

## LEGISLATIVE BILL 592

Approved by the Governor April 17, 1989

Introduced by Abboud, 12; Beck, 8; Moore, 24

AN ACT relating to crimes and punishments; to amend section 28-105, Reissue Revised Statutes of Nebraska, 1943, and sections 28-416 and 29-2262, Revised Statutes Supplement, 1988; to provide additional felony classifications; to provide additional penalties for possession of controlled substances and cocaine as prescribed; to harmonize provisions; and to repeal the original sections.

Be it enacted by the people of the State of Nebraska,

Section 1. That section 28-105, Reissue Revised Statutes of Nebraska, 1943, be amended to read as follows:

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

Class I felony.....	Death
Class IA felony.....	Life imprisonment
Class IB felony.....	Maximum-life imprisonment
	Minimum-ten years imprisonment
<u>Class IC felony.....</u>	<u>Maximum-fifty years imprisonment</u>
	<u>Mandatory minimum-five years</u>
	<u>imprisonment</u>
<u>Class ID felony.....</u>	<u>Maximum-fifty years imprisonment</u>
	<u>Mandatory minimum-three years</u>
	<u>imprisonment</u>
Class II felony.....	Maximum-fifty years imprisonment
	Minimum-one year imprisonment
Class III felony.....	Maximum-twenty years imprisonment,
	or twenty-five thousand dollars
	fine, or both
	Minimum-one year imprisonment
Class IV felony.....	Maximum-five years imprisonment, or
	ten thousand dollars fine, or both
	Minimum-none

(2) All sentences of imprisonment for Class IA, IB, IC, ID, II, and III felonies and sentences of one year or more for Class IV felonies shall be served

in institutions under the jurisdiction of the Department of Correctional Services. Sentences of less than one year shall be served in the county jail except as provided in this subsection. If the ~~Department of Correctional Services~~ department certifies that it has programs and facilities available for persons sentenced to terms of less than one year, the court may order that any sentence of six months or more be served in any institution under the jurisdiction of the ~~Department of Correctional Services~~ department. Any such certification shall be given by the department to the State Court Administrator, who shall forward copies thereof to each judge having jurisdiction to sentence in felony cases.

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

Sec. 2. That section 28-416, Revised Statutes Supplement, 1988, be amended to read as follows:

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

(2) Any Except as provided in subsections (4) and (5) of this section, any person who violates subsection (1) of this section with respect to: (a) A controlled substance classified in Schedule I, II, or III of section 28-405 which is an exceptionally hazardous drug shall be guilty of a Class II felony; (b) any other controlled substance classified in Schedule I, II, or III of section 28-405, shall be guilty of a Class III felony; or (c) a controlled substance classified in Schedule IV or V of section 28-405, shall be guilty of a Class IV felony.

(3) A person knowingly or intentionally possessing a controlled substance, except marijuana, unless such substance was obtained directly or pursuant to a valid prescription or order from a practitioner while acting in the course of his or her professional practice, or except as otherwise authorized by ~~this article~~ the act, shall be guilty of a Class IV felony.

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

(a) Seven or more ounces shall be guilty of a Class IC felony; or

(b) At least one ounce but less than seven ounces shall be guilty of a Class ID felony.

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

(a) Twenty-eight grams or more shall be guilty of a Class IC felony; or

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

(6) (4) Any person knowingly or intentionally possessing marijuana weighing more than one ounce but not more than one pound shall be guilty of a Class IIIA misdemeanor.

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

(8) (6) Any person knowingly or intentionally possessing marijuana weighing one ounce or less shall:

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

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

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

(9) (7) Any person convicted of violating this section, if placed on probation, shall, as a condition of probation, satisfactorily attend and complete appropriate treatment and counseling on drug abuse conducted by one of the community mental health facilities as provided by Chapter 71, article 50, or other licensed drug treatment facility.

(10) (8) Any person convicted of violating subsection (1), (2), or (3) of this section shall only become eligible for parole upon the satisfactory attendance and completion of appropriate treatment and counseling on drug abuse, except that any person convicted of violating subsection (4) or (5) of this section shall not be eligible for parole prior to

servng the mandatory minimum sentence.

Sec. 3. That section 29-2262, Revised Statutes Supplement, 1988, be amended to read as follows:

29-2262. (1) When a court sentences an offender to probation, it shall attach such reasonable conditions as it deems necessary or likely to insure that the offender will lead a law-abiding life.

(2) The court, as a condition of its sentence, may require the offender:

- (a) To refrain from unlawful conduct;
- (b) To be confined periodically in the county jail or to return to custody after specified hours, but not to exceed ninety days;
- (c) To meet his or her family responsibilities;
- (d) To devote himself or herself to a specific employment or occupation;
- (e) To undergo medical or psychiatric treatment and to enter and remain in a specified institution for such purpose;
- (f) To pursue a prescribed secular course of study or vocational training;
- (g) To attend or reside in a facility established for the instruction, recreation, or residence of persons on probation;
- (h) To refrain from frequenting unlawful or disreputable places or consorting with disreputable persons;
- (i) To have in his or her possession no firearm or other dangerous weapon unless granted written permission;
- (j) To remain within the jurisdiction of the court and to notify the court or the probation officer of any change in his or her address or his or her employment;
- (k) To report as directed to the court or a probation officer and to permit the officer to visit his or her home;
- (l) To pay a fine in one or more payments, as ordered;
- (m) To work, in lieu of or in addition to any fine, on public streets, parks, or other public property for a period not exceeding twenty working days. Such work shall be under the supervision of the probation officer or a law enforcement officer in the jurisdiction in which the work is performed;
- (n) To pay for blood, urine, or breath alcohol tests, psychological evaluations, and rehabilitative

services required in the identification, evaluation, and treatment of offenders if such offender has the financial ability to pay for such services;

(o) To perform community service as defined in section 29-2277; or

(p) To satisfy any other conditions reasonably related to the rehabilitation of the offender.

(3) In all cases in which the offender is guilty of assault or battery and the victim is the offender's spouse, a condition of probation shall be mandatory counseling as provided by the Protection from Domestic Abuse Act.

(4) In all cases in which the offender is guilty of violating section 28-416, a condition of probation shall be mandatory treatment and counseling as provided by subsection ~~(7)~~ (9) of section 28-416.

Sec. 4. That original section 28-105, Reissue Revised Statutes of Nebraska, 1943, and sections 28-416 and 29-2262, Revised Statutes Supplement, 1988, are repealed.