

LEGISLATURE OF NEBRASKA
ONE HUNDREDTH LEGISLATURE
FIRST SESSION
LEGISLATIVE BILL 215

Introduced by Ashford, 20

Read first time January 9, 2007

Committee: Judiciary

A BILL

1 FOR AN ACT relating to criminal law; to amend sections 28-105,
2 29-2204, 29-2520, 29-2522, 29-2524, and 83-1,105.01,
3 Revised Statutes Cumulative Supplement, 2006; to change
4 provisions relating to life imprisonment; and to repeal
5 the original sections.
6 Be it enacted by the people of the State of Nebraska,

1 Section 1. Section 28-105, Revised Statutes Cumulative
2 Supplement 2006, is amended to read:

3 28-105 (1) For purposes of the Nebraska Criminal Code and
4 any statute passed by the Legislature after the date of passage
5 of the code, felonies are divided into nine classes which are
6 distinguished from one another by the following penalties which are
7 authorized upon conviction:

- 8 Class I felony Death
- 9 Class IA felony Life imprisonment ~~without~~
- 10 ~~parole without parole~~
- 11 Class IB felony Maximum - life imprisonment
- 12 Minimum - twenty years
- 13 imprisonment
- 14 Class IC felony Maximum - fifty years
- 15 imprisonment
- 16 Mandatory minimum - five years
- 17 imprisonment
- 18 Class ID felony Maximum - fifty years
- 19 imprisonment
- 20 Mandatory minimum - three years
- 21 imprisonment
- 22 Class II felony Maximum - fifty years
- 23 imprisonment

1 Minimum - one year imprisonment

2 Class III felony Maximum - twenty years

3 imprisonment, or twenty-five

4 thousand dollars fine, or both

5 Minimum - one year imprisonment

6 Class IIIA felony Maximum - five years

7 imprisonment, or ten thousand

8 dollars fine, or both

9 Minimum - none

10 Class IV felony Maximum - five years

11 imprisonment, or ten thousand

12 dollars fine, or both

13 Minimum - none

14 (2) All sentences of imprisonment for Class IA, IB,

15 IC, ID, II, and III felonies and sentences of one year or more

16 for Class IIIA and IV felonies shall be served in institutions

17 under the jurisdiction of the Department of Correctional Services.

18 Sentences of less than one year shall be served in the county jail

19 except as provided in this subsection. If the department certifies

20 that it has programs and facilities available for persons sentenced

21 to terms of less than one year, the court may order that any

22 sentence of six months or more be served in any institution under

23 the jurisdiction of the department. Any such certification shall

1 be given by the department to the State Court Administrator, who
2 shall forward copies thereof to each judge having jurisdiction to
3 sentence in felony cases.

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

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

9 Sec. 2. Section 29-2204, Revised Statutes Cumulative
10 Supplement, 2006, is amended to read:

11 29-2204 (1) Except when a term of life imprisonment
12 ~~without parole~~ without parole is required by law, in imposing an
13 indeterminate sentence upon an offender the court shall:

14 (a)(i) Until July 1, 1998, fix the minimum and maximum
15 limits of the sentence to be served within the limits provided by
16 law, except that when a maximum limit of life is imposed by the
17 court for a Class IB felony, the minimum limit may be any term of
18 years not less than the statutory mandatory minimum; and

19 (ii) Beginning July 1, 1998:

20 (A) Fix the minimum and maximum limits of the sentence
21 to be served within the limits provided by law for any class of
22 felony other than a Class IV felony, except that when a maximum
23 limit of life is imposed by the court for a Class IB felony, the
24 minimum limit may be any term of years not less than the statutory
25 mandatory minimum. If the criminal offense is a Class IV felony,

1 the court shall fix the minimum and maximum limits of the sentence,
2 but the minimum limit fixed by the court shall not be less than
3 the minimum provided by law nor more than one-third of the maximum
4 term and the maximum limit shall not be greater than the maximum
5 provided by law; or

6 (B) Impose a definite term of years, in which event the
7 maximum term of the sentence shall be the term imposed by the court
8 and the minimum term shall be the minimum sentence provided by law;

9 (b) Advise the offender on the record the time the
10 offender will serve on his or her minimum term before attaining
11 parole eligibility assuming that no good time for which the
12 offender will be eligible is lost; and

13 (c) Advise the offender on the record the time the
14 offender will serve on his or her maximum term before attaining
15 mandatory release assuming that no good time for which the offender
16 will be eligible is lost.

