

LEGISLATURE OF NEBRASKA
ONE HUNDRED SIXTH LEGISLATURE
SECOND SESSION

LEGISLATIVE BILL 985

Introduced by Pansing Brooks, 28; Hansen, M., 26; Wayne, 13.

Read first time January 14, 2020

Committee: Judiciary

1 A BILL FOR AN ACT relating to crimes and offenses; to amend sections
2 28-111, 28-204, 28-320.01, 28-320.02, 28-929, 28-1205, 28-1212.02,
3 28-1212.04, 28-1463.04, and 29-2204.02, Reissue Revised Statutes of
4 Nebraska, sections 28-201, 28-202, 28-416, 29-1816, and 83-1,122.01,
5 Revised Statutes Cumulative Supplement, 2018, and sections 28-101,
6 28-105, 28-115, 28-813.01, 28-1206, and 28-1463.05, Revised Statutes
7 Supplement, 2019; to provide for new felony classifications; to
8 change penalties; to harmonize provisions; and to repeal the
9 original sections.
10 Be it enacted by the people of the State of Nebraska,

1 Section 1. Section 28-101, Revised Statutes Supplement, 2019, is
2 amended to read:

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

6 Sec. 2. Section 28-105, Revised Statutes Supplement, 2019, is
7 amended to read:

8 28-105 (1) For purposes of the Nebraska Criminal Code and any
9 statute passed by the Legislature after the date of passage of the code,
10 felonies are divided into twelve ~~ten~~ classes which are distinguished from
11 one another by the following penalties which are authorized upon
12 conviction:

- 13 Class I felony Death
- 14 Class IA felony Life imprisonment
- 15 Class IB felony Maximum-life imprisonment
- 16 Minimum-twenty years imprisonment
- 17 Class IC felony Maximum-fifty years imprisonment
- 18 Mandatory minimum-five years imprisonment
- 19 Class ICA felony Maximum-fifty years imprisonment
- 20 Minimum-five years imprisonment
- 21 Class ID felony Maximum-fifty years imprisonment
- 22 Mandatory minimum-three years imprisonment
- 23 Class IDA felony Maximum-fifty years imprisonment
- 24 Minimum-three years imprisonment
- 25 Class II felony Maximum-fifty years imprisonment
- 26 Minimum-one year imprisonment
- 27 Class IIA felony Maximum-twenty years imprisonment
- 28 Minimum-none
- 29 Class III felony Maximum-four years imprisonment and two years
- 30 post-release supervision or

1 twenty-five thousand dollars fine, or both
2 Minimum—none for imprisonment and nine months
3 post-release supervision if imprisonment is imposed
4 Class IIIA felony Maximum—three years imprisonment
5 and eighteen months post-release supervision or
6 ten thousand dollars fine, or both
7 Minimum—none for imprisonment and nine months
8 post-release supervision if imprisonment is imposed
9 Class IV felony Maximum—two years imprisonment and twelve
10 months post-release supervision or
11 ten thousand dollars fine, or both
12 Minimum—none for imprisonment and none for
13 post-release supervision

14 (2) All sentences for maximum terms of imprisonment for one year or
15 more for felonies shall be served in institutions under the jurisdiction
16 of the Department of Correctional Services. All sentences for maximum
17 terms of imprisonment of less than one year shall be served in the county
18 jail.

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

22 (4) A person convicted of a felony for which a mandatory minimum
23 sentence is prescribed shall not be eligible for probation.

24 (5) All sentences of post-release supervision shall be served under
25 the jurisdiction of the Office of Probation Administration and shall be
26 subject to conditions imposed pursuant to section 29-2262 and subject to
27 sanctions authorized pursuant to section 29-2266.02.

28 (6) Any person who is sentenced to imprisonment for a Class I, IA,
29 IB, IC, ICA, ID, IDA, II, or IIA felony and sentenced concurrently or
30 consecutively to imprisonment for a Class III, IIIA, or IV felony shall
31 not be subject to post-release supervision pursuant to subsection (1) of

1 this section.

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

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

10 Sec. 3. (1) When an offense is a Class IC or ICA felony, the
11 prosecutor shall elect to charge the offense as either a Class IC or ICA
12 felony, at the prosecutor's discretion.

13 (2) When an offense is a Class ID or IDA felony, the prosecutor
14 shall elect to charge the offense as either a Class ID or IDA felony, at
15 the prosecutor's discretion.

16 (3) The prosecutor's charging decision under this section shall be
17 set forth in the indictment or information.

18 Sec. 4. Section 28-111, Reissue Revised Statutes of Nebraska, is
19 amended to read:

20 28-111 (1) Any person who commits one or more of the following
21 criminal offenses against a person or a person's property because of the
22 person's race, color, religion, ancestry, national origin, gender, sexual
23 orientation, age, or disability or because of the person's association
24 with a person of a certain race, color, religion, ancestry, national
25 origin, gender, sexual orientation, age, or disability shall be punished
26 by the imposition of the next higher penalty classification than the
27 penalty classification prescribed for the criminal offense, unless such
28 criminal offense is already punishable as a Class IB felony or higher
29 classification: Manslaughter, section 28-305; assault in the first
30 degree, section 28-308; assault in the second degree, section 28-309;
31 assault in the third degree, section 28-310; terroristic threats, section

1 28-311.01; stalking, section 28-311.03; kidnapping, section 28-313; false
2 imprisonment in the first degree, section 28-314; false imprisonment in
3 the second degree, section 28-315; sexual assault in the first degree,
4 section 28-319; sexual assault in the second or third degree, section
5 28-320; sexual assault of a child, sections 28-319.01 and 28-320.01;
6 arson in the first degree, section 28-502; arson in the second degree,
7 section 28-503; arson in the third degree, section 28-504; criminal
8 mischief, section 28-519; unauthorized application of graffiti, section
9 28-524; criminal trespass in the first degree, section 28-520; or
10 criminal trespass in the second degree, section 28-521.

