

LEGISLATURE OF NEBRASKA

ONE HUNDREDTH LEGISLATURE

SECOND SESSION

LEGISLATIVE BILL 844

Introduced by Karpisek, 32.

Read first time January 10, 2008

Committee: Judiciary

A BILL

1 FOR AN ACT relating to crimes and offenses; to amend sections
2 28-441, 29-431, 29-433, and 53-180.05, Reissue Revised
3 Statutes of Nebraska, sections 28-416 and 29-434, Revised
4 Statutes Cumulative Supplement, 2006, and section 28-101,
5 Revised Statutes Supplement, 2007; to change and transfer
6 certain drug and alcohol penalty provisions; to harmonize
7 provisions; and to repeal the original sections.
8 Be it enacted by the people of the State of Nebraska,

1 Section 1. Section 28-101, Revised Statutes Supplement,
2 2007, is amended to read:

3 28-101 Sections 28-101 to 28-1350 and sections 5 and 6 of
4 this act shall be known and may be cited as the Nebraska Criminal
5 Code.

6 Sec. 2. Section 28-416, Revised Statutes Cumulative
7 Supplement, 2006, is amended to read:

8 28-416 (1) Except as authorized by the Uniform Controlled
9 Substances Act, it shall be unlawful for any person knowingly or
10 intentionally: (a) To manufacture, distribute, deliver, dispense,
11 or possess with intent to manufacture, distribute, deliver, or
12 dispense a controlled substance; or (b) to create, distribute,
13 or possess with intent to distribute a counterfeit controlled
14 substance.

15 (2) Except as provided in subsections (4), (5), (7), (8),
16 (9), and (10) of this section, any person who violates subsection
17 (1) of this section with respect to: (a) A controlled substance
18 classified in Schedule I, II, or III of section 28-405 which is an
19 exceptionally hazardous drug shall be guilty of a Class II felony;
20 (b) any other controlled substance classified in Schedule I, II, or
21 III of section 28-405 shall be guilty of a Class III felony; or (c)
22 a controlled substance classified in Schedule IV or V of section
23 28-405 shall be guilty of a Class IIIA felony.

24 (3) A person knowingly or intentionally possessing a
25 controlled substance, except marijuana, unless such substance was

1 obtained directly or pursuant to a medical order issued by a
2 practitioner authorized to prescribe while acting in the course of
3 his or her professional practice, or except as otherwise authorized
4 by the act, shall be guilty of a Class IV felony.

5 (4) (a) Except as authorized by the Uniform Controlled
6 Substances Act, any person eighteen years of age or older who
7 knowingly or intentionally manufactures, distributes, delivers,
8 dispenses, or possesses with intent to manufacture, distribute,
9 deliver, or dispense a controlled substance or a counterfeit
10 controlled substance (i) to a person under the age of eighteen
11 years, (ii) in, on, or within one thousand feet of the real
12 property comprising a public or private elementary, vocational, or
13 secondary school, a community college, a public or private college,
14 junior college, or university, or a playground, or (iii) within one
15 hundred feet of a public or private youth center, public swimming
16 pool, or video arcade facility shall be punished by the next higher
17 penalty classification than the penalty prescribed in subsection
18 (2), (7), (8), (9), or (10) of this section, depending upon the
19 controlled substance involved, for the first violation and for a
20 second or subsequent violation shall be punished by the next higher
21 penalty classification than that prescribed for a first violation
22 of this subsection, but in no event shall such person be punished
23 by a penalty greater than a Class IB felony.

24 (b) For purposes of this subsection:

25 (i) Playground shall mean any outdoor facility, including

1 any parking lot appurtenant to the facility, intended for
2 recreation, open to the public, and with any portion containing
3 three or more apparatus intended for the recreation of children,
4 including sliding boards, swingsets, and teeterboards;

5 (ii) Video arcade facility shall mean any facility
6 legally accessible to persons under eighteen years of age, intended
7 primarily for the use of pinball and video machines for amusement,
8 and containing a minimum of ten pinball or video machines; and

9 (iii) Youth center shall mean any recreational facility
10 or gymnasium, including any parking lot appurtenant to the facility
11 or gymnasium, intended primarily for use by persons under eighteen
12 years of age which regularly provides athletic, civic, or cultural
13 activities.

14 (5) (a) Except as authorized by the Uniform Controlled
15 Substances Act, it shall be unlawful for any person eighteen
16 years of age or older to knowingly and intentionally employ, hire,
17 use, cause, persuade, coax, induce, entice, seduce, or coerce any
18 person under the age of eighteen years to manufacture, transport,
19 distribute, carry, deliver, dispense, prepare for delivery, offer
20 for delivery, or possess with intent to do the same a controlled
21 substance or a counterfeit controlled substance.

