

AMENDMENTS TO LB686

(Amendments to Standing Committee amendments, AM1737)

Introduced by Friesen, 34.

1 1. Strike section 2 and insert the following new sections:

2 Sec. 2. Section 28-105, Revised Statutes Cumulative Supplement,
3 2018, is amended to read:

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

8 Class I felony Death

9 Class IA felony Life imprisonment

10 Class IB felony Maximum-life imprisonment

11 Minimum-twenty years imprisonment

12 Class IC felony Maximum-fifty years imprisonment

13 Mandatory minimum-five years imprisonment

14 Class ID felony Maximum-fifty years imprisonment

15 Mandatory minimum-three years imprisonment

16 Class II felony Maximum-fifty years imprisonment

17 Minimum-one year imprisonment

18 Class IIA felony Maximum-twenty years imprisonment

19 Minimum-none

20 Class III felony Maximum-four years imprisonment and two years

21 post-release supervision or

22 twenty-five thousand dollars fine, or both

23 Minimum-none for imprisonment and nine months

24 post-release supervision if imprisonment is imposed

25 Class IIIA felony Maximum-three years imprisonment

1 and eighteen months post-release supervision or
2 ten thousand dollars fine, or both
3 Minimum—none for imprisonment and nine months
4 post-release supervision if imprisonment is imposed
5 Class IV felony Maximum—two years imprisonment and twelve
6 months post-release supervision or
7 ten thousand dollars fine, or both
8 Minimum—none for imprisonment and none for nine months
9 post-release supervision ~~if imprisonment is imposed~~

10 (2) All sentences for maximum terms of imprisonment for one year or
11 more for felonies shall be served in institutions under the jurisdiction
12 of the Department of Correctional Services. Except as provided in section
13 29-1001, all ~~All~~ sentences for maximum terms of imprisonment of less than
14 one year shall be served in the county jail.

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

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

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

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

28 (7) Any person who is sentenced to imprisonment for a Class III,
29 IIIA, or IV felony committed prior to August 30, 2015, and sentenced
30 concurrently or consecutively to imprisonment for a Class III, IIIA, or

1 IV felony committed on or after August 30, 2015, shall not be subject to
2 post-release supervision pursuant to subsection (1) of this section.

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

6 (9) The changes made to this section by this legislative bill apply
7 to offenses committed before, on, or after the effective date of this
8 act.

9 Sec. 3. Section 28-106, Reissue Revised Statutes of Nebraska, is
10 amended to read:

11 28-106 (1) For purposes of the Nebraska Criminal Code and any
12 statute passed by the Legislature after the date of passage of the code,
13 misdemeanors are divided into seven classes which are distinguished from
14 one another by the following penalties which are authorized upon
15 conviction:

16 Class I misdemeanor..... Maximum – not more than one year
17 imprisonment, or one thousand dollars
18 fine, or both
19 Minimum – none

20 Class II misdemeanor..... Maximum – six months imprisonment, or
21 one thousand dollars fine, or both
22 Minimum – none

23 Class III misdemeanor..... Maximum – three months imprisonment,
24 or five hundred dollars fine, or both
25 Minimum – none

26 Class IIIA misdemeanor..... Maximum – seven days imprisonment, five
27 hundred dollars fine, or both
28 Minimum – none

29 Class IV misdemeanor..... Maximum – no imprisonment, five
30 hundred dollars fine

1 Minimum – none
2 Class V misdemeanor..... Maximum – no imprisonment, one
3 hundred dollars fine
4 Minimum – none
5 Class W misdemeanor..... Driving under the influence or implied
6 consent
7 First conviction
8 Maximum – sixty days imprisonment and
9 five hundred dollars fine
10 Mandatory minimum – seven days
11 imprisonment and five hundred dollars
12 fine
13 Second conviction
14 Maximum – six months imprisonment and
15 five hundred dollars fine
16 Mandatory minimum – thirty days
17 imprisonment and five hundred dollars
18 fine
19 Third conviction
20 Maximum – one year imprisonment and
21 one thousand dollars fine
22 Mandatory minimum – ninety days
23 imprisonment
24 and one thousand dollars fine

25 (2) Except as provided in section 29-1001 and subsection (3) of this
26 section, sentences Sentences of imprisonment in misdemeanor cases shall
27 be served in the county jail. ~~, except that such sentences~~

28 (3) A sentence of imprisonment in a misdemeanor case may be served
29 in an institution institutions under the jurisdiction of the Department

1 of Correctional Services if the sentence is to be served concurrently or
2 consecutively with a term for conviction of a felony and the combined
3 sentences total a term of one year or more. A determinate sentence shall
4 be imposed for a misdemeanor if the sentence is to be served concurrently
5 or consecutively with a determinate sentence for a Class III, IIIA, or IV
6 felony.