11 (2) For purposes of this section, when the offense being enhanced
12 under subsection (1) of this section:

13 (a) Is a Class IC or ICA felony, the next higher penalty
14 classification shall be a Class IB felony; and

15 (b) Is a Class ID or IDA felony, the next higher penalty
16 classification shall be a Class IC or ICA felony, subject to section 3 of
17 this act.

18 Sec. 5. Section 28-115, Revised Statutes Supplement, 2019, is
19 amended to read:

20 28-115 (1) Except as provided in subsection (2) of this section, any
21 person who commits any of the following criminal offenses against a
22 pregnant woman shall be punished by the imposition of the next higher
23 penalty classification than the penalty classification prescribed for the
24 criminal offense:

25 (a) Assault in the first degree, section 28-308;

26 (b) Assault in the second degree, section 28-309;

27 (c) Assault in the third degree, section 28-310;

28 (d) Assault by strangulation or suffocation, section 28-310.01;

29 (e) Sexual assault in the first degree, section 28-319;

30 (f) Sexual assault in the second or third degree, section 28-320;

31 (g) Sexual assault of a child in the first degree, section

1 28-319.01;

2 (h) Sexual assault of a child in the second or third degree, section
3 28-320.01;

4 (i) Sexual abuse of an inmate or parolee in the first degree,
5 section 28-322.02;

6 (j) Sexual abuse of an inmate or parolee in the second degree,
7 section 28-322.03;

8 (k) Sexual abuse of a protected individual in the first or second
9 degree, section 28-322.04;

10 (l) Sexual abuse of a detainee under section 28-322.05;

11 (m) Domestic assault in the first, second, or third degree, section
12 28-323;

13 (n) Assault on an officer, an emergency responder, a state
14 correctional employee, a Department of Health and Human Services
15 employee, or a health care professional in the first degree, section
16 28-929;

17 (o) Assault on an officer, an emergency responder, a state
18 correctional employee, a Department of Health and Human Services
19 employee, or a health care professional in the second degree, section
20 28-930;

21 (p) Assault on an officer, an emergency responder, a state
22 correctional employee, a Department of Health and Human Services
23 employee, or a health care professional in the third degree, section
24 28-931;

25 (q) Assault on an officer, an emergency responder, a state
26 correctional employee, a Department of Health and Human Services
27 employee, or a health care professional using a motor vehicle, section
28 28-931.01;

29 (r) Assault by a confined person, section 28-932;

30 (s) Confined person committing offenses against another person,
31 section 28-933; and

1 (t) Proximately causing serious bodily injury while operating a
2 motor vehicle, section 60-6,198.

3 (2) The enhancement in subsection (1) of this section does not apply
4 to any criminal offense listed in subsection (1) of this section that is
5 already punishable as a Class I, IA, or IB felony. If any criminal
6 offense listed in subsection (1) of this section is punishable as a Class
7 I misdemeanor, the penalty under this section is a Class IIIA felony.

8 (3) For purposes of this section, when the offense being enhanced
9 under subsection (1) of this section:

10 (a) Is a Class IC or ICA felony, the next higher penalty
11 classification shall be a Class IB felony; and

12 (b) Is a Class ID or IDA felony, the next higher penalty
13 classification shall be a Class IC or ICA felony, subject to section 3 of
14 this act.

15 (4) (3) The prosecution shall allege and prove beyond a reasonable
16 doubt that the victim was pregnant at the time of the offense.

17 Sec. 6. Section 28-201, Revised Statutes Cumulative Supplement,
18 2018, is amended to read:

19 28-201 (1) A person shall be guilty of an attempt to commit a crime
20 if he or she:

21 (a) Intentionally engages in conduct which would constitute the
22 crime if the attendant circumstances were as he or she believes them to
23 be; or

24 (b) Intentionally engages in conduct which, under the circumstances
25 as he or she believes them to be, constitutes a substantial step in a
26 course of conduct intended to culminate in his or her commission of the
27 crime.

28 (2) When causing a particular result is an element of the crime, a
29 person shall be guilty of an attempt to commit the crime if, acting with
30 the state of mind required to establish liability with respect to the
31 attendant circumstances specified in the definition of the crime, he or

1 she intentionally engages in conduct which is a substantial step in a
2 course of conduct intended or known to cause such a result.

3 (3) Conduct shall not be considered a substantial step under this
4 section unless it is strongly corroborative of the defendant's criminal
5 intent.

6 (4) Criminal attempt is:

7 (a) A Class II felony when the crime attempted is a Class I, IA, IB,
8 IC, ICA, ~~or~~ ID, or IDA felony;

9 (b) A Class IIA felony when the crime attempted is a Class II
10 felony;

11 (c) A Class IIIA felony when the crime attempted is a Class IIA
12 felony;

13 (d) A Class IV felony when the crime attempted is a Class III or
14 IIIA felony;

15 (e) A Class I misdemeanor when the crime attempted is a Class IV
16 felony;

17 (f) A Class II misdemeanor when the crime attempted is a Class I
18 misdemeanor; and

19 (g) A Class III misdemeanor when the crime attempted is a Class II
20 misdemeanor.

21 Sec. 7. Section 28-202, Revised Statutes Cumulative Supplement,
22 2018, is amended to read:

23 28-202 (1) A person shall be guilty of criminal conspiracy if, with
24 intent to promote or facilitate the commission of a felony:

25 (a) He agrees with one or more persons that they or one or more of
26 them shall engage in or solicit the conduct or shall cause or solicit the
27 result specified by the definition of the offense; and

28 (b) He or another person with whom he conspired commits an overt act
29 in pursuance of the conspiracy.

30 (2) If a person knows that one with whom he conspires to commit a
31 crime has conspired with another person or persons to commit the same

1 crime, he is guilty of conspiring to commit such crime with such other
2 person or persons whether or not he knows their identity.

3 (3) If a person conspires to commit a number of crimes, he is guilty
4 of only one conspiracy so long as such multiple crimes are the object of
5 the same agreement or continuous conspiratorial relationship.

