

LEGISLATURE OF NEBRASKA
ONE HUNDRED FIFTH LEGISLATURE
SECOND SESSION

LEGISLATIVE BILL 875

Introduced by Bolz, 29.

Read first time January 05, 2018

Committee: Judiciary

- 1 A BILL FOR AN ACT relating to crime and punishment; to amend section
- 2 28-105.02, Reissue Revised Statutes of Nebraska, and section
- 3 29-2204, Revised Statutes Supplement, 2017; to change provisions
- 4 relating to the sentencing; to harmonize provisions; and to repeal
- 5 the original sections.
- 6 Be it enacted by the people of the State of Nebraska,

1 Section 1. Section 28-105.02, Reissue Revised Statutes of Nebraska,
2 is amended to read:

3 28-105.02 (1) Notwithstanding any other provision of law, the death
4 penalty or life imprisonment without the possibility of parole shall not
5 be imposed upon any person for an offense committed when such person was
6 under the age of eighteen years.

7 (2) (1) Notwithstanding any other provision of law, the penalty for
8 any person convicted of a Class IA felony for an offense committed when
9 such person was under the age of eighteen years shall be a maximum
10 sentence of not greater than life imprisonment and shall be a minimum
11 sentence of not less than forty years' imprisonment.

12 (3) Notwithstanding any other provision of law, the penalty for any
13 person convicted of a Class IB felony for an offense committed when such
14 person was under the age of eighteen years shall be a maximum sentence of
15 not greater than life imprisonment and shall be a minimum sentence of
16 twenty years' imprisonment.

17 (4) (2) In determining the sentence of a convicted person under
18 subsection (1) of this section, the court shall consider mitigating
19 factors which led to the commission of the offense. The convicted person
20 may submit mitigating factors to the court, including, but not limited
21 to:

22 (a) The convicted person's age at the time of the offense;

23 (b) The impetuosity of the convicted person;

24 (c) The convicted person's family and community environment;

25 (d) The convicted person's ability to appreciate the risks and
26 consequences of the conduct;

27 (e) The convicted person's intellectual capacity; and

28 (f) The outcome of a comprehensive mental health evaluation of the
29 convicted person conducted by an adolescent mental health professional
30 licensed in this state. The evaluation shall include, but not be limited
31 to, interviews with the convicted person's family in order to learn about

1 the convicted person's prenatal history, developmental history, medical
2 history, substance abuse treatment history, if any, social history, and
3 psychological history.

4 Sec. 2. Section 29-2204, Revised Statutes Supplement, 2017, is
5 amended to read:

6 29-2204 (1) Except when a term of life imprisonment is required by
7 law, in imposing a sentence upon an offender for any class of felony
8 other than a Class III, IIIA, or IV felony, the court shall fix the
9 minimum and the maximum terms of the sentence to be served within the
10 limits provided by law. The maximum term shall not be greater than the
11 maximum limit provided by law, and:

12 (a) The minimum term fixed by the court shall be any term of years
13 less than the maximum term imposed by the court; or

14 (b) The minimum term shall be the minimum limit provided by law.

15 (2) When a maximum term of life is imposed by the court for a Class
16 IB felony, the minimum term fixed by the court shall be:

17 (a) If the defendant was under eighteen years of age at the time he
18 or she committed the crime for which he or she was convicted, a term of
19 twenty years' imprisonment; or

20 (b) If the defendant was eighteen years of age or older at the time
21 he or she committed the crime for which he was convicted:

22 (i) (a) Any term of years not less than the minimum limit provided
23 by law; or

24 (ii) (b) A term of life imprisonment.

25 (3) When a maximum term of life is imposed by the court for a Class
26 IA felony, the minimum term fixed by the court shall be:

27 (a) If the defendant was eighteen years of age or older at the time
28 he or she committed the crime for which he or she was convicted, a A term
29 of life imprisonment; or

30 (b) If Any term of years not less than the minimum limit provided by
31 law after consideration of the mitigating factors in section 28-105.02,

1 if the defendant was under eighteen years of age at the time he or she
2 committed the crime for which he or she was convicted, a term of forty
3 years' imprisonment.

4 (4) When the court is of the opinion that imprisonment may be
5 appropriate but desires more detailed information as a basis for
6 determining the sentence to be imposed than has been provided by the
7 presentence report required by section 29-2261, the court may commit an
8 offender to the Department of Correctional Services. During that time,
9 the department shall conduct a complete study of the offender as provided
10 in section 29-2204.03.

11 (5) Except when imposing a sentence for a Class IA felony ~~a term of~~
12 ~~life is required by law~~, whenever the defendant was under eighteen years
13 of age at the time he or she committed the crime for which he or she was
14 convicted, the court may, in its discretion, instead of imposing the
15 penalty provided for the crime, make such disposition of the defendant as
16 the court deems proper under the Nebraska Juvenile Code.

17 (6)(a) When imposing an indeterminate sentence upon an offender
18 under this section, the court shall:

19 (i) Advise the offender on the record the time the offender will
20 serve on his or her minimum term before attaining parole eligibility
21 assuming that no good time for which the offender will be eligible is
22 lost; and

23 (ii) Advise the offender on the record the time the offender will
24 serve on his or her maximum term before attaining mandatory release
25 assuming that no good time for which the offender will be eligible is
26 lost.

27 (b) If any discrepancy exists between the statement of the minimum
28 limit of the sentence and the statement of parole eligibility or between
29 the statement of the maximum limit of the sentence and the statement of
30 mandatory release, the statements of the minimum limit and the maximum
31 limit shall control the calculation of the offender's term.

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

5 Sec. 3. Original section 28-105.02, Reissue Revised Statutes of
6 Nebraska, and section 29-2204, Revised Statutes Supplement, 2017, are
7 repealed.