

LEGISLATURE OF NEBRASKA
ONE HUNDRED SIXTH LEGISLATURE
FIRST SESSION

LEGISLATIVE BILL 90

Introduced by Wayne, 13.

Read first time January 10, 2019

Committee:

1 A BILL FOR AN ACT relating to crimes and offenses; to amend section
2 29-2204.02, Reissue Revised Statutes of Nebraska, and section
3 28-105, Revised Statutes Cumulative Supplement, 2018; to make post-
4 release supervision optional for Class IV felonies as prescribed; to
5 provide for applicability of changes; to harmonize provisions; and
6 to repeal the original 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 none for
3 ~~nine months~~ post-release supervision
4 ~~if imprisonment is imposed~~

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

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

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

15 (5) All sentences of post-release supervision shall be served under
16 the jurisdiction of the Office of Probation Administration and shall be
17 subject to conditions imposed pursuant to section 29-2262 and subject to
18 sanctions authorized pursuant to section 29-2266.02.

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

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

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

31 (9) The changes made to the penalty for Class IV felonies by this

1 legislative bill apply to:

2 (a) Offenses committed on or after the effective date of this act;
3 and

4 (b) Offenses committed prior to the effective date of this act and
5 on or after August 30, 2015, for which a final judgment has not been
6 entered. For purposes of this subdivision, an offense shall be deemed to
7 have been committed prior to August 30, 2015, if any element of the
8 offense occurred prior to such date.

9 Sec. 2. Section 29-2204.02, Reissue Revised Statutes of Nebraska, is
10 amended to read:

11 29-2204.02 (1) Except when a term of probation is required by law as
12 provided in subsection (2) of this section or except as otherwise
13 provided in subsection (4) of this section, in imposing a sentence upon
14 an offender for a Class III, IIIA, or IV felony, the court shall:

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

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

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

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

24 (b) The defendant has been deemed a habitual criminal pursuant to
25 section 29-2221; or

26 (c) There are substantial and compelling reasons why the defendant
27 cannot effectively and safely be supervised in the community, including,
28 but not limited to, the criteria in subsections (2) and (3) of section
29 29-2260. Unless other reasons are found to be present, that the offender
30 has not previously succeeded on probation is not, standing alone, a
31 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 any ~~his or her~~ term of imprisonment before his or her term of

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

3 (ii) Advise the offender on the record the time the offender will
4 serve on any 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 (8) The changes made to this section by this legislative bill apply
22 to:

23 (a) Offenses committed on or after the effective date of this act;
24 and

25 (b) Offenses committed prior to the effective date of this act and
26 on or after August 30, 2015, for which a final judgment has not been
27 entered. For purposes of this subdivision, an offense shall be deemed to
28 have been committed prior to August 30, 2015, if any element of the
29 offense occurred prior to such date.

30 Sec. 3. Original section 29-2204.02, Reissue Revised Statutes of
31 Nebraska, and section 28-105, Revised Statutes Cumulative Supplement,

1 2018, are repealed.