6 (4)(a) (4) Conspiracy is a crime of the same class as the most
7 serious offense which is an object of the conspiracy, except that
8 conspiracy to commit a Class I felony is a Class II felony.

9 (b) If the most serious offense which is an object of the conspiracy
10 is a Class IC or ICA felony, the penalty for conspiracy shall be a Class
11 IC or ICA felony, subject to section 3 of this act.

12 (c) If the most serious offense which is an object of the conspiracy
13 is a Class ID or IDA felony, the penalty for conspiracy shall be a Class
14 ID or IDA felony, subject to section 3 of this act.

15 (5) A person prosecuted for a criminal conspiracy shall be acquitted
16 if such person proves by a preponderance of the evidence that his or her
17 conduct occurred in response to an entrapment.

18 Sec. 8. Section 28-204, Reissue Revised Statutes of Nebraska, is
19 amended to read:

20 28-204 (1) A person is guilty of being an accessory to felony if
21 with intent to interfere with, hinder, delay, or prevent the discovery,
22 apprehension, prosecution, conviction, or punishment of another for an
23 offense, he or she:

24 (a) Harbors or conceals the other;

25 (b) Provides or aids in providing a weapon, transportation,
26 disguise, or other means of effecting escape or avoiding discovery or
27 apprehension;

28 (c) Conceals or destroys evidence of the crime or tampers with a
29 witness, informant, document, or other source of information, regardless
30 of its admissibility in evidence;

31 (d) Warns the other of impending discovery or apprehension other

1 than in connection with an effort to bring another into compliance with
2 the law;

3 (e) Volunteers false information to a peace officer; or

4 (f) By force, intimidation, or deception, obstructs anyone in the
5 performance of any act which might aid in the discovery, detection,
6 apprehension, prosecution, conviction, or punishment of such person.

7 (2)(a) Accessory to felony is a Class IIA felony if the actor
8 violates subdivision (1)(a), (1)(b), or (1)(c) of this section, the actor
9 knows of the conduct of the other, and the conduct of the other
10 constitutes a Class I, IA, IB, IC, ICA, ~~or ID~~, or IDA felony.

11 (b) Accessory to felony is a Class IIIA felony if the actor violates
12 subdivision (1)(a), (1)(b), or (1)(c) of this section, the actor knows of
13 the conduct of the other, and the conduct of the other constitutes a
14 Class II or IIA felony.

15 (c) Accessory to felony is a Class IV felony if the actor violates
16 subdivision (1)(a), (1)(b), or (1)(c) of this section, the actor knows of
17 the conduct of the other, and the conduct of the other constitutes a
18 Class III or Class IIIA felony.

19 (d) Accessory to felony is a Class I misdemeanor if the actor
20 violates subdivision (1)(a), (1)(b), or (1)(c) of this section, the actor
21 knows of the conduct of the other, and the conduct of the other
22 constitutes a Class IV felony.

23 (e) Accessory to felony is a Class IV felony if the actor violates
24 subdivision (1)(d), (1)(e), or (1)(f) of this section, the actor knows of
25 the conduct of the other, and the conduct of the other constitutes a
26 felony of any class other than a Class IV felony.

27 (f) Accessory to felony is a Class I misdemeanor if the actor
28 violates subdivision (1)(d), (1)(e), or (1)(f) of this section, the actor
29 knows of the conduct of the other, and the conduct of the other
30 constitutes a Class IV felony.

31 Sec. 9. Section 28-320.01, Reissue Revised Statutes of Nebraska, is

1 amended to read:

2 28-320.01 (1) A person commits sexual assault of a child in the
3 second or third degree if he or she subjects another person fourteen
4 years of age or younger to sexual contact and the actor is at least
5 nineteen years of age or older.

6 (2) Sexual assault of a child is in the second degree if the actor
7 causes serious personal injury to the victim. Sexual assault of a child
8 in the second degree is a Class II felony for the first offense.

9 (3) Sexual assault of a child is in the third degree if the actor
10 does not cause serious personal injury to the victim. Sexual assault of a
11 child in the third degree is a Class IIIA felony for the first offense.

12 (4) Any person who is found guilty of second degree sexual assault
13 of a child under this section and who has previously been convicted (a)
14 under this section, (b) under section 28-319 of first degree or attempted
15 first degree sexual assault, (c) under section 28-319.01 for first degree
16 or attempted first degree sexual assault of a child, or (d) in any other
17 state or federal court under laws with essentially the same elements as
18 this section, section 28-319, or section 28-319.01 shall be guilty of a
19 Class IC felony and shall be sentenced to a mandatory minimum term of
20 twenty-five years in prison or shall be guilty of a Class ICA felony,
21 subject to section 3 of this act.

22 (5) Any person who is found guilty of third degree sexual assault of
23 a child under this section and who has previously been convicted (a)
24 under this section, (b) under section 28-319 of first degree or attempted
25 first degree sexual assault, (c) under section 28-319.01 for first degree
26 or attempted first degree sexual assault of a child, or (d) in any other
27 state or federal court under laws with essentially the same elements as
28 this section, section 28-319, or section 28-319.01 shall be guilty of a
29 Class IC felony or a Class ICA felony, subject to section 3 of this act.

30 Sec. 10. Section 28-320.02, Reissue Revised Statutes of Nebraska, is
31 amended to read:

1 28-320.02 (1) No person shall knowingly solicit, coax, entice, or
2 lure (a) a child sixteen years of age or younger or (b) a peace officer
3 who is believed by such person to be a child sixteen years of age or
4 younger, by means of an electronic communication device as that term is
5 defined in section 28-833, to engage in an act which would be in
6 violation of section 28-319, 28-319.01, or 28-320.01 or subsection (1) or
7 (2) of section 28-320. A person shall not be convicted of both a
8 violation of this subsection and a violation of section 28-319,
9 28-319.01, or 28-320.01 or subsection (1) or (2) of section 28-320 if the
10 violations arise out of the same set of facts or pattern of conduct and
11 the individual solicited, coaxed, enticed, or lured under this subsection
12 is also the victim of the sexual assault under section 28-319, 28-319.01,
13 or 28-320.01 or subsection (1) or (2) of section 28-320.

