

LEGISLATIVE BILL 1266

Approved by the Governor April 18, 1998

Introduced by Wesely, 26; Hilgert, 7; Chambers, 11

AN ACT relating to crimes and punishments; to amend section 28-105.01, Reissue Revised Statutes of Nebraska, and sections 28-105 and 28-201, Revised Statutes Supplement, 1997; to change penalties for certain felonies; to provide an exemption from capital punishment for persons with mental retardation; to change provisions relating to criminal attempt; and to repeal the original sections.
Be it enacted by the people of the State of Nebraska,

Section 1. Section 28-105, Revised Statutes Supplement, 1997, is amended to read:

28-105. (1) For purposes of the Nebraska Criminal Code and any statute passed by the Legislature after the date of passage of the code, felonies are divided into eight classes which are distinguished from one another by the following penalties which are authorized upon conviction:

Class I felony Death
 Class IA felony Life imprisonment
 Class IB felony Maximum-life imprisonment
 Minimum-twenty years imprisonment
 Class IC felony Maximum-fifty years imprisonment
 Mandatory minimum-five years imprisonment
 Class ID felony Maximum-fifty years imprisonment
 Mandatory minimum-three years imprisonment
 Class II felony Maximum-fifty years imprisonment
 Minimum-one year imprisonment
 Class III felony ... Maximum-twenty years imprisonment, or
 twenty-five thousand dollars fine, or both
 Minimum-one year imprisonment
 Class IIIA felony .. Maximum-five years imprisonment, or
 ten thousand dollars fine, or both
 ~~Minimum-six months imprisonment~~
 Minimum-none
 Class IV felony Maximum-five years imprisonment, or ten
 thousand dollars fine, or both
 ~~Minimum-six months imprisonment~~
 Minimum-none

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

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

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

Sec. 2. Section 28-105.01, Reissue Revised Statutes of Nebraska, is amended to read:

28-105.01. (1) Notwithstanding any other provision of law, the death penalty shall not be imposed upon any person who was under the age of eighteen years at the time of the commission of the crime.

(2) Notwithstanding any other provision of law, the death penalty shall not be imposed upon any person with mental retardation.

(3) As used in subsection (2) of this section, mental retardation means significantly subaverage general intellectual functioning existing concurrently with deficits in adaptive behavior. An intelligence quotient of seventy or below on a reliably administered intelligence quotient test shall be presumptive evidence of mental retardation.

(4) Within one hundred twenty days after the effective date of this act, a convicted person sentenced to the penalty of death prior to the effective date of this act may bring a verified motion in the district court

which imposed such sentence requesting a ruling that the penalty of death be precluded under subsection (2) of this section and that the sentence be vacated. The court shall cause notice of each such request to be served on the county attorney, grant a prompt hearing on the request, and determine the issues and make findings of fact with respect to the request. If the court finds by a preponderance of the evidence that the convicted person is a person with mental retardation, the sentence of death shall be vacated and a sentence of life imprisonment imposed.

(5) For any convicted person who may be sentenced to the penalty of death on or after the effective date of this act, the court shall hold a hearing prior to any sentencing hearing upon a verified motion of the defense requesting a ruling that the penalty of death be precluded under subsection (2) of this section. If the court finds, by a preponderance of the evidence, that the defendant is a person with mental retardation, the death sentence shall not be imposed. A ruling by the court that the evidence of diminished intelligence introduced by the defendant does not preclude the death penalty under subsection (2) of this section shall not restrict the defendant's opportunity to introduce such evidence at the sentencing hearing or to argue that such evidence should be given mitigating significance.

Sec. 3. Section 28-201, Revised Statutes Supplement, 1997, is amended to read:

28-201. (1) A person shall be guilty of an attempt to commit a crime if he or she:

(a) Intentionally engages in conduct which would constitute the crime if the attendant circumstances were as he or she believes them to be; or

(b) Intentionally engages in conduct which, under the circumstances as he or she believes them to be, constitutes a substantial step in a course of conduct intended to culminate in his or her commission of the crime.

(2) When causing a particular result is an element of the crime, a person shall be guilty of an attempt to commit the crime if, acting with the state of mind required to establish liability with respect to the attendant circumstances specified in the definition of the crime, he or she intentionally engages in conduct which is a substantial step in a course of conduct intended or known to cause such a result.

(3) Conduct shall not be considered a substantial step under this section unless it is strongly corroborative of the defendant's criminal intent.

(4) Criminal attempt is:

(a) A Class II felony when the crime attempted is a Class I, Class IA, or Class IB felony;

(b) A Class III felony when the crime attempted is a Class II felony;

(c) A Class IIIA felony when the crime attempted is manslaughter under section 28-305, motor vehicle homicide under subdivision (3)(c) of section 28-306, assault in the first degree under section 28-308, sexual assault in the second degree under section 28-320, possession or distribution of controlled substances under subdivision (2)(b) of section 28-416 manufacturing, distributing, delivering, dispensing, or possessing with intent to manufacture, distribute, deliver, or dispense controlled substances listed in Schedule I, II, or III of section 28-405 under section 28-416 except for an exceptionally hazardous drug, incest under section 28-703, child abuse under subsection (5) of section 28-707, assault on an officer in the second degree under section 28-930, or assault by a confined person with a deadly or dangerous weapon under section 28-932;

(d) A Class IV felony when the crime attempted is a Class III felony not listed in subdivision (4)(c) of this section;

(e) A Class I misdemeanor when the crime attempted is a Class IIIA or Class IV felony;

(f) A Class II misdemeanor when the crime attempted is a Class I misdemeanor; and

(g) A Class III misdemeanor when the crime attempted is a Class II misdemeanor.

Sec. 4. Original section 28-105.01, Reissue Revised Statutes of Nebraska, and sections 28-105 and 28-201, Revised Statutes Supplement, 1997, are repealed.