

LEGISLATURE OF NEBRASKA
ONE HUNDRED SEVENTH LEGISLATURE
FIRST SESSION

LEGISLATIVE BILL 7

Introduced by Blood, 3.

Read first time January 07, 2021

Committee: Judiciary

1 A BILL FOR AN ACT relating to crimes and offenses; to amend sections
2 28-801 and 28-801.01, Reissue Revised Statutes of Nebraska, and
3 sections 28-101, 28-416, and 28-441, Revised Statutes Cumulative
4 Supplement, 2020; to provide immunity from arrest and prosecution
5 for certain controlled substances and prostitution violations by
6 witnesses and victims of violent crimes and persons cooperating with
7 law enforcement; to harmonize provisions; and to repeal the original
8 sections.
9 Be it enacted by the people of the State of Nebraska,

1 Section 1. Section 28-101, Revised Statutes Cumulative Supplement,
2 2020, is amended to read:

3 28-101 Sections 28-101 to 28-1357 and 28-1601 to 28-1603 and section
4 2 of this act shall be known and may be cited as the Nebraska Criminal
5 Code.

6 Sec. 2. (1) A person shall not be arrested or prosecuted for an
7 eligible offense if such person witnessed or was the victim of a crime of
8 violence and such person:

9 (a) Either:

10 (i) In good faith, reported such crime of violence to law
11 enforcement; or

12 (ii) Requested emergency medical assistance for the victim of such
13 crime; and

14 (b) Evidence supporting the arrest or prosecution of the eligible
15 offense was obtained or discovered as a result of such person reporting
16 such crime of violence to law enforcement or requesting emergency medical
17 assistance.

18 (2) A person shall not be arrested or prosecuted for an eligible
19 offense if:

20 (a) Evidence supporting the arrest or prosecution of the person for
21 an eligible offense was obtained or discovered as a result of the
22 investigation or prosecution of a crime of violence; and

23 (b) Such person cooperates with law enforcement in the investigation
24 or prosecution of a crime of violence.

25 (3) For purposes of this section:

26 (a) Crime of violence means:

27 (i) A violation of section 28-303, 28-304, 28-305, 28-308, 28-309,
28 28-310, 28-310.01, 28-311, 28-311.03, 28-313, 28-314, 28-316.01, 28-319,
29 28-319.01, 28-320, 28-320.01, 28-322.02, 28-322.03, 28-322.04, 28-322.05,
30 28-323, 28-324, 28-386 , 28-507, 28-703, 28-707, or 28-831;

31 (ii) An offense that has as an element the threat to inflict serious

1 bodily injury or death on another person, the infliction of serious
2 bodily injury on another person, or causing the death of another person;
3 or

4 (iii) Attempt, conspiracy, solicitation, being an accessory to,
5 aiding and abetting, aiding the consummation of, or compounding a felony
6 with any of the offenses listed in subdivision (3)(a)(i) or (ii) of this
7 section as the underlying offense; and

8 (b) Eligible offense means:

9 (i) A violation of subsection (3) or (13) of section 28-416, a
10 violation of section 28-801, 28-801.01, 28-804, 28-806, or 28-441 or a
11 violation of a city or village ordinance prohibiting loitering for the
12 purpose of engaging in prostitution or a similar offense; or

13 (ii) Attempt, conspiracy, solicitation, being an accessory to,
14 aiding and abetting, aiding the consummation of, or compounding a felony
15 with any of the offenses in subdivision (3)(b)(i) of this section as the
16 underlying offense.

17 Sec. 3. Section 28-416, Revised Statutes Cumulative Supplement,
18 2020, is amended to read:

19 28-416 (1) Except as authorized by the Uniform Controlled Substances
20 Act, it shall be unlawful for any person knowingly or intentionally: (a)
21 To manufacture, distribute, deliver, dispense, or possess with intent to
22 manufacture, distribute, deliver, or dispense a controlled substance; or
23 (b) to create, distribute, or possess with intent to distribute a
24 counterfeit controlled substance.