14 (2) A person who violates this section is guilty of a Class ID
15 felony or a Class IDA felony, subject to section 3 of this act. If a
16 person who violates this section has previously been convicted of a
17 violation of this section or section 28-308, 28-309, 28-310, 28-311,
18 28-313, 28-314, 28-315, 28-319, 28-319.01, 28-320.01, 28-813.01, 28-833,
19 28-1463.03, or 28-1463.05 or subsection (1) or (2) of section 28-320, the
20 person is guilty of a Class IC felony or a Class ICA felony, subject to
21 section 3 of this act.

22 Sec. 11. Section 28-416, Revised Statutes Cumulative Supplement,
23 2018, is amended to read:

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

30 (2) Except as provided in subsections (4), (5), (7), (8), (9), and
31 (10) of this section, any person who violates subsection (1) of this

1 section with respect to: (a) A controlled substance classified in
2 Schedule I, II, or III of section 28-405 which is an exceptionally
3 hazardous drug shall be guilty of a Class II felony; (b) any other
4 controlled substance classified in Schedule I, II, or III of section
5 28-405 shall be guilty of a Class IIA felony; or (c) a controlled
6 substance classified in Schedule IV or V of section 28-405 shall be
7 guilty of a Class IIIA felony.

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

17 (4)(a) Except as authorized by the Uniform Controlled Substances
18 Act, any person eighteen years of age or older who knowingly or
19 intentionally manufactures, distributes, delivers, dispenses, or
20 possesses with intent to manufacture, distribute, deliver, or dispense a
21 controlled substance or a counterfeit controlled substance (i) to a
22 person under the age of eighteen years, (ii) in, on, or within one
23 thousand feet of the real property comprising a public or private
24 elementary, vocational, or secondary school, a community college, a
25 public or private college, junior college, or university, or a
26 playground, or (iii) within one hundred feet of a public or private youth
27 center, public swimming pool, or video arcade facility shall be punished
28 by the next higher penalty classification than the penalty prescribed in
29 subsection (2), (7), (8), (9), or (10) of this section, depending upon
30 the controlled substance involved, for the first violation and for a
31 second or subsequent violation shall be punished by the next higher

1 penalty classification than that prescribed for a first violation of this
2 subsection, but in no event shall such person be punished by a penalty
3 greater than a Class IB felony.

4 (b) When the violation being enhanced under subdivision (4)(a) of
5 this section:

6 (i) Is a Class IC or ICA felony, the next higher penalty
7 classification shall be a Class IB felony; and

8 (ii) Is a Class ID or IDA felony, the next higher penalty
9 classification shall be a Class IC or ICA felony, subject to section 3 of
10 this act.

11 (c) ~~(b)~~ For purposes of this subsection:

12 (i) Playground means any outdoor facility, including any parking lot
13 appurtenant to the facility, intended for recreation, open to the public,
14 and with any portion containing three or more apparatus intended for the
15 recreation of children, including sliding boards, swingsets, and
16 teeterboards;

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

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

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

1 (b) Except as authorized by the Uniform Controlled Substances Act,
2 it shall be unlawful for any person eighteen years of age or older to
3 knowingly and intentionally employ, hire, use, cause, persuade, coax,
4 induce, entice, seduce, or coerce any person under the age of eighteen
5 years to aid and abet any person in the manufacture, transportation,
6 distribution, carrying, delivery, dispensing, preparation for delivery,
7 offering for delivery, or possession with intent to do the same of a
8 controlled substance or a counterfeit controlled substance.

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

17 (d) When the violation being enhanced under subdivision (5)(c) of
18 this section:

19 (i) Is a Class IC or ICA felony, the next higher penalty
20 classification shall be a Class IB felony; and

21 (ii) Is a Class ID or IDA felony, the next higher penalty
22 classification shall be a Class IC or ICA felony, subject to section 3 of
23 this act.

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

27 (7) Any person who violates subsection (1) of this section with
28 respect to cocaine or any mixture or substance containing a detectable
29 amount of cocaine 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 a Class ICA felony, subject
3 to section 3 of this act; or

4 (c) At least ten grams but less than twenty-eight grams shall be
5 guilty of a Class ID felony or a Class IDA felony, subject to section 3
6 of this act.

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

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

12 (b) At least twenty-eight grams but less than one hundred forty
13 grams shall be guilty of a Class IC felony or a Class ICA felony, subject
14 to section 3 of this act; or

15 (c) At least ten grams but less than twenty-eight grams shall be
16 guilty of a Class ID felony or a Class IDA felony, subject to section 3
17 of this act.

18 (9) Any person who violates subsection (1) of this section with
19 respect to heroin or any mixture or substance containing a detectable
20 amount of heroin 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 a Class ICA felony, subject
25 to section 3 of this act; or

26 (c) At least ten grams but less than twenty-eight grams shall be
27 guilty of a Class ID felony or a Class IDA felony, subject to section 3
28 of this act.

29 (10) Any person who violates subsection (1) of this section with
30 respect to amphetamine, its salts, optical isomers, and salts of its
31 isomers, or with respect to methamphetamine, its salts, optical isomers,

1 and salts of its isomers, in a quantity of:

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

4 (b) At least twenty-eight grams but less than one hundred forty
5 grams shall be guilty of a Class IC felony or a Class ICA felony, subject
6 to section 3 of this act; or

7 (c) At least ten grams but less than twenty-eight grams shall be
8 guilty of a Class ID felony or a Class IDA felony, subject to section 3
9 of this act.

