

LEGISLATURE OF NEBRASKA  
ONE HUNDRED SIXTH LEGISLATURE  
SECOND SESSION

**LEGISLATIVE BILL 959**

Introduced by Vargas, 7; Lathrop, 12.

Read first time January 13, 2020

Committee: Judiciary

- 1 A BILL FOR AN ACT relating to crimes and offenses; to amend section
- 2 29-2221, Reissue Revised Statutes of Nebraska; to change provisions
- 3 relating to the habitual criminal enhancement; to define terms; and
- 4 to repeal the original section.
- 5 Be it enacted by the people of the State of Nebraska,

1 Section 1. Section 29-2221, Reissue Revised Statutes of Nebraska, is  
2 amended to read:

3 29-2221 (1) Whoever has been twice convicted of a violent felony  
4 ~~crime~~, sentenced, and committed to prison, in this or any other state or  
5 by the United States or once in this state and once at least in any other  
6 state or by the United States, for terms of not less than one year each  
7 shall, upon conviction of a violent felony committed in this state, be  
8 deemed to be a habitual criminal and shall be punished by imprisonment in  
9 a Department of Correctional Services adult correctional facility for a  
10 mandatory minimum term of ten years and a maximum term of not more than  
11 sixty years, except that:

12 (a) If the violent felony committed is in violation of section  
13 28-303, 28-304, 28-308, 28-313, 28-319, 28-319.01, 28-502, 28-929, or  
14 28-1222, and at least one of the habitual criminal's prior violent felony  
15 convictions was for a violation of one of the sections listed in this  
16 subdivision or of a similar statute in another state or of the United  
17 States, the mandatory minimum term shall be twenty-five years and the  
18 maximum term not more than sixty years;

19 (b) If the violent felony committed is in violation of subsection  
20 (3) of section 28-306 and at least one of the prior convictions is in  
21 violation of subsection (3) of section 28-306 and the other is in  
22 violation of one of the sections set forth in subdivision (a) of this  
23 subsection or if the violent felony committed is in violation of one of  
24 the sections set forth in subdivision (a) of this subsection and both of  
25 the prior convictions are in violation of subsection (3) of section  
26 28-306, the mandatory minimum term shall be twenty-five years and the  
27 maximum term not more than sixty years; and

28 (c) If a greater punishment is otherwise provided by statute, the  
29 law creating the greater punishment shall govern.

30 (2) When punishment of an accused as a habitual criminal is sought,  
31 the facts with reference thereto shall be charged in the indictment or

1 information which contains the charge of the violent felony upon which  
2 the accused is prosecuted, but the fact that the accused is charged with  
3 being a habitual criminal shall not be an issue upon the trial of the  
4 violent felony charge and shall not in any manner be disclosed to the  
5 jury. If the accused is convicted of a violent felony, before sentence is  
6 imposed a hearing shall be had before the court alone as to whether such  
7 person has been previously convicted of prior violent felonies. The court  
8 shall fix a time for the hearing and notice thereof shall be given to the  
9 accused at least three days prior thereto. At the hearing, if the court  
10 finds from the evidence submitted that the accused has been convicted two  
11 or more times of violent felonies and sentences imposed therefor by the  
12 courts of this or any other state or by the United States, the court  
13 shall sentence such person so convicted as a habitual criminal.

14 (3) If the person so convicted shows to the satisfaction of the  
15 court before which the conviction was had that he or she was released  
16 from imprisonment upon either of such sentences upon a pardon granted for  
17 the reason that he or she was innocent, such conviction and sentence  
18 shall not be considered as such under this section and section 29-2222.

19 (4) For purposes of this section:

20 (a) Serious bodily injury has the same meaning as in section 28-109;

21 (b) Sexual contact and sexual penetration have the same meaning as  
22 in section 28-318; and

23 (c) Violent felony means:

24 (i) A felony violation of any of the following sections: 28-303,  
25 28-304, 28-305, 28-306, 28-308, 28-309, 28-310.01, 28-311, 28-311.01,  
26 28-311.03, 28-311.08, 28-313, 28-314, 28-319, 28-319.01, 28-320,  
27 28-320.01, 28-320.02, 28-322.02, 28-322.03, 28-322.04, 28-322.05, 28-323,  
28 28-324, 28-386, 28-391, 28-392, 28-393, 28-394, 28-397, 28-398, 28-502,  
29 28-503, 28-507, 28-703, 28-707, 28-813.01, 28-831, 28-833, 28-904,  
30 28-905, 28-912, 28-929, 28-930, 28-931, 28-931.01, 28-932, 28-933,  
31 28-934, 28-1005, 28-1009, 28-1105.01, 28-1205, 28-1212.02, 28-1212.04,

1 28-1221, 28-1222, 28-1223, 28-1224, 28-1351, 28-1463.03, or 28-1463.05;

2 (ii) A felony that has as an element of the offense:

3 (A) Sexual contact or sexual penetration; or

4 (B) The threat to inflict serious bodily injury or death on another  
5 person, the infliction of serious bodily injury on another person, or  
6 causing the death of another person;

7 (iii) Attempt, solicitation, aiding or abetting, being an accessory,  
8 or conspiracy to commit an offense listed in subdivision (4)(c)(i) or  
9 (ii) of this section; or

10 (iv) A felony violation of an offense of any other state or of the  
11 United States that is substantially equivalent to any offense listed in  
12 subdivisions (4)(c)(i), (ii), or (iii) of this section.

13 Sec. 2. Original section 29-2221, Reissue Revised Statutes of  
14 Nebraska, is repealed.