25 (2) Except as provided in subsections (4), (5), (7), (8), (9), and
26 (10) of this section, any person who violates subsection (1) of this
27 section with respect to: (a) A controlled substance classified in
28 Schedule I, II, or III of section 28-405 which is an exceptionally
29 hazardous drug shall be guilty of a Class II felony; (b) any other
30 controlled substance classified in Schedule I, II, or III of section
31 28-405 shall be guilty of a Class IIA felony; or (c) a controlled

1 substance classified in Schedule IV or V of section 28-405 shall be
2 guilty of a Class IIIA felony.

3 (3) Except as provided in section 2 of this act, a A person
4 knowingly or intentionally possessing a controlled substance, except
5 marijuana or any substance containing a quantifiable amount of the
6 substances, chemicals, or compounds described, defined, or delineated in
7 subdivision (c)(25) of Schedule I of section 28-405, unless such
8 substance was obtained directly or pursuant to a medical order issued by
9 a practitioner authorized to prescribe while acting in the course of his
10 or her professional practice, or except as otherwise authorized by the
11 act, shall be guilty of a Class IV felony. A person shall not be in
12 violation of this subsection if section 28-472 applies.

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

31 (b) For purposes of this subsection:

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

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

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

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

21 (b) Except as authorized by the Uniform Controlled Substances Act,
22 it shall be unlawful for any person eighteen years of age or older to
23 knowingly and intentionally employ, hire, use, cause, persuade, coax,
24 induce, entice, seduce, or coerce any person under the age of eighteen
25 years to aid and abet any person in the manufacture, transportation,
26 distribution, carrying, delivery, dispensing, preparation for delivery,
27 offering for delivery, or possession with intent to do the same of a
28 controlled substance or a counterfeit controlled substance.

29 (c) Any person who violates subdivision (a) or (b) of this
30 subsection shall be punished by the next higher penalty classification
31 than the penalty prescribed in subsection (2), (7), (8), (9), or (10) of

1 this section, depending upon the controlled substance involved, for the
2 first violation and for a second or subsequent violation shall be
3 punished by the next higher penalty classification than that prescribed
4 for a first violation of this subsection, but in no event shall such
5 person be punished by a penalty greater than a Class IB felony.

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

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

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

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

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

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

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

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

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

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

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

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

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

5 (10) Any person who violates subsection (1) of this section with
6 respect to amphetamine, its salts, optical isomers, and salts of its
7 isomers, or with respect to methamphetamine, its salts, optical isomers,
8 and salts of its isomers, in a quantity of:

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

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

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

15 (11) Any person knowingly or intentionally possessing marijuana
16 weighing more than one ounce but not more than one pound shall be guilty
17 of a Class III misdemeanor.

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

20 (13) Except as provided in section 2 of this act, any Any person
21 knowingly or intentionally possessing marijuana weighing one ounce or
22 less or any substance containing a quantifiable amount of the substances,
23 chemicals, or compounds described, defined, or delineated in subdivision
24 (c)(25) of Schedule I of section 28-405 shall:

25 (a) For the first offense, be guilty of an infraction, receive a
26 citation, be fined three hundred dollars, and be assigned to attend a
27 course as prescribed in section 29-433 if the judge determines that
28 attending such course is in the best interest of the individual
29 defendant;

30 (b) For the second offense, be guilty of a Class IV misdemeanor,
31 receive a citation, and be fined four hundred dollars and may be

1 imprisoned not to exceed five days; and

2 (c) For the third and all subsequent offenses, be guilty of a Class
3 IIIA misdemeanor, receive a citation, be fined five hundred dollars, and
4 be imprisoned not to exceed seven days.

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

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

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

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

22 (18) In addition to the existing penalties available for a violation
23 of subsection (1) of this section, including any criminal attempt or
24 conspiracy to violate subsection (1) of this section, a sentencing court
25 may order that any money, securities, negotiable instruments, firearms,
26 conveyances, or electronic communication devices as defined in section
27 28-833 or any equipment, components, peripherals, software, hardware, or
28 accessories related to electronic communication devices be forfeited as a
29 part of the sentence imposed if it finds by clear and convincing evidence
30 adduced at a separate hearing in the same prosecution, following
31 conviction for a violation of subsection (1) of this section, and

1 conducted pursuant to section 28-1601, that any or all such property was
2 derived from, used, or intended to be used to facilitate a violation of
3 subsection (1) of this section.