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

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

15 (13) Any person knowingly or intentionally possessing marijuana
16 weighing one ounce or less or any substance containing a quantifiable
17 amount of the substances, chemicals, or compounds described, defined, or
18 delineated in subdivision (c)(25) of Schedule I of section 28-405 shall:

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

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

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

30 (14) Any person convicted of violating this section, if placed on
31 probation, shall, as a condition of probation, satisfactorily attend and

1 complete appropriate treatment and counseling on drug abuse provided by a
2 program authorized under the Nebraska Behavioral Health Services Act or
3 other licensed drug treatment facility.

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

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

13 (a) Is a Class IC or ICA felony, the next higher penalty
14 classification shall be a Class IB felony; and

15 (b) Is a Class ID or IDA felony, the next higher penalty
16 classification shall be a Class IC or ICA felony, subject to section 3 of
17 this act.

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

21 (18) In addition to the existing penalties available for a violation
22 of subsection (1) of this section, including any criminal attempt or
23 conspiracy to violate subsection (1) of this section, a sentencing court
24 may order that any money, securities, negotiable instruments, firearms,
25 conveyances, or electronic communication devices as defined in section
26 28-833 or any equipment, components, peripherals, software, hardware, or
27 accessories related to electronic communication devices be forfeited as a
28 part of the sentence imposed if it finds by clear and convincing evidence
29 adduced at a separate hearing in the same prosecution, following
30 conviction for a violation of subsection (1) of this section, and
31 conducted pursuant to section 28-1601, that any or all such property was

1 derived from, used, or intended to be used to facilitate a violation of
2 subsection (1) of this section.

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

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

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

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

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

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

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

30 (ii) For a second offense, the court may, as part of the judgment of
31 conviction or adjudication, (A) prohibit such person from obtaining any

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

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

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

18 Sec. 12. Section 28-813.01, Revised Statutes Supplement, 2019, is
19 amended to read:

20 28-813.01 (1) It shall be unlawful for a person nineteen years of
21 age or older to knowingly possess any visual depiction of sexually
22 explicit conduct which has a child as one of its participants or
23 portrayed observers. Violation of this subsection is a Class IIA felony.

24 (2) It shall be unlawful for a person under nineteen years of age to
25 knowingly and intentionally possess any visual depiction of sexually
26 explicit conduct which has a child other than the defendant as one of its
27 participants or portrayed observers. Violation of this subsection is a
28 Class I misdemeanor. A second or subsequent conviction under this
29 subsection is a Class IV felony.

30 (3) It shall be an affirmative defense to a charge made pursuant to
31 subsection (2) of this section that:

1 (a)(i) The defendant was less than nineteen years of age; (ii) the
2 visual depiction of sexually explicit conduct portrays a child who is
3 fifteen years of age or older; (iii) the visual depiction was knowingly
4 and voluntarily generated by the child depicted therein; (iv) the visual
5 depiction was knowingly and voluntarily provided by the child depicted in
6 the visual depiction; (v) the visual depiction contains only one child;
7 (vi) the defendant has not provided or made available the visual
8 depiction to another person except the child depicted who originally sent
9 the visual depiction to the defendant; and (vii) the defendant did not
10 coerce the child in the visual depiction to either create or send the
11 visual depiction; or

12 (b)(i) The defendant was less than eighteen years of age; (ii) the
13 difference in age between the defendant and the child portrayed is less
14 than four years; (iii) the visual depiction was knowingly and voluntarily
15 generated by the child depicted therein; (iv) the visual depiction was
16 knowingly and voluntarily provided by the child depicted in the visual
17 depiction; (v) the visual depiction contains only one child; (vi) the
18 defendant has not provided or made available the visual depiction to
19 another person except the child depicted who originally sent the visual
20 depiction to the defendant; and (vii) the defendant did not coerce the
21 child in the visual depiction to either create or send the visual
22 depiction.

23 (4) Any person who violates subsection (1) or (2) of this section
24 and has previously been convicted of a violation of this section or
25 section 28-308, 28-309, 28-310, 28-311, 28-313, 28-314, 28-315, 28-319,
26 28-319.01, 28-320.01, 28-833, 28-1463.03, or 28-1463.05 or subsection (1)
27 or (2) of section 28-320 shall be guilty of a Class IC felony or a Class
28 ICA felony for each offense, subject to section 3 of this act.

29 (5) In addition to the penalties provided in this section, a
30 sentencing court may order that any money, securities, negotiable
31 instruments, firearms, conveyances, or electronic communication devices

1 as defined in section 28-833 or any equipment, components, peripherals,
2 software, hardware, or accessories related to electronic communication
3 devices be forfeited as a part of the sentence imposed if it finds by
4 clear and convincing evidence adduced at a separate hearing in the same
5 prosecution, conducted pursuant to section 28-1601, that any or all such
6 property was derived from, used, or intended to be used to facilitate a
7 violation of this section.

8 (6) The definitions in section 28-1463.02 shall apply to this
9 section.

10 Sec. 13. Section 28-929, Reissue Revised Statutes of Nebraska, is
11 amended to read:

12 28-929 (1) A person commits the offense of assault on an officer, an
13 emergency responder, a state correctional employee, a Department of
14 Health and Human Services employee, or a health care professional in the
15 first degree if:

16 (a) He or she intentionally or knowingly causes serious bodily
17 injury:

18 (i) To a peace officer, a probation officer, a firefighter, an out-
19 of-hospital emergency care provider, or an employee of the Department of
20 Correctional Services;

21 (ii) To an employee of the Department of Health and Human Services
22 if the person committing the offense is committed as a dangerous sex
23 offender under the Sex Offender Commitment Act; or

24 (iii) To a health care professional; and

25 (b) The offense is committed while such officer, firefighter, out-
26 of-hospital emergency care provider, or employee is engaged in the
27 performance of his or her official duties or while the health care
28 professional is on duty at a hospital or a health clinic.

