

LEGISLATURE OF NEBRASKA  
ONE HUNDRED SEVENTH LEGISLATURE  
FIRST SESSION

**LEGISLATIVE BILL 34**

Introduced by Pansing Brooks, 28; Vargas, 7; Wayne, 13.

Read first time January 07, 2021

Committee:

- 1 A BILL FOR AN ACT relating to crimes and offenses; to amend sections
- 2 28-105.02 and 29-2204.02, Reissue Revised Statutes of Nebraska, and
- 3 sections 28-105, 28-105.01, and 29-2204, Revised Statutes Cumulative
- 4 Supplement, 2020; to change provisions relating to sentences for
- 5 certain offenses committed by persons under twenty-one years of age;
- 6 to require consideration of certain factors at sentencing; to
- 7 harmonize provisions; and to repeal the original sections.
- 8 Be it enacted by the people of the State of Nebraska,

1 Section 1. Section 28-105, Revised Statutes Cumulative Supplement,  
2 2020, is amended to read:

3 28-105 (1) For purposes of the Nebraska Criminal Code and any  
4 statute passed by the Legislature after the date of passage of the code,  
5 felonies are divided into ten classes which are distinguished from one  
6 another by the following penalties which are authorized upon conviction:

7	Class I felony	Death
8	Class IA felony	Life imprisonment
9	Class IB felony	Maximum-life imprisonment
10		Minimum-twenty years imprisonment
11	Class IC felony	Maximum-fifty years imprisonment
12		Mandatory minimum-five years imprisonment
13	Class ID felony	Maximum-fifty years imprisonment
14		Mandatory minimum-three years imprisonment
15	Class II felony	Maximum-fifty years imprisonment
16		Minimum-one year imprisonment
17	Class IIA felony	Maximum-twenty years imprisonment
18		Minimum-none
19	Class III felony	Maximum-four years imprisonment and two years
20		post-release supervision or
21		twenty-five thousand dollars fine, or both
22		Minimum-none for imprisonment and nine months
23		post-release supervision if imprisonment is imposed
24	Class IIIA felony	Maximum-three years imprisonment
25		and eighteen months post-release supervision or
26		ten thousand dollars fine, or both
27		Minimum-none for imprisonment and nine months
28		post-release supervision if imprisonment is imposed
29	Class IV felony	Maximum-two years imprisonment and twelve
30		months post-release supervision or

1                   ten thousand dollars fine, or both  
2                   Minimum—none for imprisonment and none for  
3                   post-release supervision

4           (2) All sentences for maximum terms of imprisonment for one year or  
5 more for felonies shall be served in institutions under the jurisdiction  
6 of the Department of Correctional Services. All sentences for maximum  
7 terms of imprisonment of less than one year shall be served in the county  
8 jail.

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

12           (4) The minimum term of imprisonment for any person convicted of a  
13 Class IC or Class ID felony for an offense committed when such person was  
14 under twenty-one years of age shall not be a mandatory minimum but a  
15 minimum term only.

16           (5) ~~(4)~~ A person convicted of a felony for which a mandatory minimum  
17 sentence is prescribed shall not be eligible for probation.

18           (6) ~~(5)~~ All sentences of post-release supervision shall be served  
19 under the jurisdiction of the Office of Probation Administration and  
20 shall be subject to conditions imposed pursuant to section 29-2262 and  
21 subject to sanctions authorized pursuant to section 29-2266.02.

22           (7) ~~(6)~~ Any person who is sentenced to imprisonment for a Class I,  
23 IA, IB, IC, ID, II, or IIA felony and sentenced concurrently or  
24 consecutively to imprisonment for a Class III, IIIA, or IV felony shall  
25 not be subject to post-release supervision pursuant to subsection (1) of  
26 this section.

27           (8) ~~(7)~~ Any person who is sentenced to imprisonment for a Class III,  
28 IIIA, or IV felony committed prior to August 30, 2015, and sentenced  
29 concurrently or consecutively to imprisonment for a Class III, IIIA, or  
30 IV felony committed on or after August 30, 2015, shall not be subject to  
31 post-release supervision pursuant to subsection (1) of this section.

1           (9) ~~(8)~~ The changes made to the penalties for Class III, IIIA, and  
2 IV felonies by Laws 2015, LB605, do not apply to any offense committed  
3 prior to August 30, 2015, as provided in section 28-116.

4           Sec. 2. Section 28-105.01, Revised Statutes Cumulative Supplement,  
5 2020, is amended to read:

6           28-105.01 (1) Notwithstanding any other provision of law, the death  
7 penalty or life imprisonment shall not be imposed upon any person who was  
8 under the age of twenty-one ~~eighteen~~ years at the time of the commission  
9 of the crime.