22 (b) Except as authorized by the Uniform Controlled
23 Substances Act, it shall be unlawful for any person eighteen years
24 of age or older to knowingly and intentionally employ, hire, use,
25 cause, persuade, coax, induce, entice, seduce, or coerce any person

1 under the age of eighteen years to aid and abet any person in
2 the manufacture, transportation, distribution, carrying, delivery,
3 dispensing, preparation for delivery, offering for delivery, or
4 possession with intent to do the same of a controlled substance or
5 a counterfeit controlled substance.

6 (c) Any person who violates subdivision (a) or (b) of
7 this subsection shall be punished by the next higher penalty
8 classification than the penalty prescribed in subsection (2), (7),
9 (8), (9), or (10) of this section, depending upon the controlled
10 substance involved, for the first violation and for a second or
11 subsequent violation shall be punished by the next higher penalty
12 classification than that prescribed for a first violation of this
13 subsection, but in no event shall such person be punished by a
14 penalty greater than a Class IB felony.

15 (6) It shall not be a defense to prosecution for
16 violation of subsection (4) or (5) of this section that the
17 defendant did not know the age of the person through whom the
18 defendant violated such subsection.

19 (7) Any person who violates subsection (1) of this
20 section with respect to cocaine or any mixture or substance
21 containing a detectable amount of cocaine in a quantity of:

22 (a) One hundred forty grams or more shall be guilty of a
23 Class IB felony;

24 (b) At least twenty-eight grams but less than one hundred
25 forty grams shall be guilty of a Class IC felony; or

1 (c) At least ten grams but less than twenty-eight grams
2 shall be guilty of a Class ID felony.

3 (8) Any person who violates subsection (1) of this
4 section with respect to base cocaine (crack) or any mixture or
5 substance containing a detectable amount of base cocaine in a
6 quantity of:

7 (a) One hundred forty grams or more shall be guilty of a
8 Class IB felony;

9 (b) At least twenty-eight grams but less than one hundred
10 forty grams shall be guilty of a Class IC felony; or

11 (c) At least ten grams but less than twenty-eight grams
12 shall be guilty of a Class ID felony.

13 (9) Any person who violates subsection (1) of this
14 section with respect to heroin or any mixture or substance
15 containing a detectable amount of heroin in a quantity of:

16 (a) One hundred forty grams or more shall be guilty of a
17 Class IB felony;

18 (b) At least twenty-eight grams but less than one hundred
19 forty grams shall be guilty of a Class IC felony; or

20 (c) At least ten grams but less than twenty-eight grams
21 shall be guilty of a Class ID felony.

22 (10) Any person who violates subsection (1) of this
23 section with respect to amphetamine, its salts, optical isomers,
24 and salts of its isomers, or with respect to methamphetamine, its
25 salts, optical isomers, and salts of its isomers, in a quantity of:

1 (a) One hundred forty grams or more shall be guilty of a
2 Class IB felony;

3 (b) At least twenty-eight grams but less than one hundred
4 forty grams shall be guilty of a Class IC felony; or

5 (c) At least ten grams but less than twenty-eight grams
6 shall be guilty of a Class ID felony.

7 (11) Any person knowingly or intentionally possessing
8 marijuana weighing more than one ounce but not more than one pound
9 shall be guilty of a Class ~~IIIA~~ II misdemeanor.

10 (12) Any person knowingly or intentionally possessing
11 marijuana weighing more than one pound shall be guilty of a Class
12 IV felony.

13 (13) Any person knowingly or intentionally possessing
14 marijuana weighing one ounce or less shall be guilty of a Class III
15 misdemeanor ~~-(a) For the first offense, be guilty of an infraction,~~
16 ~~receive a citation, be fined one hundred dollars, and be assigned~~
17 ~~to attend a course as prescribed in section 29-433. if the judge~~
18 ~~determines that attending such course is in the best interest of~~
19 ~~the individual defendant;~~

20 ~~-(b) For the second offense, be guilty of a Class IV~~
21 ~~misdemeanor, receive a citation, and be fined two hundred dollars~~
22 ~~and may be imprisoned not to exceed five days; and~~

23 ~~-(c) For the third and all subsequent offenses, be guilty~~
24 ~~of a Class IIIA misdemeanor, receive a citation, be fined three~~
25 ~~hundred dollars, and be imprisoned not to exceed seven days.~~

1 (14) Any person convicted of violating this section,
2 if placed on probation, shall, as a condition of probation,
3 satisfactorily attend and complete appropriate treatment and
4 counseling on drug abuse provided by a program authorized under
5 the Nebraska Behavioral Health Services Act or other licensed drug
6 treatment facility.