29 (2) Assault on an officer, an emergency responder, a state
30 correctional employee, a Department of Health and Human Services
31 employee, or a health care professional in the first degree shall be a

1 Class ID felony or a Class IDA felony, subject to section 3 of this act.

2 Sec. 14. Section 28-1205, Reissue Revised Statutes of Nebraska, is
3 amended to read:

4 28-1205 (1)(a) Any person who uses a firearm, a knife, brass or iron
5 knuckles, or any other deadly weapon to commit any felony which may be
6 prosecuted in a court of this state commits the offense of use of a
7 deadly weapon to commit a felony.

8 (b) Use of a deadly weapon, other than a firearm, to commit a felony
9 is a Class II felony.

10 (c) Use of a deadly weapon, which is a firearm, to commit a felony
11 is a Class IC felony or a Class ICA felony, subject to section 3 of this
12 act.

13 (2)(a) Any person who possesses a firearm, a knife, brass or iron
14 knuckles, or a destructive device during the commission of any felony
15 which may be prosecuted in a court of this state commits the offense of
16 possession of a deadly weapon during the commission of a felony.

17 (b) Possession of a deadly weapon, other than a firearm, during the
18 commission of a felony is a Class III felony.

19 (c) Possession of a deadly weapon, which is a firearm, during the
20 commission of a felony is a Class II felony.

21 (3) The crimes defined in this section shall be treated as separate
22 and distinct offenses from the felony being committed, and sentences
23 imposed under this section shall be consecutive to any other sentence
24 imposed.

25 (4) Possession of a deadly weapon may be proved through evidence
26 demonstrating either actual or constructive possession of a firearm, a
27 knife, brass or iron knuckles, or a destructive device during,
28 immediately prior to, or immediately after the commission of a felony.

29 (5) For purposes of this section:

30 (a) Destructive device has the same meaning as in section 28-1213;

31 and

1 (b) Use of a deadly weapon includes the discharge, employment, or
2 visible display of any part of a firearm, a knife, brass or iron
3 knuckles, any other deadly weapon, or a destructive device during,
4 immediately prior to, or immediately after the commission of a felony or
5 communication to another indicating the presence of a firearm, a knife,
6 brass or iron knuckles, any other deadly weapon, or a destructive device
7 during, immediately prior to, or immediately after the commission of a
8 felony, regardless of whether such firearm, knife, brass or iron
9 knuckles, deadly weapon, or destructive device was discharged, actively
10 employed, or displayed.

11 Sec. 15. Section 28-1206, Revised Statutes Supplement, 2019, is
12 amended to read:

13 28-1206 (1) A person commits the offense of possession of a deadly
14 weapon by a prohibited person if he or she:

15 (a) Possesses a firearm, a knife, or brass or iron knuckles and he
16 or she:

17 (i) Has previously been convicted of a felony;

18 (ii) Is a fugitive from justice;

19 (iii) Is the subject of a current and validly issued domestic
20 violence protection order, harassment protection order, or sexual assault
21 protection order and is knowingly violating such order; or

22 (iv) Is on probation pursuant to a deferred judgment for a felony
23 under section 29-2292; or

24 (b) Possesses a firearm or brass or iron knuckles and he or she has
25 been convicted within the past seven years of a misdemeanor crime of
26 domestic violence.

27 (2) The felony conviction may have been had in any court in the
28 United States, the several states, territories, or possessions, or the
29 District of Columbia.

30 (3)(a) Possession of a deadly weapon which is not a firearm by a
31 prohibited person is a Class III felony.

1 (b) Possession of a deadly weapon which is a firearm by a prohibited
2 person is a Class ID felony or a Class IDA felony, subject to section 3
3 of this act for a first offense, and a Class IB felony for a second or
4 subsequent offense.

5 (4) Subdivision (1)(a)(i) of this section shall not prohibit:

6 (a) Possession of archery equipment for lawful purposes; or

7 (b) If in possession of a recreational license, possession of a
8 knife for purposes of butchering, dressing, or otherwise processing or
9 harvesting game, fish, or furs.

10 (5)(a) For purposes of this section, misdemeanor crime of domestic
11 violence means a crime that:

12 (i) Is classified as a misdemeanor under the laws of the United
13 States or the District of Columbia or the laws of any state, territory,
14 possession, or tribe;

15 (ii) Has, as an element, the use or attempted use of physical force
16 or the threatened use of a deadly weapon; and

17 (iii) Is committed by another against his or her spouse, his or her
18 former spouse, a person with whom he or she has a child in common whether
19 or not they have been married or lived together at any time, or a person
20 with whom he or she is or was involved in a dating relationship as
21 defined in section 28-323.

22 (b) For purposes of this section, misdemeanor crime of domestic
23 violence also includes the following offenses, if committed by a person
24 against his or her spouse, his or her former spouse, a person with whom
25 he or she is or was involved in a dating relationship as defined in
26 section 28-323, or a person with whom he or she has a child in common
27 whether or not they have been married or lived together at any time:

28 (i) Assault in the third degree under section 28-310;

29 (ii) Stalking under subsection (1) of section 28-311.04;

30 (iii) False imprisonment in the second degree under section 28-315;

31 (iv) First offense domestic assault in the third degree under

1 subsection (1) of section 28-323; or

2 (v) Any attempt or conspiracy to commit any of such offenses.

3 (c) A person shall not be considered to have been convicted of a
4 misdemeanor crime of domestic violence unless:

5 (i) The person was represented by counsel in the case or knowingly
6 and intelligently waived the right to counsel in the case; and

7 (ii) In the case of a prosecution for a misdemeanor crime of
8 domestic violence for which a person was entitled to a jury trial in the
9 jurisdiction in which the case was tried, either:

10 (A) The case was tried to a jury; or

11 (B) The person knowingly and intelligently waived the right to have
12 the case tried to a jury.