10           (2) Notwithstanding any other provision of law, the death penalty  
11 shall not be imposed upon any person with an intellectual disability.

12           (3) As used in subsection (2) of this section, intellectual  
13 disability means significantly subaverage general intellectual  
14 functioning existing concurrently with deficits in adaptive behavior. An  
15 intelligence quotient of seventy or below on a reliably administered  
16 intelligence quotient test shall be presumptive evidence of intellectual  
17 disability.

18           (4) If (a) a jury renders a verdict finding the existence of one or  
19 more aggravating circumstances as provided in section 29-2520 or (b)(i)  
20 the information contains a notice of aggravation as provided in section  
21 29-1603 and (ii) the defendant waives his or her right to a jury  
22 determination of the alleged aggravating circumstances, the court shall  
23 hold a hearing prior to any sentencing determination proceeding as  
24 provided in section 29-2521 upon a verified motion of the defense  
25 requesting a ruling that the penalty of death be precluded under  
26 subsection (2) of this section. If the court finds, by a preponderance of  
27 the evidence, that the defendant is a person with an intellectual  
28 disability, the death sentence shall not be imposed. A ruling by the  
29 court that the evidence of diminished intelligence introduced by the  
30 defendant does not preclude the death penalty under subsection (2) of  
31 this section shall not restrict the defendant's opportunity to introduce

1 such evidence at the sentencing determination proceeding as provided in  
2 section 29-2521 or to argue that such evidence should be given mitigating  
3 significance.

4 Sec. 3. Section 28-105.02, Reissue Revised Statutes of Nebraska, is  
5 amended to read:

6 28-105.02 (1) Notwithstanding any other provision of law, the  
7 penalty for any person convicted of a Class IA felony for an offense  
8 committed when such person was under the age of twenty-one ~~eighteen~~ years  
9 shall be a maximum sentence of not greater than eighty years' ~~life~~  
10 imprisonment and a minimum sentence of not greater ~~less~~ than forty years'  
11 imprisonment.

12 (2) 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 twenty-one years shall be a maximum sentence  
15 of not greater than sixty years' imprisonment and a minimum sentence of  
16 not greater than twenty years' imprisonment, except as provided in  
17 section 28-319.01.

18 (3) ~~(2)~~ In determining the sentence of a convicted person under  
19 ~~subsection (1)~~ of this section, the court shall consider mitigating  
20 factors which led to the commission of the offense. The convicted person  
21 may submit mitigating factors to the court, including, but not limited  
22 to:

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

24 (b) The impetuosity of the convicted person;

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

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

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

29 (f) The outcome of a comprehensive mental health evaluation of the  
30 convicted person conducted by an adolescent mental health professional  
31 licensed in this state. The evaluation shall include, but not be limited

1 to, interviews with the convicted person's family in order to learn about  
2 the convicted person's prenatal history, developmental history, medical  
3 history, substance abuse treatment history, if any, social history, and  
4 psychological history.

5 Sec. 4. Section 29-2204, Revised Statutes Cumulative Supplement,  
6 2020, is amended to read:

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

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

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

17 (2) In imposing a sentence for a Class IA or IB felony upon an  
18 offender who was under twenty-one years of age at the time the offense  
19 was committed, the court shall fix the minimum and the maximum terms of  
20 the sentence as provided in section 28-105.02.

21 (3) ~~(2)~~ When a maximum term of life is imposed by the court for a  
22 Class IB felony for an offender who was twenty-one years of age or older  
23 at the time the offense was committed, the minimum term fixed by the  
24 court shall be any ~~:(a) Any~~ term of years not less than the minimum limit  
25 provided by law. ~~;~~ ~~or~~

26 ~~(b) A term of life imprisonment.~~

27 (4) ~~(3)~~ When a maximum term of life is imposed by the court for a  
28 Class IA felony for an offender who was twenty-one years of age or older  
29 at the time the offense was committed, the minimum term fixed by the  
30 court shall be a ~~:(a) A~~ term of life imprisonment. ~~;~~ ~~or~~

31 ~~(b) Any term of years not less than the minimum limit provided by~~

1 ~~law after consideration of the mitigating factors in section 28-105.02,~~  
2 ~~if the defendant was under eighteen years of age at the time he or she~~  
3 ~~committed the crime for which he or she was convicted.~~

4 (5) (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 (6) If the defendant was under twenty-one years of age at the time  
12 the defendant committed the crime for which the defendant was convicted,  
13 the court shall consider the mitigating factors in section 28-105.02  
14 prior to sentencing.

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

21 (8)(a) (6)(a) When imposing an indeterminate sentence upon an  
22 offender under this section, the court shall:

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

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

31 (b) If any discrepancy exists between the statement of the minimum

1 limit of the sentence and the statement of parole eligibility or between  
2 the statement of the maximum limit of the sentence and the statement of  
3 mandatory release, the statements of the minimum limit and the maximum  
4 limit shall control the calculation of the offender's term.

