

LEGISLATURE OF NEBRASKA  
ONE HUNDRED FOURTH LEGISLATURE  
FIRST SESSION

**LEGISLATIVE BILL 483**

Introduced by Pansing Brooks, 28.

Read first time January 20, 2015

Committee: Judiciary

1 A BILL FOR AN ACT relating to criminal procedure; to amend section  
2 83-1,105.01, Reissue Revised Statutes of Nebraska, and section  
3 29-2204, Revised Statutes Cumulative Supplement, 2014; to change  
4 provisions relating to indeterminate sentencing; and to repeal the  
5 original sections.  
6 Be it enacted by the people of the State of Nebraska,

1 Section 1. Section 29-2204, Revised Statutes Cumulative Supplement,  
2 2014, is amended to read:

3 29-2204 (1) Except when a term of life imprisonment is required by  
4 law, in imposing an indeterminate sentence upon an offender the court  
5 shall:

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

11 ~~(ii) Beginning July 1, 1998:~~

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

22 ~~(ii B) Impose a definite term of years, in which event the maximum~~  
23 ~~term of the sentence shall be the term imposed by the court and the~~  
24 ~~minimum term shall be the minimum sentence provided by law;~~

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

29 (c) Advise the offender on the record the time the offender will  
30 serve on his or her maximum term before attaining mandatory release  
31 assuming that no good time for which the offender will be eligible is

1 lost.

2 If any discrepancy exists between the statement of the minimum limit  
3 of the sentence and the statement of parole eligibility or between the  
4 statement of the maximum limit of the sentence and the statement of  
5 mandatory release, the statements of the minimum limit and the maximum  
6 limit shall control the calculation of the offender's term. If the court  
7 imposes more than one sentence upon an offender or imposes a sentence  
8 upon an offender who is at that time serving another sentence, the court  
9 shall state whether the sentences are to be concurrent or consecutive.

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

30 (b) In order to encourage the use of this procedure in appropriate  
31 cases, all costs incurred during the period the defendant is held in a

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

6 (3) Except when a term of life is required by law, whenever the  
7 defendant was under eighteen years of age at the time he or she committed  
8 the crime for which he or she was convicted, the court may, in its  
9 discretion, instead of imposing the penalty provided for the crime, make  
10 such disposition of the defendant as the court deems proper under the  
11 Nebraska Juvenile Code. Until October 1, 2013, prior to making a  
12 disposition which commits the juvenile to the Office of Juvenile  
13 Services, the court shall order the juvenile to be evaluated by the  
14 office if the juvenile has not had an evaluation within the past twelve  
15 months.

16 Sec. 2. Section 83-1,105.01, Reissue Revised Statutes of Nebraska,  
17 is amended to read:

18 83-1,105.01 Except when a term of life imprisonment is required by  
19 law, in imposing an indeterminate sentence upon an offender the court  
20 shall:

21 (1) Fix the minimum and maximum limits of the sentence to be served  
22 within the limits provided by law for any class of felony ~~other than a~~  
23 ~~Class IV felony~~, except that when a maximum limit of life is imposed by  
24 the court for a Class IB felony, the minimum limit may be any term of  
25 years not less than the statutory mandatory minimum. ~~The~~ If the criminal  
26 ~~offense is a Class IV felony~~, the court shall fix the minimum and maximum  
27 limits of the sentence, but the minimum limit fixed by the court shall  
28 not be less than the minimum provided by law nor more than one-third of  
29 the maximum term and the maximum limit shall not be greater than the  
30 maximum provided by law;

31 (2) Impose a definite term of years, in which event the maximum term

1 of the sentence shall be the term imposed by the court and the minimum  
2 term shall be the minimum sentence provided by law; or

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

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

30 Sec. 3. Original section 83-1,105.01, Reissue Revised Statutes of  
31 Nebraska, and section 29-2204, Revised Statutes Cumulative Supplement,

1 2014, are repealed.