4 (19) In addition to the penalties provided in this section:

5 (a) If the person convicted or adjudicated of violating this section
6 is eighteen years of age or younger and has one or more licenses or
7 permits issued under the Motor Vehicle Operator's License Act:

8 (i) For the first offense, the court may, as a part of the judgment
9 of conviction or adjudication, (A) impound any such licenses or permits
10 for thirty days and (B) require such person to attend a drug education
11 class;

12 (ii) For a second offense, the court may, as a part of the judgment
13 of conviction or adjudication, (A) impound any such licenses or permits
14 for ninety days and (B) require such person to complete no fewer than
15 twenty and no more than forty hours of community service and to attend a
16 drug education class; and

17 (iii) For a third or subsequent offense, the court may, as a part of
18 the judgment of conviction or adjudication, (A) impound any such licenses
19 or permits for twelve months and (B) require such person to complete no
20 fewer than sixty hours of community service, to attend a drug education
21 class, and to submit to a drug assessment by a licensed alcohol and drug
22 counselor; and

23 (b) If the person convicted or adjudicated of violating this section
24 is eighteen years of age or younger and does not have a permit or license
25 issued under the Motor Vehicle Operator's License Act:

26 (i) For the first offense, the court may, as part of the judgment of
27 conviction or adjudication, (A) prohibit such person from obtaining any
28 permit or any license pursuant to the act for which such person would
29 otherwise be eligible until thirty days after the date of such order and
30 (B) require such person to attend a drug education class;

31 (ii) For a second offense, the court may, as part of the judgment of

1 conviction or adjudication, (A) prohibit such person from obtaining any
2 permit or any license pursuant to the act for which such person would
3 otherwise be eligible until ninety days after the date of such order and
4 (B) require such person to complete no fewer than twenty hours and no
5 more than forty hours of community service and to attend a drug education
6 class; and

7 (iii) For a third or subsequent offense, the court may, as part of
8 the judgment of conviction or adjudication, (A) prohibit such person from
9 obtaining any permit or any license pursuant to the act for which such
10 person would otherwise be eligible until twelve months after the date of
11 such order and (B) require such person to complete no fewer than sixty
12 hours of community service, to attend a drug education class, and to
13 submit to a drug assessment by a licensed alcohol and drug counselor.

14 A copy of an abstract of the court's conviction or adjudication
15 shall be transmitted to the Director of Motor Vehicles pursuant to
16 sections 60-497.01 to 60-497.04 if a license or permit is impounded or a
17 juvenile is prohibited from obtaining a license or permit under this
18 subsection.

19 Sec. 4. Section 28-441, Revised Statutes Cumulative Supplement,
20 2020, is amended to read:

21 28-441 (1) It shall be unlawful for any person to use, or to possess
22 with intent to use, drug paraphernalia to manufacture, inject, ingest,
23 inhale, or otherwise introduce into the human body a controlled substance
24 in violation of sections 28-101, 28-431, and 28-439 to 28-444.

25 (2) Except as provided in section 2 of this act, any Any person who
26 violates this section shall be guilty of an infraction.

27 (3) A person shall not be in violation of this section if section
28 28-472 applies.

29 Sec. 5. Section 28-801, Reissue Revised Statutes of Nebraska, is
30 amended to read:

31 28-801 (1) Except as provided in subsection (5) of this section and

1 section 2 of this act, any person who performs, offers, or agrees to
2 perform any act of sexual contact or sexual penetration, as those terms
3 are defined in section 28-318, with any person not his or her spouse, in
4 exchange for money or other thing of value, commits prostitution.