17 If any discrepancy exists between the statement of
18 the minimum limit of the sentence and the statement of parole
19 eligibility or between the statement of the maximum limit of the
20 sentence and the statement of mandatory release, the statements
21 of the minimum limit and the maximum limit shall control the
22 calculation of the offender's term. If the court imposes more
23 than one sentence upon an offender or imposes a sentence upon
24 an offender who is at that time serving another sentence, the
25 court shall state whether the sentences are to be concurrent or

1 consecutive.

2 (2) (a) When the court is of the opinion that imprisonment
3 may be appropriate but desires more detailed information as a
4 basis for determining the sentence to be imposed than has been
5 provided by the presentence report required by section 29-2261, the
6 court shall commit an offender to the Department of Correctional
7 Services for a period not exceeding ninety days. The department
8 shall conduct a complete study of the offender during that time,
9 inquiring into such matters as his or her previous delinquency or
10 criminal experience, social background, capabilities, and mental,
11 emotional, and physical health and the rehabilitative resources
12 or programs which may be available to suit his or her needs. By
13 the expiration of the period of commitment or by the expiration
14 of such additional time as the court shall grant, not exceeding
15 a further period of ninety days, the offender shall be returned
16 to the court for sentencing and the court shall be provided
17 with a written report of the results of the study, including
18 whatever recommendations the department believes will be helpful to
19 a proper resolution of the case. After receiving the report and the
20 recommendations, the court shall proceed to sentence the offender
21 in accordance with subsection (1) of this section. The term of the
22 sentence shall run from the date of original commitment under this
23 subsection.

24 (b) In order to encourage the use of this procedure
25 in appropriate cases, all costs incurred during the period the

1 defendant is held in a state institution under this subsection
2 shall be a responsibility of the state and the county shall
3 be liable only for the cost of delivering the defendant to the
4 institution and the cost of returning him or her to the appropriate
5 court for sentencing or such other disposition as the court may
6 then deem appropriate.

7 (3) Except when a term of life is required by law,
8 whenever the defendant was under eighteen years of age at the time
9 he or she committed the crime for which he or she was convicted,
10 the court may, in its discretion, instead of imposing the penalty
11 provided for the crime, make such disposition of the defendant
12 as the court deems proper under the Nebraska Juvenile Code. Prior
13 to making a disposition which commits the juvenile to the Office
14 of Juvenile Services, the court shall order the juvenile to be
15 evaluated by the office if the juvenile has not had an evaluation
16 within the past twelve months.

17 Sec. 3. Section 29-2520, Revised Statutes Cumulative
18 Supplement, 2006, is amended to read:

19 29-2520 (1) Whenever any person is found guilty of a
20 violation of section 28-303 and the information contains a notice
21 of aggravation as provided in section 29-1603, the district court
22 shall, as soon as practicable, fix a date for an aggravation
23 hearing to determine the alleged aggravating circumstances. If no
24 notice of aggravation has been filed, the district court shall
25 enter a sentence of life imprisonment ~~without parole.~~ without

1 parole.

2 (2) Unless the defendant waives his or her right to a
3 jury determination of the alleged aggravating circumstances, such
4 determination shall be made by:

5 (a) The jury which determined the defendant's guilt; or

6 (b) A jury impaneled for purposes of the determination of
7 the alleged aggravating circumstances if:

8 (i) The defendant waived his or her right to a jury at
9 the trial of guilt and either was convicted before a judge or was
10 convicted on a plea of guilty or nolo contendere; or

11 (ii) The jury which determined the defendant's guilt has
12 been discharged.

