

LEGISLATURE OF NEBRASKA
ONE HUNDRED SEVENTH LEGISLATURE
FIRST SESSION

LEGISLATIVE BILL 505

Introduced by Cavanaugh, J., 9; McKinney, 11.

Read first time January 19, 2021

Committee: Judiciary

- 1 A BILL FOR AN ACT relating to crimes and offenses; to amend section
- 2 29-2221, Reissue Revised Statutes of Nebraska; to change provisions
- 3 relating to the habitual criminal enhancement; to define terms; and
- 4 to repeal the original section.
- 5 Be it enacted by the people of the State of Nebraska,

1 Section 1. Section 29-2221, Reissue Revised Statutes of Nebraska, is
2 amended to read:

3 29-2221 (1) Whoever has been twice convicted of a covered felony
4 ~~crime~~, sentenced, and committed to prison, in this or any other state or
5 by the United States or once in this state and once at least in any other
6 state or by the United States, for terms of not less than one year each
7 shall, upon conviction of a covered felony described in subdivision (4)
8 (a)(i), (ii), or (iii) of this section and which was committed in this
9 state, be deemed to be a habitual criminal and shall be punished by
10 imprisonment in a Department of Correctional Services adult correctional
11 facility for a mandatory minimum term of ten years and a maximum term of
12 not more than sixty years, except that:

13 (a) If the covered felony committed is in violation of section
14 28-303, 28-304, 28-308, 28-313, 28-319, 28-319.01, 28-502, 28-929, or
15 28-1222, and at least one of the habitual criminal's prior covered felony
16 convictions was for a violation of one of the sections listed in this
17 subdivision or of a similar statute in another state or of the United
18 States, the mandatory minimum term shall be twenty-five years and the
19 maximum term not more than sixty years;

20 (b) If the covered felony committed is in violation of subsection
21 (3) of section 28-306 and at least one of the prior convictions is in
22 violation of subsection (3) of section 28-306 and the other is in
23 violation of one of the sections set forth in subdivision (a) of this
24 subsection or if the covered felony committed is in violation of one of
25 the sections set forth in subdivision (a) of this subsection and both of
26 the prior convictions are in violation of subsection (3) of section
27 28-306, the mandatory minimum term shall be twenty-five years and the
28 maximum term not more than sixty years; and

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

31 (2) When punishment of an accused as a habitual criminal is sought,

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

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

20 (4) For purposes of this section:

21 (a) Covered felony means:

22 (i) A felony violation of any of the following sections: 28-303,
23 28-304, 28-305, 28-306, 28-308, 28-309, 28-310.01, 28-311, 28-311.01,
24 28-311.03, 28-311.08, 28-313, 28-314, 28-316.01, 28-319, 28-319.01,
25 28-320, 28-320.01, 28-320.02, 28-322.02, 28-322.03, 28-322.04, 28-322.05,
26 28-323, 28-324, 28-386, 28-391, 28-392, 28-393, 28-394, 28-397, 28-398,
27 28-502, 28-503, 28-507, 28-703, 28-707, 28-813.01, 28-831, 28-833,
28 28-904, 28-905, 28-912, 28-929, 28-930, 28-931, 28-931.01, 28-932,
29 28-933, 28-934, 28-1005, 28-1009, 28-1105.01, 28-1205, 28-1212.02,
30 28-1212.04, 28-1221, 28-1222, 28-1223, 28-1224, 28-1351, 28-1463.03, or
31 28-1463.05;

1 (ii) A felony that has an element of the offense:

2 (A) Sexual contact or sexual penetration; or

3 (B) The threat to inflict serious bodily injury or death on another

4 person, the infliction of serious bodily injury on another person, or

5 causing the death of another person;

6 (iii) Attempt, solicitation, aiding or abetting, being an accessory,

7 or conspiracy to commit an offense listed in subdivision (4)(a)(i) or

8 (ii) of this section;

9 (iv) A felony violation of section 42-924 or 60-6,196;

10 (v) Attempt, solicitation, aiding or abetting, being an accessory,

11 or conspiracy to commit an offense listed in subdivision (4)(a)(iv) of

12 this section; or

13 (vi) A felony violation of an offense of any other state or of the

14 United States that is substantially equivalent to any offense listed in

15 subdivisions (4)(a)(i), (ii), (iii), (iv), or (v) of this section;

16 (b) Serious bodily injury has the same meaning as in section 28-109;

17 and

18 (c) Sexual contact and sexual penetration have the same meanings as

19 in section 28-318.

20 Sec. 2. Original section 29-2221, Reissue Revised Statutes of
21 Nebraska, is repealed.