13 (6) In addition, for purposes of this section:

14 (a) Archery equipment means:

15 (i) A longbow, recurve bow, compound bow, or nonelectric crossbow
16 that is drawn or cocked with human power and released by human power; and

17 (ii) Target or hunting arrows, including arrows with broad, fixed,
18 or removable heads or that contain multiple sharp cutting edges;

19 (b) Domestic violence protection order means a protection order
20 issued pursuant to section 42-924;

21 (c) Harassment protection order means a protection order issued
22 pursuant to section 28-311.09 or that meets or exceeds the criteria set
23 forth in section 28-311.10 regarding protection orders issued by a court
24 in any other state or a territory, possession, or tribe;

25 (d) Recreational license means a state-issued license, certificate,
26 registration, permit, tag, sticker, or other similar document or
27 identifier evidencing permission to hunt, fish, or trap for furs in the
28 State of Nebraska; and

29 (e) Sexual assault protection order means a protection order issued
30 pursuant to section 28-311.11 or that meets or exceeds the criteria set
31 forth in section 28-311.12 regarding protection orders issued by a court

1 in any other state or a territory, possession, or tribe.

2 Sec. 16. Section 28-1212.02, Reissue Revised Statutes of Nebraska,
3 is amended to read:

4 28-1212.02 Any person who unlawfully and intentionally discharges a
5 firearm at an inhabited dwelling house, occupied building, occupied motor
6 vehicle, occupied aircraft, inhabited motor home as defined in section
7 71-4603, or inhabited camper unit as defined in section 60-1801 shall be
8 guilty of a Class ID felony or a Class IDA felony, subject to section 3
9 of this act.

10 Sec. 17. Section 28-1212.04, Reissue Revised Statutes of Nebraska,
11 is amended to read:

12 28-1212.04 Any person, within the territorial boundaries of any city
13 of the first class or county containing a city of the metropolitan class
14 or primary class, who unlawfully, knowingly, and intentionally or
15 recklessly discharges a firearm, while in any motor vehicle or in the
16 proximity of any motor vehicle that such person has just exited, at or in
17 the general direction of any person, dwelling, building, structure,
18 occupied motor vehicle, occupied aircraft, inhabited motor home as
19 defined in section 71-4603, or inhabited camper unit as defined in
20 section 60-1801, is guilty of a Class IC felony or a Class ICA felony,
21 subject to section 3 of this act.

22 Sec. 18. Section 28-1463.04, Reissue Revised Statutes of Nebraska,
23 is amended to read:

24 28-1463.04 (1) Any person who is under nineteen years of age at the
25 time he or she violates section 28-1463.03 shall be guilty of a Class III
26 felony for each offense.

27 (2) Any person who is nineteen years of age or older at the time he
28 or she violates section 28-1463.03 shall be guilty of a Class ID felony
29 or a Class IDA felony for each offense, subject to section 3 of this act.

30 (3) Any person who violates section 28-1463.03 and has previously
31 been convicted of a violation of section 28-1463.03 or section 28-308,

1 28-309, 28-310, 28-311, 28-313, 28-314, 28-315, 28-319, 28-319.01,
2 28-320.01, 28-813, 28-833, or 28-1463.05 or subsection (1) or (2) of
3 section 28-320 shall be guilty of a Class IC felony or a Class ICA felony
4 for each offense, subject to section 3 of this act.

5 Sec. 19. Section 28-1463.05, Revised Statutes Supplement, 2019, is
6 amended to read:

7 28-1463.05 (1) It shall be unlawful for a person to knowingly
8 possess with intent to rent, sell, deliver, distribute, trade, or provide
9 to any person any visual depiction of sexually explicit conduct which has
10 a child other than the defendant as one of its participants or portrayed
11 observers.

12 (2)(a) Any person who is under nineteen years of age at the time he
13 or she violates this section shall be guilty of a Class IIIA felony for
14 each offense.

15 (b) Any person who is nineteen years of age or older at the time he
16 or she violates this section shall be guilty of a Class IIA felony for
17 each offense.

18 (c) Any person who violates this section and has previously been
19 convicted of a violation of this section or section 28-308, 28-309,
20 28-310, 28-311, 28-313, 28-314, 28-315, 28-319, 28-319.01, 28-320.01,
21 28-813, 28-833, or 28-1463.03 or subsection (1) or (2) of section 28-320
22 shall be guilty of a Class IC felony or a Class ICA felony for each
23 offense, subject to section 3 of this act.

24 Sec. 20. Section 29-1816, Revised Statutes Cumulative Supplement,
25 2018, is amended to read:

26 29-1816 (1)(a) The accused may be arraigned in county court or
27 district court:

28 (i) If the accused was eighteen years of age or older when the
29 alleged offense was committed;

30 (ii) If the accused was younger than eighteen years of age and was
31 fourteen years of age or older when an alleged offense punishable as a

1 Class I, IA, IB, IC, ICA, ID, IDA, II, or IIA felony was committed;

2 (iii) If the alleged offense is a traffic offense as defined in
3 section 43-245; or

4 (iv) Until January 1, 2017, if the accused was seventeen years of
5 age when an alleged offense described in subdivision (1) of section
6 43-247 was committed.

7 (b) Arraignment in county court or district court shall be by
8 reading to the accused the complaint or information, unless the reading
9 is waived by the accused when the nature of the charge is made known to
10 him or her. The accused shall then be asked whether he or she is guilty
11 or not guilty of the offense charged. If the accused appears in person
12 and by counsel and goes to trial before a jury regularly impaneled and
13 sworn, he or she shall be deemed to have waived arraignment and a plea of
14 not guilty shall be deemed to have been made.

15 (2) At the time of the arraignment, the county court or district
16 court shall advise the accused, if the accused was younger than eighteen
17 years of age at the time the alleged offense was committed, that the
18 accused may move the county court or district court at any time not later
19 than thirty days after arraignment, unless otherwise permitted by the
20 court for good cause shown, to waive jurisdiction in such case to the
21 juvenile court for further proceedings under the Nebraska Juvenile Code.
22 This subsection does not apply if the case was transferred to county
23 court or district court from juvenile court.

