

LEGISLATURE OF NEBRASKA
ONE HUNDRED SIXTH LEGISLATURE
FIRST SESSION

LEGISLATIVE BILL 376

Introduced by Friesen, 34.

Read first time January 16, 2019

Committee: Judiciary

1 A BILL FOR AN ACT relating to crimes and offenses; to amend sections
2 28-106, 29-1001, and 83-176, Reissue Revised Statutes of Nebraska,
3 and sections 28-105 and 83-171, Revised Statutes Cumulative
4 Supplement, 2018; to provide for the safekeeping of prisoners as
5 prescribed; to harmonize provisions; and to repeal the original
6 sections.

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

1 Section 1. Section 28-105, Revised Statutes Cumulative Supplement,
2 2018, is 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. Except as provided in section
7 29-1001, all ~~All~~ sentences for maximum terms of imprisonment of less than
8 one year shall be served in the county 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) All sentences of post-release supervision shall be served under
15 the jurisdiction of the Office of Probation Administration and shall be
16 subject to conditions imposed pursuant to section 29-2262 and subject to
17 sanctions authorized pursuant to section 29-2266.02.

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

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

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

30 (9) The changes made to this section by this legislative bill apply
31 to offenses committed before, on, and after the effective date of this

1 act.

2 Sec. 2. Section 28-106, Reissue Revised Statutes of Nebraska, is
3 amended to read:

4 28-106 (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 misdemeanors are divided into seven classes which are distinguished from
7 one another by the following penalties which are authorized upon
8 conviction:

9 Class I misdemeanor..... Maximum – not more than one year
10 imprisonment, or one thousand dollars
11 fine, or both
12 Minimum – none

13 Class II misdemeanor..... Maximum – six months imprisonment, or
14 one thousand dollars fine, or both
15 Minimum – none

16 Class III misdemeanor..... Maximum – three months imprisonment,
17 or five hundred dollars fine, or both
18 Minimum – none

19 Class IIIA misdemeanor..... Maximum – seven days imprisonment, five
20 hundred dollars fine, or both
21 Minimum – none

22 Class IV misdemeanor..... Maximum – no imprisonment, five
23 hundred dollars fine
24 Minimum – none

25 Class V misdemeanor..... Maximum – no imprisonment, one
26 hundred dollars fine
27 Minimum – none

28 Class W misdemeanor..... Driving under the influence or implied
29 consent
30 First conviction

1 Maximum – sixty days imprisonment and
 2 five hundred dollars fine
 3 Mandatory minimum – seven days
 4 imprisonment and five hundred dollars
 5 fine
 6 Second conviction
 7 Maximum – six months imprisonment and
 8 five hundred dollars fine
 9 Mandatory minimum – thirty days
 10 imprisonment and five hundred dollars
 11 fine
 12 Third conviction
 13 Maximum – one year imprisonment and
 14 one thousand dollars fine
 15 Mandatory minimum – ninety days
 16 imprisonment
 17 and one thousand dollars fine

18 (2) Except as provided in section 29-1001 and subsection (3) of this
 19 section, sentences Sentences of imprisonment in misdemeanor cases shall
 20 be served in the county jail, ~~except that such sentences~~

21 (3) A sentence of imprisonment in a misdemeanor case may be served
 22 in an institution ~~institutions~~ under the jurisdiction of the Department
 23 of Correctional Services if the sentence is to be served concurrently or
 24 consecutively with a term for conviction of a felony and the combined
 25 sentences total a term of one year or more. A determinate sentence shall
 26 be imposed for a misdemeanor if the sentence is to be served concurrently
 27 or consecutively with a determinate sentence for a Class III, IIIA, or IV
 28 felony.

29 (4) The changes made to this section by this legislative bill apply
 30 to offenses committed before, on, and after the effective date of this
 31 act.

1 Sec. 3. Section 29-1001, Reissue Revised Statutes of Nebraska, is
2 amended to read:

3 29-1001 (1) Whenever it shall be lawful and necessary to confine
4 any prisoner in custody previous to conviction upon a criminal
5 accusation, or in custody for contempt or alleged contempt of court, or
6 upon an attachment by order of a court or judge, or otherwise in lawful
7 custody, or upon conviction for any offense, the officer or person having
8 such prisoner him in such custody may convey such prisoner him to and
9 confine such prisoner him in the jail of any county in this state, or
10 other secure and convenient place of confinement in this state, to be
11 procured by such officer or person having such prisoner in custody.

