

AMENDMENTS TO LB935

(Amendments to E and R amendments, ER163)

Introduced by Cavanaugh, J., 9.

1 1. Strike sections 24 and 25 and insert the following new section:

2 **Sec. 24.** Section 29-2204.02, Reissue Revised Statutes of Nebraska,  
3 is amended to read:

4 29-2204.02 (1) Except when a term of probation is required by law as  
5 provided in subsection (2) of this section or except as otherwise  
6 provided in subsection (4) of this section, in imposing a sentence upon  
7 an offender for a Class III, IIIA, or IV felony, the court shall:

8 (a) Impose a determinate sentence of imprisonment within the  
9 applicable range in section 28-105; and

10 (b) Impose a sentence of post-release supervision, under the  
11 jurisdiction of the Office of Probation Administration, within the  
12 applicable range in section 28-105.

13 (2) If the criminal offense is a Class IV felony, the court shall  
14 impose a sentence of probation unless:

15 (a) The defendant is concurrently or consecutively sentenced to  
16 imprisonment for any felony other than another Class IV felony;

17 (b) The defendant was originally charged with a Class I, IA, IB, IC,  
18 ID, II, IIA, III, or IIIA felony;

19 (c) ~~(b)~~ The defendant has been deemed a habitual criminal pursuant  
20 to section 29-2221; or

21 (d) ~~(c)~~ There are substantial and compelling reasons why the  
22 defendant cannot effectively and safely be supervised in the community,  
23 including, but not limited to, the criteria in subsections (2) and (3) of  
24 section 29-2260. Unless other reasons are found to be present, that the  
25 offender has not previously succeeded on probation is not, standing  
26 alone, a substantial and compelling reason.

1 (3) If a sentence of probation is not imposed, the court shall state  
2 its reasoning on the record, advise the defendant of his or her right to  
3 appeal the sentence, and impose a sentence as provided in subsection (1)  
4 of this section.

5 (4) For any sentence of imprisonment for a Class III, IIIA, or IV  
6 felony for an offense committed on or after August 30, 2015, imposed  
7 consecutively or concurrently with (a) a sentence for a Class III, IIIA,  
8 or IV felony for an offense committed prior to August 30, 2015, or (b) a  
9 sentence of imprisonment for a Class I, IA, IB, IC, ID, II, or IIA  
10 felony, the court shall impose an indeterminate sentence within the  
11 applicable range in section 28-105 that does not include a period of  
12 post-release supervision, in accordance with the process set forth in  
13 section 29-2204.

14 (5) For any sentence of imprisonment for a misdemeanor imposed  
15 consecutively or concurrently with a sentence of imprisonment for a Class  
16 III, IIIA, or IV felony for an offense committed on or after August 30,  
17 2015, the court shall impose a determinate sentence within the applicable  
18 range in section 28-106 unless the person is also committed to the  
19 Department of Correctional Services in accordance with section 29-2204  
20 for (a) a sentence of imprisonment for a Class III, IIIA, or IV felony  
21 committed prior to August 30, 2015, or (b) a sentence of imprisonment for  
22 a Class I, IA, IB, IC, ID, II, or IIA felony.

23 (6) If the defendant was under eighteen years of age at the time he  
24 or she committed the crime for which he or she was convicted, the court  
25 may, in its discretion, instead of imposing the penalty provided for the  
26 crime, make such disposition of the defendant as the court deems proper  
27 under the Nebraska Juvenile Code.

28 (7)(a) When imposing a determinate sentence upon an offender under  
29 this section, the court shall:

30 (i) Advise the offender on the record the time the offender will  
31 serve on his or her term of imprisonment before his or her term of post-

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

3 (ii) Advise the offender on the record the time the offender will  
4 serve on his or her term of post-release supervision; and

5 (iii) When imposing a sentence following revocation of post-release  
6 supervision, advise the offender on the record the time the offender will  
7 serve on his or her term of imprisonment, including credit for time  
8 served, assuming that no good time for which the offender will be  
9 eligible is lost.

10 (b) If a period of post-release supervision is required but not  
11 imposed by the sentencing court, the term of post-release supervision  
12 shall be the minimum provided by law.

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

17 (d) If the offender has been sentenced to two or more determinate  
18 sentences and one or more terms of post-release supervision, the offender  
19 shall serve all determinate sentences before being released on post-  
20 release supervision.

21 2. Renumber the remaining sections and correct internal references  
22 accordingly.

23 3. Correct the operative date and repealer sections so that the  
24 section added by this amendment becomes operative three calendar months  
25 after the adjournment of this legislative session.