5 (2) Any person convicted of violating subsection (1) of this section
6 shall be punished as follows:

7 (a) If such person has had no prior convictions or has had one prior
8 conviction, such person shall be guilty of a Class II misdemeanor. If the
9 court places such person on probation, such order of probation shall
10 include, as one of its conditions, that such person shall satisfactorily
11 attend and complete an appropriate mental health and substance abuse
12 assessment conducted by a licensed mental health professional or
13 substance abuse professional authorized to complete such assessment; and

14 (b) If such person has had two or more prior convictions, such
15 person shall be guilty of a Class I misdemeanor. If the court places such
16 person on probation, such order of probation shall include, as one of its
17 conditions, that such person shall satisfactorily attend and complete an
18 appropriate mental health and substance abuse assessment conducted by a
19 licensed mental health professional or substance abuse professional
20 authorized to complete such assessment.

21 (3) It is an affirmative defense to prosecution under this section
22 that such person was a trafficking victim as defined in section 28-830.

23 (4) For purposes of this section, prior conviction means any
24 conviction on or after July 14, 2006, for violation of subsection (1) of
25 this section or any conviction on or after July 14, 2006, for violation
26 of a city or village ordinance relating to prostitution.

27 (5) If the law enforcement officer determines, after a reasonable
28 detention for investigative purposes, that a person suspected of or
29 charged with a violation of subsection (1) of this section is (a) a
30 person engaging in those acts as a direct result of being a trafficking
31 victim as defined in section 28-830, such person shall be immune from

1 prosecution for a prostitution offense or (b) a person under eighteen
2 years of age, such person shall be immune from prosecution for a
3 prostitution offense under this section and shall be subject to temporary
4 custody under section 43-248 and further disposition under the Nebraska
5 Juvenile Code. A law enforcement officer who takes a person under
6 eighteen years of age into custody under this section shall immediately
7 report an allegation of a violation of section 28-831 to the Department
8 of Health and Human Services which shall commence an investigation within
9 twenty-four hours under the Child Protection and Family Safety Act.

10 Sec. 6. Section 28-801.01, Reissue Revised Statutes of Nebraska, is
11 amended to read:

12 28-801.01 (1) Except as provided in section 2 of this act, any Any
13 person who solicits another person not his or her spouse to perform any
14 act of sexual contact or sexual penetration, as those terms are defined
15 in section 28-318, in exchange for money or other thing of value, commits
16 solicitation of prostitution.

17 (2) Any person convicted of violating subsection (1) of this section
18 shall be punished as follows:

19 (a) If such person has had no prior convictions, such person shall
20 be guilty of a Class I misdemeanor and pay a fine of not less than two
21 hundred fifty dollars, unless the person solicited is under the age of
22 eighteen years, in which case such person violating this section shall be
23 guilty of a Class IV felony. If the court places such person on
24 probation, such order of probation shall include in its conditions (i)
25 the payment of a fine of not less than two hundred fifty dollars, (ii)
26 that such person shall satisfactorily attend and complete an appropriate
27 mental health and substance abuse assessment conducted by a licensed
28 mental health professional or substance abuse professional authorized to
29 complete such assessment, and (iii) that such person shall satisfactorily
30 attend and complete, at his or her own expense, an educational program
31 designed to educate participants on the effect of prostitution on the

1 participants' health, on the person solicited, and on the community; and

2 (b) If such person has had one or more prior convictions, such
3 person shall be guilty of a Class IV felony and pay a fine of not less
4 than five hundred dollars. If the court places such person on probation,
5 such order of probation shall include in its conditions (i) the payment
6 of a fine of not less than five hundred dollars, (ii) that such person
7 shall satisfactorily attend and complete an appropriate mental health and
8 substance abuse assessment conducted by a licensed mental health
9 professional or substance abuse professional authorized to complete such
10 assessment, and (iii) that such person shall satisfactorily attend and
11 complete, at his or her own expense, an educational program designed to
12 educate participants on the effect of prostitution on the participants'
13 health, on the person solicited, and on the community.

14 (3) It is an affirmative defense to prosecution under this section
15 that such person was a trafficking victim as defined in section 28-830.

16 Sec. 7. Original sections 28-801 and 28-801.01, Reissue Revised
17 Statutes of Nebraska, and sections 28-101, 28-416, and 28-441, Revised
18 Statutes Cumulative Supplement, 2020, are repealed.