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

9 Sec. 5. Section 29-2204.02, Reissue Revised Statutes of Nebraska, is  
10 amended to read:

11 29-2204.02 (1) Except when a term of probation is required by law as  
12 provided in subsection (2) of this section or except as otherwise  
13 provided in subsection (4) of this section, in imposing a sentence upon  
14 an offender for a Class III, IIIA, or IV felony, the court shall:

15 (a) Impose a determinate sentence of imprisonment within the  
16 applicable range in section 28-105; and

17 (b) Impose a sentence of post-release supervision, under the  
18 jurisdiction of the Office of Probation Administration, within the  
19 applicable range in section 28-105.

20 (2) If the criminal offense is a Class IV felony, the court shall  
21 impose a sentence of probation unless:

22 (a) The defendant is concurrently or consecutively sentenced to  
23 imprisonment for any felony other than another Class IV felony;

24 (b) The defendant has been deemed a habitual criminal pursuant to  
25 section 29-2221; or

26 (c) There are substantial and compelling reasons why the defendant  
27 cannot effectively and safely be supervised in the community, including,  
28 but not limited to, the criteria in subsections (2) and (3) of section  
29 29-2260. Unless other reasons are found to be present, that the offender  
30 has not previously succeeded on probation is not, standing alone, a  
31 substantial and compelling reason.



1 (3) If a sentence of probation is not imposed, the court shall state  
2 its reasoning on the record, advise the defendant of his or her right to  
3 appeal the sentence, and impose a sentence as provided in subsection (1)  
4 of this section.

5 (4) For any sentence of imprisonment for a Class III, IIIA, or IV  
6 felony for an offense committed on or after August 30, 2015, imposed  
7 consecutively or concurrently with (a) a sentence for a Class III, IIIA,  
8 or IV felony for an offense committed prior to August 30, 2015, or (b) a  
9 sentence of imprisonment for a Class I, IA, IB, IC, ID, II, or IIA  
10 felony, the court shall impose an indeterminate sentence within the  
11 applicable range in section 28-105 that does not include a period of  
12 post-release supervision, in accordance with the process set forth in  
13 section 29-2204.

14 (5) For any sentence of imprisonment for a misdemeanor imposed  
15 consecutively or concurrently with a sentence of imprisonment for a Class  
16 III, IIIA, or IV felony for an offense committed on or after August 30,  
17 2015, the court shall impose a determinate sentence within the applicable  
18 range in section 28-106 unless the person is also committed to the  
19 Department of Correctional Services in accordance with section 29-2204  
20 for (a) a sentence of imprisonment for a Class III, IIIA, or IV felony  
21 committed prior to August 30, 2015, or (b) a sentence of imprisonment for  
22 a Class I, IA, IB, IC, ID, II, or IIA felony.

23 (6) If the defendant was under twenty-one years of age at the time  
24 the defendant committed the crime for which the defendant was convicted,  
25 the court shall consider the mitigating factors in section 28-105.02  
26 prior to sentencing.

27 (7) (6) If the defendant was under eighteen years of age at the time  
28 he or she committed the crime for which he or she was convicted, the  
29 court may, in its discretion, instead of imposing the penalty provided  
30 for the crime, make such disposition of the defendant as the court deems  
31 proper under the Nebraska Juvenile Code.

1           (8)(a) ~~(7)(a)~~ When imposing a determinate sentence upon an offender  
2 under this section, the court shall:

3           (i) Advise the offender on the record the time the offender will  
4 serve on his or her term of imprisonment before his or her term of post-  
5 release supervision assuming that no good time for which the offender  
6 will be eligible is lost;

7           (ii) Advise the offender on the record the time the offender will  
8 serve on his or her term of post-release supervision; and

9           (iii) When imposing a sentence following revocation of post-release  
10 supervision, advise the offender on the record the time the offender will  
11 serve on his or her term of imprisonment, including credit for time  
12 served, assuming that no good time for which the offender will be  
13 eligible is lost.

14           (b) If a period of post-release supervision is required but not  
15 imposed by the sentencing court, the term of post-release supervision  
16 shall be the minimum provided by law.

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

21           (d) If the offender has been sentenced to two or more determinate  
22 sentences and one or more terms of post-release supervision, the offender  
23 shall serve all determinate sentences before being released on post-  
24 release supervision.

25           Sec. 6. Original sections 28-105.02 and 29-2204.02, Reissue Revised  
26 Statutes of Nebraska, and sections 28-105, 28-105.01, and 29-2204,  
27 Revised Statutes Cumulative Supplement, 2020, are repealed.