12 (2)(a) The authority granted by subsection (1) of this section
13 includes the authority of a sheriff or other county official having a
14 prisoner in lawful custody, when necessary for the safekeeping of such
15 prisoner, to convey such prisoner to and confine such prisoner in the
16 jail of any city or county of this state, any juvenile detention facility
17 of this state, an institution under the control of the Department of
18 Correctional Services, or any other secure and convenient place of
19 confinement in this state, to be procured by such sheriff or other county
20 official having such prisoner in custody.

21 (b) The authority to determine what is necessary for the safekeeping
22 of a prisoner shall rest with the sheriff or other county official having
23 such prisoner in lawful custody. The sheriff or other county official may
24 determine that a prisoner cannot safely serve his or her sentence or
25 otherwise be safely kept in a particular place of confinement if the
26 place of confinement is not staffed or equipped to safely keep the
27 prisoner for any reason, including, but not limited to, the medical or
28 mental health needs of a prisoner or because the prisoner presents a
29 danger to himself, herself, or others.

30 (c) The Department of Correctional Services shall take custody of
31 and be responsible for the safekeeping of prisoners transferred to the

1 department pursuant to this section, except as provided in section
2 83-176.

3 (d) Nothing in this section shall be construed to shift
4 responsibility for the cost of keeping and maintaining a prisoner,
5 including the cost of the medical or mental health care for a prisoner,
6 from a county to the state, from one county to another, or otherwise from
7 the sheriff, official, or other person transferring custody of such
8 prisoner to the entity or person receiving custody of such prisoner. Such
9 cost shall be paid by the county in which the offense was committed or
10 alleged to have been committed.

11 (3) The changes made to this section by this legislative bill apply
12 to offenses committed before, on, and after the effective date of this
13 act.

14 Sec. 4. Section 83-171, Revised Statutes Cumulative Supplement,
15 2018, is amended to read:

16 83-171 There is hereby created a Department of Correctional Services
17 which shall:

18 (1) Maintain and administer facilities required for the custody,
19 control, correctional treatment, and rehabilitation of persons committed
20 to the department and for the safekeeping of such other persons as may be
21 remanded to the department in accordance with law, including section
22 29-1001;

23 (2) Develop policies and programs for the correctional treatment and
24 rehabilitation of persons committed to the department;

25 (3) Supervise parolees who have been committed to the department;
26 and

27 (4) Until July 1, 2016, administer parole services in the facilities
28 and in the community and, beginning July 1, 2016, cooperate with the
29 Board of Parole and Division of Parole Supervision to assist with the
30 efficient administration of parole services in the facilities and in the
31 community.

1 Sec. 5. Section 83-176, Reissue Revised Statutes of Nebraska, is
2 amended to read:

3 83-176 (1) Whenever any person is sentenced or committed under any
4 provision of law to a specific facility within the department or to the
5 custody of the warden or superintendent of such facility, he or she shall
6 be deemed to be sentenced or committed to the department.

7 (2) Except as provided in subsection (3) of this section, the The
8 director may designate as a place of confinement of a person committed to
9 the department any available, suitable, and appropriate residence
10 facility or institution, whether or not operated by the state, and may at
11 any time transfer such person from one place of confinement to another.

12 (3) The director shall not return to the custody of a sheriff or
13 other county official a person committed by such sheriff or other county
14 official to the department for safekeeping pursuant to section 29-1001
15 unless:

16 (a) The director finds that circumstances have changed such that the
17 person may be safely kept in the custody of such sheriff or other county
18 official; and

19 (b) Such sheriff or other county official agrees to accept custody.

20 (4) The changes made to this section by this legislative bill apply
21 to offenses committed before, on, and after the effective date of this
22 act.

23 Sec. 6. Original sections 28-106, 29-1001, and 83-176, Reissue
24 Revised Statutes of Nebraska, and sections 28-105 and 83-171, Revised
25 Statutes Cumulative Supplement, 2018, are repealed.