24 (3) For motions to transfer a case from the county court or district
25 court to juvenile court:

26 (a) The county court or district court shall schedule a hearing on
27 such motion within fifteen days. The customary rules of evidence shall
28 not be followed at such hearing. The accused shall be represented by an
29 attorney. The criteria set forth in section 43-276 shall be considered at
30 such hearing. After considering all the evidence and reasons presented by
31 both parties, the case shall be transferred to juvenile court unless a

1 sound basis exists for retaining the case in county court or district
2 court; and

3 (b) The county court or district court shall set forth findings for
4 the reason for its decision. If the county court or district court
5 determines that the accused should be transferred to the juvenile court,
6 the complete file in the county court or district court shall be
7 transferred to the juvenile court and the complaint, indictment, or
8 information may be used in place of a petition therein. The county court
9 or district court making a transfer shall order the accused to be taken
10 forthwith to the juvenile court and designate where the juvenile shall be
11 kept pending determination by the juvenile court. The juvenile court
12 shall then proceed as provided in the Nebraska Juvenile Code.

13 (c) An order granting or denying transfer of the case from county or
14 district court to juvenile court shall be considered a final order for
15 the purposes of appeal. Upon entry of an order, any party may appeal to
16 the Court of Appeals within ten days. Such review shall be advanced on
17 the court docket without an extension of time granted to any party except
18 upon a showing of exceptional cause. Appeals shall be submitted,
19 assigned, and scheduled for oral argument as soon as the appellee's brief
20 is due to be filed. The Court of Appeals shall conduct its review in an
21 expedited manner and shall render the judgment and opinion, if any, as
22 speedily as possible. During the pendency of an appeal from an order
23 transferring the case to juvenile court, the juvenile court may enter
24 temporary orders in the best interests of the juvenile.

25 (4) When the accused was younger than eighteen years of age when an
26 alleged offense was committed, the county attorney or city attorney shall
27 proceed under section 43-274.

28 Sec. 21. Section 29-2204.02, Reissue Revised Statutes of Nebraska,
29 is amended to read:

30 29-2204.02 (1) Except when a term of probation is required by law as
31 provided in subsection (2) of this section or except as otherwise

1 provided in subsection (4) of this section, in imposing a sentence upon
2 an offender for a Class III, IIIA, or IV felony, the court shall:

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

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

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

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

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

14 (c) There are substantial and compelling reasons why the defendant
15 cannot effectively and safely be supervised in the community, including,
16 but not limited to, the criteria in subsections (2) and (3) of section
17 29-2260. Unless other reasons are found to be present, that the offender
18 has not previously succeeded on probation is not, standing alone, a
19 substantial and compelling reason.

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

24 (4) For any sentence of imprisonment for a Class III, IIIA, or IV
25 felony for an offense committed on or after August 30, 2015, imposed
26 consecutively or concurrently with (a) a sentence for a Class III, IIIA,
27 or IV felony for an offense committed prior to August 30, 2015, or (b) a
28 sentence of imprisonment for a Class I, IA, IB, IC, ICA, ID, IDA, II, or
29 IIA felony, the court shall impose an indeterminate sentence within the
30 applicable range in section 28-105 that does not include a period of
31 post-release supervision, in accordance with the process set forth in

1 section 29-2204.

2 (5) For any sentence of imprisonment for a misdemeanor imposed
3 consecutively or concurrently with a sentence of imprisonment for a Class
4 III, IIIA, or IV felony for an offense committed on or after August 30,
5 2015, the court shall impose a determinate sentence within the applicable
6 range in section 28-106 unless the person is also committed to the
7 Department of Correctional Services in accordance with section 29-2204
8 for (a) a sentence of imprisonment for a Class III, IIIA, or IV felony
9 committed prior to August 30, 2015, or (b) a sentence of imprisonment for
10 a Class I, IA, IB, IC, ICA, ID, IDA, II, or IIA felony.

11 (6) If the defendant was under eighteen years of age at the time he
12 or she committed the crime for which he or she was convicted, the court
13 may, in its discretion, instead of imposing the penalty provided for the
14 crime, make such disposition of the defendant as the court deems proper
15 under the Nebraska Juvenile Code.

16 (7)(a) When imposing a determinate sentence upon an offender under
17 this section, the court shall:

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

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

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

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

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

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

9 Sec. 22. Section 83-1,122.01, Revised Statutes Cumulative
10 Supplement, 2018, is amended to read:

11 83-1,122.01 (1) Except as provided in subsection (3) of this
12 section, the board does not have jurisdiction over a person who is
13 committed to the department in accordance with section 29-2204.02 for a
14 Class III, IIIA, or IV felony committed on or after August 30, 2015,
15 unless the person is also committed to the department in accordance with
16 section 29-2204 for (a) a sentence of imprisonment for a Class III, IIIA,
17 or IV felony committed prior to August 30, 2015, or (b) a sentence of
18 imprisonment for a Class I, IA, IB, IC, ICA, ID, IDA, II, or IIA felony.

19 (2) Except as provided in subsection (3) of this section, the board
20 does not have jurisdiction over a person committed to the department for
21 a misdemeanor sentence imposed consecutively or concurrently with a Class
22 III, IIIA, or IV felony sentence for an offense committed on or after
23 August 30, 2015, unless the person is also committed to the department in
24 accordance with section 29-2204 for (a) a sentence of imprisonment for a
25 Class III, IIIA, or IV felony committed prior to August 30, 2015, or (b)
26 a sentence of imprisonment for a Class I, IA, IB, IC, ICA, ID, IDA, II,
27 or IIA felony.

28 (3) This section does not apply to medical parole under section
29 83-1,110.02.

30 Sec. 23. Original sections 28-111, 28-204, 28-320.01, 28-320.02,
31 28-929, 28-1205, 28-1212.02, 28-1212.04, 28-1463.04, and 29-2204.02,

1 Reissue Revised Statutes of Nebraska, sections 28-201, 28-202, 28-416,
2 29-1816, and 83-1,122.01, Revised Statutes Cumulative Supplement, 2018,
3 and sections 28-101, 28-105, 28-115, 28-813.01, 28-1206, and 28-1463.05,
4 Revised Statutes Supplement, 2019, are repealed.