7 (15) Any person convicted of violating this section, if
8 sentenced to the Department of Correctional Services, shall attend
9 appropriate treatment and counseling on drug abuse.

10 (16) Any person knowingly or intentionally possessing a
11 firearm while in violation of subsection (1) of this section shall
12 be punished by the next higher penalty classification than the
13 penalty prescribed in subsection (2), (7), (8), (9), or (10) of
14 this section, but in no event shall such person be punished by a
15 penalty greater than a Class IB felony.

16 (17) A person knowingly or intentionally in possession
17 of money used or intended to be used to facilitate a violation
18 of subsection (1) of this section shall be guilty of a Class IV
19 felony.

20 Sec. 3. Section 28-441, Reissue Revised Statutes of
21 Nebraska, is amended to read:

22 28-441 (1) It shall be unlawful for any person to use, or
23 to possess with intent to use, drug paraphernalia to manufacture,
24 inject, ingest, inhale, or otherwise introduce into the human body
25 a controlled substance in violation of sections ~~28-101~~, 28-431, and

1 28-439 to 28-444.

2 (2) Any person who violates this section shall be guilty
3 of ~~an infraction~~ a Class IIIA misdemeanor.

4 Sec. 4. Section 29-431, Reissue Revised Statutes of
5 Nebraska, is amended to read:

6 29-431 As used in sections ~~28-416~~, 29-422, 29-424,
7 29-425, ~~and 29-431~~, and 29-432, ~~to 29-434~~, unless the context
8 otherwise requires, infraction shall mean the violation of any law,
9 ordinance, order, rule, or regulation, not including those related
10 to traffic, which is not otherwise declared to be a misdemeanor or
11 a felony. Infraction shall include violations of section 60-6,267.

12 Sec. 5. Section 29-433, Reissue Revised Statutes of
13 Nebraska, is amended to read:

14 ~~29-433~~ A person ~~cited for an infraction~~ convicted of a
15 misdemeanor pursuant to section 28-416 or sections 53-180.01 to
16 53-180.03 shall be assigned to attend a course of instruction
17 relating to the effects of the misuse of drugs, including alcohol
18 and controlled substances if a judge determines that attending such
19 a course is in the best interest of the individual defendant.

20 Such instruction shall include counseling on the legal, medical,
21 psychological, and social effects of drug use and abuse. Such
22 course shall consist of a minimum of five hours and a maximum of
23 ten hours of instruction and counseling. Upon completion of the
24 assigned course, the instructor shall notify the court in writing
25 of such completion and the notification shall be made a part of

1 the record of the citation. Any person failing to complete such
2 course within thirty days after the assignment shall be guilty of
3 an infraction.

4 Sec. 6. Section 29-434, Revised Statutes Cumulative
5 Supplement, 2006, is amended to read:

6 ~~29-434~~ All drug treatment centers shall provide the
7 necessary facilities and programs to carry out the provisions of
8 section 29-433.

9 Sec. 7. Section 53-180.05, Reissue Revised Statutes of
10 Nebraska, is amended to read:

11 53-180.05 (1) Any person violating section 53-180 shall
12 be guilty of a Class I misdemeanor. Any person violating any of
13 the provisions of sections 53-180.01 to 53-180.03 shall be guilty
14 of a Class III misdemeanor and be assigned to attend a course as
15 prescribed in section 29-433.

16 (2) Any person who knowingly manufactures, creates, or
17 alters any form of identification for the purpose of sale or
18 delivery of such form of identification to a person under the age
19 of twenty-one years shall be guilty of a Class I misdemeanor. For
20 purposes of this subsection, form of identification means any card,
21 paper, or legal document that may be used to establish the age of
22 the person named thereon for the purpose of purchasing alcoholic
23 liquor.

24 (3) When a minor is arrested for a violation of sections
25 53-180 to 53-180.02 or subsection (2) of this section, the law

1 enforcement agency employing the arresting peace officer shall make
2 a reasonable attempt to notify such minor's parent or guardian of
3 the arrest.

4 Sec. 8. Original sections 28-441, 29-431, 29-433, and
5 53-180.05, Reissue Revised Statutes of Nebraska, sections 28-416
6 and 29-434, Revised Statutes Cumulative Supplement, 2006, and
7 section 28-101, Revised Statutes Supplement, 2007, are repealed.