  
27 minimum but not mandatory. This subsection shall not apply to mandatory  
28 minimum sentences for violations of subsection (16) of section 28-416.

29           (6) ~~(5)~~ All sentences of post-release supervision shall be served  
30 under the jurisdiction of the Office of Probation Administration and  
31 shall be subject to conditions imposed pursuant to section 29-2262 and

1 subject to sanctions authorized pursuant to section 29-2266.02.

2 (7) ~~(6)~~ Any person who is sentenced to imprisonment for a Class I,  
3 IA, IB, IC, ID, II, or IIA felony and sentenced concurrently or  
4 consecutively to imprisonment for a Class III, IIIA, or IV felony shall  
5 not be subject to post-release supervision pursuant to subsection (1) of  
6 this section.

7 (8) ~~(7)~~ Any person who is sentenced to imprisonment for a Class III,  
8 IIIA, or IV felony committed prior to August 30, 2015, and sentenced  
9 concurrently or consecutively to imprisonment for a Class III, IIIA, or  
10 IV felony committed on or after August 30, 2015, shall not be subject to  
11 post-release supervision pursuant to subsection (1) of this section.

12 (9) ~~(8)~~ The changes made to the penalties for Class III, IIIA, and  
13 IV felonies by Laws 2015, LB605, do not apply to any offense committed  
14 prior to August 30, 2015, as provided in section 28-116.

15 Sec. 2. Section 29-2221, Reissue Revised Statutes of Nebraska, is  
16 amended to read:

17 29-2221 (1) Whoever has been twice convicted of a crime, sentenced,  
18 and committed to prison, in this or any other state or by the United  
19 States or once in this state and once at least in any other state or by  
20 the United States, for terms of not less than one year each shall, upon  
21 conviction of a felony committed in this state, be deemed to be a  
22 habitual criminal and shall be punished by imprisonment in a Department  
23 of Correctional Services adult correctional facility for a mandatory  
24 minimum term of ten years and a maximum term of not more than sixty  
25 years, except that:

26 (a) If the felony committed is in violation of section 28-303,  
27 28-304, 28-308, 28-313, 28-319, 28-319.01, 28-502, 28-929, or 28-1222,  
28 and at least one of the habitual criminal's prior felony convictions was  
29 for a violation of one of the sections listed in this subdivision or of a  
30 similar statute in another state or of the United States, the mandatory  
31 minimum term shall be twenty-five years and the maximum term not more

1 than sixty years;

2 (b) If the felony committed is in violation of subsection (3) of  
3 section 28-306 and at least one of the prior convictions is in violation  
4 of subsection (3) of section 28-306 and the other is in violation of one  
5 of the sections set forth in subdivision (a) of this subsection or if the  
6 felony committed is in violation of one of the sections set forth in  
7 subdivision (a) of this subsection and both of the prior convictions are  
8 in violation of subsection (3) of section 28-306, the mandatory minimum  
9 term shall be twenty-five years and the maximum term not more than sixty  
10 years; and

11 (c) If a greater punishment is otherwise provided by statute, the  
12 law creating the greater punishment shall govern.

13 (2)(a) If it appears to the sentencing judge, upon review of a  
14 presentence investigation, that there is reason to believe that the  
15 person convicted is a habitual criminal, then, before sentence is  
16 imposed, a hearing shall be held before the judge to determine whether  
17 such person has been previously convicted of prior felonies as provided  
18 in subsection (1) of this section and the nature of the sentences  
19 received upon conviction of such felonies. The judge shall fix a time for  
20 the hearing, and notice shall be given to the person accused of being a  
21 habitual criminal at least three days prior to the hearing. At the  
22 hearing, if the judge finds that subsection (1) of this section may be  
23 applied with respect to the sentencing of such person and that imposition  
24 of a sentence under such subsection may be appropriate, the judge, with  
25 the consent of the prosecuting attorney, may invoke subsection (1) of  
26 this section.

27 (b) If subsection (1) is not invoked, such subsection shall not  
28 apply and the judge shall impose sentence as otherwise provided by law.

29 (c) If subsection (1) is invoked, the sentence of such person  
30 accused of being a habitual criminal shall then be determined at a  
31 sentencing determination proceeding by a panel of three judges, including

1 the judge who presided at the trial of guilt or who accepted the plea and  
2 two additional active district court judges named at random by the Chief  
3 Justice. The judge who presided at the trial of guilt or who accepted the  
4 plea shall act as the presiding judge for the sentencing determination  
5 proceeding. The sentencing determination proceeding shall be held as soon  
6 as practicable, and the presiding judge shall set forth the general order  
7 of procedure at the outset of the sentencing determination proceeding. At  
8 the sentencing determination proceeding, evidence may be presented as to  
9 any matter that a majority of the panel deems relevant and probative with  
10 respect to sentencing and shall include matters relating to the  
11 appropriateness of imposing a sentence under subsection (1) of this  
12 section and to any sentence excessiveness or disproportionality that may  
13 result. The prosecuting attorney and the defendant or his or her counsel  
14 shall be permitted to present arguments for or against imposing sentence  
15 pursuant to subsection (1) of this section. The panel shall make written  
16 findings of fact based upon the trial of guilt and the sentencing  
17 determination proceeding. If the panel reaches a unanimous conclusion  
18 that sentencing such person pursuant to subsection (1) of this section is  
19 appropriate, the presiding judge shall sentence such person as a habitual  
20 criminal. If the panel is unable to reach a unanimous conclusion that  
21 sentencing such person pursuant to subsection (1) of this section is  
22 appropriate, subsection (1) of this section shall not apply and the judge  
23 who presided at the trial of guilt or who accepted the plea shall impose  
24 sentence as otherwise provided by law. If the judge who presided at the  
25 trial of guilt or who accepted the plea dies or is otherwise  
26 incapacitated or disqualified, the authority of such judge under this  
27 subsection shall transfer to the judge taking over the case.

28 ~~(2) When punishment of an accused as a habitual criminal is sought,~~  
29 ~~the facts with reference thereto shall be charged in the indictment or~~  
30 ~~information which contains the charge of the felony upon which the~~  
31 ~~accused is prosecuted, but the fact that the accused is charged with~~

1 ~~being a habitual criminal shall not be an issue upon the trial of the~~  
2 ~~felony charge and shall not in any manner be disclosed to the jury. If~~  
3 ~~the accused is convicted of a felony, before sentence is imposed a~~  
4 ~~hearing shall be had before the court alone as to whether such person has~~  
5 ~~been previously convicted of prior felonies. The court shall fix a time~~  
6 ~~for the hearing and notice thereof shall be given to the accused at least~~  
7 ~~three days prior thereto. At the hearing, if the court finds from the~~  
8 ~~evidence submitted that the accused has been convicted two or more times~~  
9 ~~of felonies and sentences imposed therefor by the courts of this or any~~  
10 ~~other state or by the United States, the court shall sentence such person~~  
11 ~~so convicted as a habitual criminal.~~

12 (3) If the person so convicted shows to the satisfaction of the  
13 court before which the conviction was had that he or she was released  
14 from imprisonment upon either of such sentences upon a pardon granted for  
15 the reason that he or she was innocent, such conviction and sentence  
16 shall not be considered as such under this section and section 29-2222.

17 Sec. 3. Original sections 28-105 and 29-2221, Reissue Revised  
18 Statutes of Nebraska, are repealed.