

LEGISLATURE OF NEBRASKA
ONE HUNDRED FIFTH LEGISLATURE
SECOND SESSION

LEGISLATIVE BILL 977

Introduced by Wayne, 13.

Read first time January 10, 2018

Committee:

1 A BILL FOR AN ACT relating to crimes and offenses; to amend sections
2 29-2204.02 and 29-2308, Reissue Revised Statutes of Nebraska,
3 section 83-1,122.01, Revised Statutes Cumulative Supplement, 2016,
4 and section 28-105, Revised Statutes Supplement, 2017; to change
5 provisions relating to sentencing for Class IV felonies and the
6 jurisdiction of the Board of Parole; to provide for applicability of
7 changes; to harmonize provisions; and to repeal the original
8 sections.
9 Be it enacted by the people of the State of Nebraska,

1 Section 1. Section 28-105, Revised Statutes Supplement, 2017, is
2 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 post-release supervision at the discretion of
5 the judge

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

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

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

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

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

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

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

1 (9) The changes made to this section by this legislative bill shall
2 apply to:

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

5 (b) Offenses committed prior to the effective date of this act and
6 on or after August 30, 2015, for which a final judgment has not been
7 entered.

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

10 29-2204.02 (1) ~~Except when a term of probation is required by law as~~
11 ~~provided in subsection (2) of this section or except as otherwise~~
12 provided in subsection (5) ~~(4)~~ of this section, in imposing a sentence
13 upon an offender for a Class III or Class ~~7~~ IIIA, ~~or IV~~ felony, the court
14 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) Except when a term of probation is required by law as provided
21 in subsection (3) of this section or except as otherwise provided in
22 subsection (5) of this section, in imposing a sentence upon an offender
23 for a Class IV felony, the court:

24 (a) Shall impose a determinate sentence of imprisonment within the
25 applicable range in section 28-105; and

26 (b) May impose a sentence of post-release supervision, under the
27 jurisdiction of the Office of Probation Administration, within the
28 applicable range in section 28-105.

29 (3) (2) If the criminal offense is a Class IV felony, the court
30 shall impose a sentence of probation unless:

31 (a) The defendant is concurrently or consecutively sentenced to

1 imprisonment for any felony other than another Class IV felony;

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

4 (c) There are substantial and compelling reasons why the defendant
5 cannot effectively and safely be supervised in the community, including,
6 but not limited to, the criteria in subsections (2) and (3) of section
7 29-2260. Unless other reasons are found to be present, that the offender
8 has not previously succeeded on probation is not, standing alone, a
9 substantial and compelling reason.

10 (4) ~~(3)~~ If a sentence of probation is not imposed, the court shall
11 state its reasoning on the record, advise the defendant of his or her
12 right to appeal the sentence, and impose a sentence as provided in
13 subsection (1) or (2) of this section.

14 (5) ~~(4)~~ For any sentence of imprisonment for a Class III, IIIA, or
15 IV felony for an offense committed on or after August 30, 2015, imposed
16 consecutively or concurrently with (a) a sentence for a Class III, IIIA,
17 or IV felony for an offense committed prior to August 30, 2015, or (b) a
18 sentence of imprisonment for a Class I, IA, IB, IC, ID, II, or IIA
19 felony, the court shall impose an indeterminate sentence within the
20 applicable range in section 28-105 that does not include a period of
21 post-release supervision, in accordance with the process set forth in
22 section 29-2204.

23 (6) ~~(5)~~ For any sentence of imprisonment for a misdemeanor imposed
24 consecutively or concurrently with a sentence of imprisonment for a Class
25 III, IIIA, or IV felony for an offense committed on or after August 30,
26 2015, the court shall impose a determinate sentence within the applicable
27 range in section 28-106 unless the person is also committed to the
28 Department of Correctional Services in accordance with section 29-2204
29 for (a) a sentence of imprisonment for a Class III, IIIA, or IV felony
30 committed prior to August 30, 2015, or (b) a sentence of imprisonment for
31 a Class I, IA, IB, IC, ID, II, or IIA felony.

1 (7) ~~(6)~~ If the defendant was under eighteen years of age at the time
2 he or she committed the crime for which he or she was convicted, the
3 court may, in its discretion, instead of imposing the penalty provided
4 for the crime, make such disposition of the defendant as the court deems
5 proper under the Nebraska Juvenile Code.