7 (4) The changes made to this section by this legislative bill apply
8 to offenses committed before, on, or after the effective date of this
9 act.

10 Sec. 5. Section 29-1001, Reissue Revised Statutes of Nebraska, is
11 amended to read:

12 29-1001 (1) Whenever it shall be lawful and necessary to confine
13 any prisoner in custody previous to conviction upon a criminal
14 accusation, or in custody for contempt or alleged contempt of court, or
15 upon an attachment by order of a court or judge, or otherwise in lawful
16 custody, or upon conviction for any offense, the officer or person having
17 such prisoner ~~him~~ in such custody may convey such prisoner ~~him~~ to and
18 confine such prisoner ~~him~~ in the jail of any county in this state, or
19 other secure and convenient place of confinement in this state, to be
20 procured by such officer or person having such prisoner in custody.

21 (2)(a) The authority granted by subsection (1) of this section
22 includes the authority of a sheriff or other county official having a
23 prisoner in lawful custody, when necessary for the safekeeping of such
24 prisoner, to convey such prisoner to and confine such prisoner in the
25 jail of any city or county of this state, any juvenile detention facility
26 of this state, an institution under the control of the Department of
27 Correctional Services, or any other secure and convenient place of
28 confinement in this state, to be procured by such sheriff or other county
29 official having such prisoner in custody.

30 (b) The authority to determine what is necessary for the safekeeping
31 of a prisoner shall rest with the sheriff or other county official having

1 such prisoner in lawful custody. The sheriff or other county official may
2 determine that a prisoner cannot safely serve his or her sentence or
3 otherwise be safely kept in a particular place of confinement if the
4 place of confinement is not staffed or equipped to safely keep the
5 prisoner for any reason, including, but not limited to, the medical or
6 mental health needs of a prisoner or because the prisoner presents a
7 danger to himself, herself, or others.

8 (c) The Department of Correctional Services shall take custody of
9 and be responsible for the safekeeping of prisoners transferred to the
10 department pursuant to this section, except as provided in section
11 83-176.

12 (d) Nothing in this section shall be construed to shift
13 responsibility for the cost of keeping and maintaining a prisoner,
14 including the cost of the medical or mental health care for a prisoner,
15 from a county to the state, from one county to another, or otherwise from
16 the sheriff, official, or other person transferring custody of such
17 prisoner to the entity or person receiving custody of such prisoner. Such
18 cost shall be paid by the county in which the offense was committed or
19 alleged to have been committed.

20 (3) The changes made to this section by this legislative bill apply
21 to offenses committed before, on, or after the effective date of this
22 act.

23 Sec. 16. Section 83-171, Revised Statutes Cumulative Supplement,
24 2018, is amended to read:

25 83-171 There is hereby created a Department of Correctional Services
26 which shall:

27 (1) Maintain and administer facilities required for the custody,
28 control, correctional treatment, and rehabilitation of persons committed
29 to the department and for the safekeeping of such other persons as may be
30 remanded to the department in accordance with law, including section
31 29-1001;

1 (2) Develop policies and programs for the correctional treatment and
2 rehabilitation of persons committed to the department;

3 (3) Supervise parolees who have been committed to the department;
4 and

5 (4) Until July 1, 2016, administer parole services in the facilities
6 and in the community and, beginning July 1, 2016, cooperate with the
7 Board of Parole and Division of Parole Supervision to assist with the
8 efficient administration of parole services in the facilities and in the
9 community.

10 Sec. 18. Section 83-176, Reissue Revised Statutes of Nebraska, is
11 amended to read:

12 83-176 (1) Whenever any person is sentenced or committed under any
13 provision of law to a specific facility within the department or to the
14 custody of the warden or superintendent of such facility, he or she shall
15 be deemed to be sentenced or committed to the department.

16 (2) Except as provided in subsection (3) of this section, the The
17 director may designate as a place of confinement of a person committed to
18 the department any available, suitable, and appropriate residence
19 facility or institution, whether or not operated by the state, and may at
20 any time transfer such person from one place of confinement to another.

21 (3) The director shall not return to the custody of a sheriff or
22 other county official a person committed by such sheriff or other county
23 official to the department for safekeeping pursuant to section 29-1001
24 unless:

25 (a) The director finds that circumstances have changed such that the
26 person may be safely kept in the custody of such sheriff or other county
27 official; and

28 (b) Such sheriff or other county official agrees to accept custody.

29 (4) The changes made to this section by this legislative bill apply
30 to offenses committed before, on, or after the effective date of this
31 act.

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2. Renumber the remaining sections, correct internal references, and
- 2 correct the repealer accordingly.