13 A jury required by subdivision (2)(b) of this section
14 shall be impaneled in the manner provided in sections 29-2004 to
15 29-2010.

16 (3) The defendant may waive his or her right to a
17 jury determination of the alleged aggravating circumstances. The
18 court shall accept the waiver after determining that it is made
19 freely, voluntarily, and knowingly. If the defendant waives his
20 or her right to a jury determination of the alleged aggravating
21 circumstances, such determination shall be made by a panel of
22 judges as a part of the sentencing determination proceeding as
23 provided in section 29-2521.

24 (4)(a) At an aggravation hearing before a jury for the
25 determination of the alleged aggravating circumstances, the state

1 may present evidence as to the existence of the aggravating
2 circumstances alleged in the information. The Nebraska Evidence
3 Rules shall apply at the aggravation hearing.

4 (b) Alternate jurors who would otherwise be discharged
5 upon final submission of the cause to the jury shall be retained
6 during the deliberation of the defendant's guilt but shall not
7 participate in such deliberations. Such alternate jurors shall
8 serve during the aggravation hearing as provided in section 29-2004
9 but shall not participate in the jury's deliberations under this
10 subsection.

11 (c) If the jury serving at the aggravation hearing is
12 the jury which determined the defendant's guilt, the jury may
13 consider evidence received at the trial of guilt for purposes
14 of reaching its verdict as to the existence or nonexistence of
15 aggravating circumstances in addition to the evidence received at
16 the aggravation hearing.

17 (d) After the presentation and receipt of evidence at
18 the aggravation hearing, the state and the defendant or his or her
19 counsel may present arguments before the jury as to the existence
20 or nonexistence of the alleged aggravating circumstances.

21 (e) The court shall instruct the members of the jury
22 as to their duty as jurors, the definitions of the aggravating
23 circumstances alleged in the information, and the state's burden to
24 prove the existence of each aggravating circumstance alleged in the
25 information beyond a reasonable doubt.

1 (f) The jury at the aggravation hearing shall deliberate
2 and return a verdict as to the existence or nonexistence of each
3 alleged aggravating circumstance. Each aggravating circumstance
4 shall be proved beyond a reasonable doubt. Each verdict with
5 respect to each alleged aggravating circumstance shall be
6 unanimous. If the jury is unable to reach a unanimous verdict
7 with respect to an aggravating circumstance, such aggravating
8 circumstance shall not be weighed in the sentencing determination
9 proceeding as provided in section 29-2521.

10 (g) Upon rendering its verdict as to the determination of
11 the aggravating circumstances, the jury shall be discharged.

12 (h) If no aggravating circumstance is found to exist,
13 the court shall enter a sentence of life imprisonment ~~without~~
14 ~~parole.~~ without parole. If one or more aggravating circumstances
15 are found to exist, the court shall convene a panel of three judges
16 to hold a hearing to receive evidence of mitigation and sentence
17 excessiveness or disproportionality as provided in subsection (3)
18 of section 29-2521.

19 Sec. 4. Section 29-2522, Revised Statutes Cumulative
20 Supplement, 2006, is amended to read:

21 29-2522 The panel of judges for the sentencing
22 determination proceeding shall either unanimously fix the sentence
23 at death or, if the sentence of death was not unanimously agreed
24 upon by the panel, fix the sentence at life imprisonment ~~without~~
25 ~~parole.~~ without parole. Such sentence determination shall be based

1 upon the following considerations:

2 (1) Whether the aggravating circumstances as determined
3 to exist justify imposition of a sentence of death;

4 (2) Whether sufficient mitigating circumstances exist
5 which approach or exceed the weight given to the aggravating
6 circumstances; or

7 (3) Whether the sentence of death is excessive or
8 disproportionate to the penalty imposed in similar cases,
9 considering both the crime and the defendant.

