

LEGISLATURE OF NEBRASKA
ONE HUNDRED EIGHTH LEGISLATURE
FIRST SESSION

LEGISLATIVE BILL 127

Introduced by Day, 49; McKinney, 11.

Read first time January 06, 2023

Committee: Judiciary

1 A BILL FOR AN ACT relating to crimes and offenses; to amend section
2 28-105.02, Reissue Revised Statutes of Nebraska, and section
3 29-2204, Revised Statutes Cumulative Supplement, 2022; to change
4 provisions relating to sentences for certain offenses committed by
5 persons under eighteen years of age; to harmonize provisions; and to
6 repeal the original sections.

7 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
4 penalty for any person convicted of a Class IA felony for an offense
5 committed when such person was under the age of eighteen years shall be a
6 maximum sentence of not greater than eighty years' life imprisonment and
7 a minimum sentence of not more less than forty years' imprisonment.

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

13 (3) (2) In determining the sentence of a convicted person under
14 subsection (1) or (2) of this section, the court shall consider
15 mitigating factors which led to the commission of the offense. The
16 convicted person may submit mitigating factors to the court, including,
17 but not limited to:

- 18 (a) The convicted person's age at the time of the offense;
- 19 (b) The impetuosity of the convicted person;
- 20 (c) The convicted person's family and community environment;
- 21 (d) The convicted person's ability to appreciate the risks and
22 consequences of the conduct;
- 23 (e) The convicted person's intellectual capacity; and
- 24 (f) The outcome of a comprehensive mental health evaluation of the
25 convicted person conducted by an adolescent mental health professional
26 licensed in this state. The evaluation shall include, but not be limited
27 to, interviews with the convicted person's family in order to learn about
28 the convicted person's prenatal history, developmental history, medical
29 history, substance abuse treatment history, if any, social history, and
30 psychological history.

31 Sec. 2. Section 29-2204, Revised Statutes Cumulative Supplement,

1 2022, is amended to read:

2 29-2204 (1) Except as provided in subsection (2) of this section and
3 except when a term of life imprisonment is required by law, in imposing a
4 sentence upon an offender for any class of felony other than a Class III,
5 IIIA, or IV felony, the court shall fix the minimum and the maximum terms
6 of the sentence to be served within the limits provided by law. The
7 maximum term shall not be greater than the maximum limit provided by law,
8 and:

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

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

12 (2) In imposing a sentence for a Class IA or IB felony upon an
13 offender who was under eighteen years of age at the time the offense was
14 committed, the court shall fix the minimum and the maximum terms of the
15 sentence as provided in section 28-105.02.

16 (3) (2) When a maximum term of life is imposed by the court for a
17 Class IB felony for an offender who was eighteen years of age or older at
18 the time the offense was committed, the minimum term fixed by the court
19 shall be:

20 (a) Any term of years not less than the minimum limit provided by
21 law; or

22 (b) A term of life imprisonment.

23 (4) (3) When a maximum term of life is imposed by the court for a
24 Class IA felony for an offender who was eighteen years of age or older at
25 the time the offense was committed, the minimum term fixed by the court
26 shall be a ~~÷~~ (a) A term of life imprisonment, ~~;~~ or

27 (b) Any term of years not less than the minimum limit provided by
28 law after consideration of the mitigating factors in section 28-105.02,
29 if the defendant was under eighteen years of age at the time he or she
30 committed the crime for which he or she was convicted.

31 (5) (4) When the court is of the opinion that imprisonment may be

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

7 (6) Whenever ~~(5) Except when a term of life is required by law,~~
8 ~~whenever~~ the defendant was under eighteen years of age at the time he or
9 she committed the crime for which he or she was convicted, the court may,
10 in its discretion, instead of imposing the penalty provided for the
11 crime, make such disposition of the defendant as the court deems proper
12 under the Nebraska Juvenile Code.

13 (7)(a) ~~(6)(a)~~ When imposing an indeterminate sentence upon an
14 offender under this section, the court shall:

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

19 (ii) Advise the offender on the record the time the offender will
20 serve on his or her maximum term before attaining mandatory release
21 assuming that no good time for which the offender will be eligible is
22 lost.

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

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

1 Sec. 3. Original section 28-105.02, Reissue Revised Statutes of
2 Nebraska, and section 29-2204, Revised Statutes Cumulative Supplement,
3 2022, are repealed.