6 (8)(a) ~~(7)(a)~~ When imposing a determinate sentence upon an offender
7 under this section, the court shall:

8 (i) Advise the offender on the record the time the offender will
9 serve on his or her term of imprisonment before any ~~his or her~~ term of
10 post-release supervision or parole assuming that no good time for which
11 the offender will be eligible is lost;

12 (ii) Advise the offender on the record of any ~~the~~ time the offender
13 will serve on a ~~his or her~~ term of post-release supervision; and

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

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

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

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

30 (9) The changes made to this section by this legislative bill shall
31 apply to:

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

3 (b) Offenses committed prior to the effective date of this act and
4 on or after August 30, 2015, for which a final judgment has not been
5 entered.

6 Sec. 3. Section 29-2308, Reissue Revised Statutes of Nebraska, is
7 amended to read:

8 29-2308 (1) In all criminal cases that now are or may hereafter be
9 pending in the Court of Appeals or Supreme Court, the appellate court may
10 reduce the sentence rendered by the district court against the accused
11 when in its opinion the sentence is excessive, and it shall be the duty
12 of the appellate court to render such sentence against the accused as in
13 its opinion may be warranted by the evidence. No judgment shall be set
14 aside, new trial granted, or judgment rendered in any criminal case on
15 the grounds of misdirection of the jury or the improper admission or
16 rejection of evidence or for error as to any matter of pleading or
17 procedure if the appellate court, after an examination of the entire
18 cause, considers that no substantial miscarriage of justice has actually
19 occurred.

20 (2) In all criminal cases based on offenses subject to determinate
21 sentencing under subsection (3) ~~(2)~~ of section 29-2204.02, the appellate
22 court may determine that a sentence is excessive because the district
23 court did not provide substantial and compelling reasons for imposing a
24 sentence other than probation.

25 Sec. 4. Section 83-1,122.01, Revised Statutes Cumulative Supplement,
26 2016, is amended to read:

27 83-1,122.01 (1) The board does not have jurisdiction over a person
28 who is committed to the department in accordance with section 29-2204.02
29 for a Class III or Class ~~7~~ IIIA, ~~or~~ IV felony committed on or after
30 August 30, 2015, unless the person is also committed to the department in
31 accordance with section 29-2204 for:

1 (a) A a sentence of imprisonment for a Class III, IIIA, or IV felony
2 committed prior to August 30, 2015; ~~τ~~ or

3 (b) A a sentence of imprisonment for a Class I, IA, IB, IC, ID, II,
4 or IIA felony.

5 (2) The board does not have jurisdiction over a person who is
6 committed to the department in accordance with section 29-2204.02 for a
7 Class IV felony committed on or after August 30, 2015, unless:

8 (a) The sentence does not include a term of post-release
9 supervision; or

10 (b) The person is also committed to the department in accordance
11 with section 29-2204 for:

12 (i) A sentence of imprisonment for a Class III, IIIA, or IV felony
13 committed prior to August 30, 2015; or

14 (ii) A sentence of imprisonment for a Class I, IA, IB, IC, ID, II,
15 or IIA felony.

16 (3) ~~(2)~~ The board does not have jurisdiction over a person committed
17 to the department for a misdemeanor sentence imposed consecutively or
18 concurrently with a Class III or Class ~~τ~~ IIIA, ~~or~~ IV felony sentence for
19 an offense committed on or after August 30, 2015, unless the person is
20 also committed to the department in accordance with section 29-2204 for:

21 (a) A a sentence of imprisonment for a Class III, IIIA, or IV felony
22 committed prior to August 30, 2015; ~~τ~~ or

23 (b) A a sentence of imprisonment for a Class I, IA, IB, IC, ID, II,
24 or IIA felony.

25 (4) The board does not have jurisdiction over a person committed to
26 the department for a misdemeanor sentence imposed consecutively or
27 concurrently with a Class IV felony sentence for an offense committed on
28 or after August 30, 2015, unless:

29 (a) The sentence does not include a term of post-release
30 supervision; or

31 (b) The person is also committed to the department in accordance

1 with section 29-2204 for:

2 (i) A sentence of imprisonment for a Class III, IIIA, or IV felony
3 committed prior to August 30, 2015; or

4 (ii) A sentence of imprisonment for a Class I, IA, IB, IC, ID, II,
5 or IIA felony.

6 (5) The changes made to this section by this legislative bill shall
7 apply to:

8 (a) Offenses committed on or after the effective date of this act;
9 or

10 (b) Offenses committed prior to the effective date of this act and
11 on or after August 30, 2015, for which a final judgment has not been
12 entered.

13 Sec. 5. Original sections 29-2204.02 and 29-2308, Reissue Revised
14 Statutes of Nebraska, section 83-1,122.01, Revised Statutes Cumulative
15 Supplement, 2016, and section 28-105, Revised Statutes Supplement, 2017,
16 are repealed.