10 In each case, the determination of the panel of judges
11 shall be in writing and refer to the aggravating and mitigating
12 circumstances weighed in the determination of the panel.

13 If an order is entered sentencing the defendant to death,
14 a date for execution shall not be fixed until after the conclusion
15 of the appeal provided for by section 29-2525.

16 Sec. 5. Section 29-2524, Revised Statutes Cumulative
17 Supplement, 2006, is amended to read:

18 29-2524 Nothing in sections 25-1140.09, 28-303, 28-313,
19 and 29-2519 to 29-2546 shall be in any way deemed to repeal or
20 limit existing procedures for automatic review of capital cases,
21 nor shall they in any way limit the right of the Supreme Court
22 to reduce a sentence of death to a sentence of life imprisonment
23 ~~without parole~~ without parole in accordance with the provisions of
24 section 29-2308, nor shall they limit the right of the Board of
25 Pardons to commute any sentence of death to a sentence of life

1 imprisonment ~~without parole.~~ without parole.

2 Sec. 6. Section 83-1,105.01, Revised Statutes Cumulative
3 Supplement, 2006, is amended to read:

4 83-1,105.01 Except when a term of life imprisonment
5 ~~without parole~~ without parole is required by law, in imposing an
6 indeterminate sentence upon an offender the court shall:

7 (1) Fix the minimum and maximum limits of the sentence
8 to be served within the limits provided by law for any class of
9 felony other than a Class IV felony, except that when a maximum
10 limit of life is imposed by the court for a Class IB felony, the
11 minimum limit may be any term of years not less than the statutory
12 mandatory minimum. If the criminal offense is a Class IV felony,
13 the court shall fix the minimum and maximum limits of the sentence,
14 but the minimum limit fixed by the court shall not be less than
15 the minimum provided by law nor more than one-third of the maximum
16 term and the maximum limit shall not be greater than the maximum
17 provided by law;

18 (2) Impose a definite term of years, in which event the
19 maximum term of the sentence shall be the term imposed by the court
20 and the minimum term shall be the minimum sentence provided by law;
21 or

22 (3) (a) When the court is of the opinion that imprisonment
23 may be appropriate but desires more detailed information as a
24 basis for determining the sentence to be imposed than has been
25 provided by the presentence report required by section 29-2261, the

1 court shall commit an offender to the Department of Correctional
2 Services for a period not exceeding ninety days. The department
3 shall conduct a complete study of the offender during that time,
4 inquiring into such matters as his or her previous delinquency or
5 criminal experience, social background, capabilities, and mental,
6 emotional, and physical health and the rehabilitative resources
7 or programs which may be available to suit his or her needs. By
8 the expiration of the period of commitment or by the expiration
9 of such additional time as the court shall grant, not exceeding
10 a further period of ninety days, the offender shall be returned
11 to the court for sentencing and the court shall be provided
12 with a written report of the results of the study, including
13 whatever recommendations the department believes will be helpful to
14 a proper resolution of the case. After receiving the report and the
15 recommendations, the court shall proceed to sentence the offender
16 in accordance with any applicable provision of law. The term of the
17 sentence shall run from the date of original commitment under this
18 subdivision.

19 (b) In order to encourage the use of this procedure
20 in appropriate cases, all costs incurred during the period the
21 offender is held in a state institution under this subdivision
22 shall be the responsibility of the state and the county shall
23 be liable only for the cost of delivering the offender to the
24 institution and the cost of returning him or her to the appropriate
25 court for sentencing or such other disposition as the court may

1 then deem appropriate.

2 Sec. 7. Original sections 28-105, 29-2204, 29-2520,
3 29-2522, 29-2524, and 83-1,105.01, Revised Statutes Cumulative
4 Supplement, 2006, are repealed.