

LEGISLATIVE BILL 528

Approved by the Governor April 17, 1986

Introduced by Judiciary Committee, Hoagland, 6,
Chairperson; Abboud, 12; Chizek, 31;
Remmers, 1; Rupp, 22; Conway, 17

AN ACT relating to violations; to amend sections 29-2262, 29-2412, 48-115, 48-126.01, and 79-211, Reissue Revised Statutes of Nebraska, 1943; to define terms; to provide for community service as a sentencing alternative; to provide the length of community service required; to authorize an additional condition for probation; to change provisions relating to nonpayment of fines; to provide for workers' compensation benefits in certain situations; to change provisions relating to the reporting of nonattendance at school; and to repeal the original sections.

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

Section 1. As used in sections 1 to 3 of this act, unless the context otherwise requires:

(1) Agency shall mean any public or governmental unit, institution, division, or agency or any private nonprofit organization which provides services intended to enhance the social welfare or general well-being of the community, which agrees to accept community service from offenders and to supervise and report the progress of such community service to the court or its representative; and

(2) Community service shall mean uncompensated labor for an agency to be performed by an offender when the offender is not working or attending school.

Sec. 2. An offender may be sentenced to community service (1) as an alternative to a fine, incarceration, or supervised probation, or in lieu of incarceration if he or she fails to pay a fine as ordered, except when the violation of a misdemeanor or felony requires mandatory incarceration or imposition of a fine, (2) as a condition of probation, or (3) in addition to any other sanction. The court shall establish the terms and conditions of community service including, but not limited to, a reasonable time limit for completion. If an offender fails to perform community service as ordered by the court, he or she may

be arrested and after a hearing may be resentenced on the original charge, have probation revoked, or be found in contempt of court. No person convicted of an offense involving serious bodily injury or sexual assault shall be eligible for community service.

Sec. 3. The length of a community service sentence shall be as follows:

(1) For a Class IV or Class V misdemeanor, not less than four nor more than eighty hours;

(2) For a Class III or Class IIIA misdemeanor, not less than eight nor more than one hundred fifty hours;

(3) For a Class I or Class II misdemeanor, not less than twenty nor more than four hundred hours;

(4) For a Class IV felony, not less than two hundred nor more than three thousand hours; and

(5) For a Class III felony, not less than four hundred nor more than six thousand hours.

Sec. 4. That section 29-2262, Reissue Revised Statutes of Nebraska, 1943, 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 that 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 make restitution of the fruits of his or her crime or to make such reparation as the court determines to be appropriate for the loss or damage caused thereby;

(k) 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;

(l) To report as directed to the court or a probation officer and to permit the officer to visit his or her home;

(m) To pay a fine in one or more payments, as ordered;

(n) 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;

(o) 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; ~~or~~

(p) To perform community service as defined in section 1 of this act; or

~~(p)~~ (q) 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 ~~sections 42-901 to 42-927~~ the Protection from Domestic Abuse Act.

Sec. 5. That section 29-2412, Reissue Revised Statutes of Nebraska, 1943, be amended to read as follows:

29-2412. Whenever it shall be made satisfactorily to appear to the district court, or to the county judge of the proper county, after all legal means have been exhausted, that any person who is subject to being or is confined in jail for any fine or costs of prosecution for any criminal offense has no estate ~~wherewith~~ with which to pay such fine and costs, or costs only, it shall be the duty of such court or judge, on his or her own motion or upon the motion of the person so confined, to discharge such person from further imprisonment, for such fine and costs, which discharge shall operate as a complete release of such

fine and costs. ~~Nothing in this section~~ ~~PROVIDED,~~ ~~nothing herein~~ shall authorize any person to be discharged from imprisonment before the expiration of the time for which he or she may be sentenced to be imprisoned, as part of his or her punishment, or when such person shall default on a payment due pursuant to an installment agreement arranged by the court. Any person held in custody for nonpayment of a fine or for default on an installment shall be entitled to a credit on the fine or installment of ~~twenty-five~~ forty dollars for each day so held. In no case shall a person held in custody for nonpayment of a fine be held in such custody for more days than the maximum number to which he or she could have been sentenced if the penalty set by law includes the possibility of confinement.

Sec. 6. That section 48-115, Reissue Revised Statutes of Nebraska, 1943, be amended to read as follows:

48-115. The terms employee and ~~workman~~ worker are used interchangeably and have the same meaning throughout ~~Chapter 48, article 1~~ the Nebraska Workers' Compensation Act. Such terms include the plural and all ages and both sexes and shall be construed to mean:

(1) Every person in the service of the state or of any governmental agency created by it, including the Nebraska National Guard and members of the military forces of the State of Nebraska, under any appointment or contract of hire, expressed or implied, oral or written. ~~For~~ ~~PROVIDED,~~ that (a) ~~for~~ the purposes of ~~Chapter 48, article 1~~ the Nebraska Workers' Compensation Act, (a) volunteer firefighters of any fire department of any rural or suburban fire protection district, city, or village, which fire department is regularly organized under the laws of the State of Nebraska, shall be deemed employees of such rural or suburban fire protection district, city, or village while in the performance of their duties as members of such department and shall be considered as having entered and as acting in the regular course of their employment when traveling from any place from which they have been called to active duty to a fire station or other place where firefighting equipment that their company or unit is to use is located or to any emergency that the volunteer firefighters may be officially called to participate in, (b) members of such volunteer fire department, before they are entitled to benefits under ~~Chapter 48, article 1~~ the Nebraska Workers' Compensation Act, shall be recommended by the chief of the fire department for membership therein to the board of directors, the mayor

and city commission, the mayor and council, or the chairperson and board of trustees, as the case may be, and upon confirmation shall be deemed employees of the rural or suburban fire protection district, city, or village. 7 (c) members of such fire department after confirmation to membership may be removed by a majority vote of such board of directors, commission, council, or board and thereafter shall not be considered employees of such rural or suburban fire protection district, city, or village. 7 (d) firefighters of any fire department of any rural or suburban fire protection district, city, or village shall be considered as acting in the performance and within the scope of their duties in fighting fire or saving property or life outside of the corporate limits of their respective districts, cities, or villages, but only if directed to do so by the chief of the fire department or some person authorized to act for such chief. 7 (e) any members of the state Civil Defense Agency, any local organization for civil defense, or any civil defense mobile support unit, which state Civil Defense Agency, local organization for civil defense, or civil defense mobile support unit is regularly organized under the laws of the State of Nebraska, shall be deemed employees of such state Civil Defense Agency, local organization for civil defense, or civil defense mobile support unit while in the performance of their duties as members of such state Civil Defense Agency, local organization, or mobile support unit. 7 (f) any person fulfilling conditions of probation, or community service as defined in section 1 of this act, pursuant to any order of any court of this state who shall be working for a governmental body, or agency as defined in section 1 of this act, pursuant to any condition of probation, or community service as defined in section 1 of this act, shall be deemed an employee of such the governmental body or agency for the purposes of Chapter 48, article 1 the Nebraska Workers' Compensation Act. 7 (g) volunteer ambulance drivers and attendants who provide ambulance service for any county, city, or village or any combination of such county, city, or village under the authority of section 23-378 shall be deemed employees of the county, city, or village or combination thereof while in the performance of their duties as such ambulance drivers or attendants and shall be considered as having entered into and as acting in the regular course of their employment when traveling from any place from which they have been called to active duty to a hospital or other place where the ambulance they are to use is located or to any

emergency in which the volunteer drivers or attendants may be officially called to participate, but such volunteer ambulance drivers or attendants shall be considered as acting in the performance and within the scope of their duties outside of the corporate limits of their respective county, city, or village only if officially directed to do so, and (h) before such volunteer ambulance drivers or attendants shall be entitled to benefits under Chapter 48, article 17 the Nebraska Workers' Compensation Act, they shall be confirmed to perform such duties by the county board or the governing body of the city or village or combination thereof, as the case may be, and upon such confirmation shall be deemed employees of the county, city, or village or combination thereof and may be removed by majority vote of such county board or governing body of the city or village, and (i) members of a law enforcement reserve force appointed in accordance with section 81-1438 shall be deemed employees of the county or city for which they were appointed; and

(2) Every person in the service of an employer who is engaged in any trade, occupation, business, or profession as described in section 48-106 under any contract of hire, expressed or implied, oral or written, including aliens and also including minors, who for the purpose of making election of remedies under Chapter 48, article 17 the Nebraska Workers' Compensation Act shall have the same power of contracting and electing as adult employees.

As used in subdivisions (1) and (2) of this section, the terms employee and worker and workman shall not be construed to include any person whose employment is not in the usual course of the trade, business, profession, or occupation of his or her employer.

If an employee subject to Chapter 48, article 17 the Nebraska Workers' Compensation Act suffers an injury on account of which he or she or, in the event of his or her death, his or her dependents would otherwise have been entitled to the benefits provided by Chapter 48, article 17 such act, the employee or, in the event of his or her death, his or her dependents shall be entitled to the benefits provided under Chapter 48, article 17 such act, if the injury or injury resulting in death occurred within this state, or if at the time of such injury (a) the employment was principally localized within this state, (b) the employer was performing work within this state, or (c) the contract of hire was made within this state.

(3) Every executive officer of a corporation

elected or appointed under the provisions or authority of the charter, articles of incorporation, or bylaws of such corporation shall be an employee of such corporation under the provisions of Chapter 48, article 1 Nebraska Workers' Compensation Act, except that an executive officer of a Nebraska corporation who owns twenty-five per cent or more of the common stock of such corporation may waive his or her right to coverage. Such waiver shall be in writing and filed with the secretary of the corporation and the Nebraska Workmen's Workers' Compensation Court. Such waiver, as prescribed by the Nebraska Workmen's Compensation Court compensation court, shall include a statement in substantially the following form: Notice. I am aware that health and accident insurance policies frequently exclude coverage for personal injuries caused by accident or occupational disease arising out of and in the course of employment. Before waiving my rights to coverage under workmen's compensation law the Nebraska Workers' Compensation Act, I certify that I have carefully examined the terms of my health and accident coverage. Such waiver shall become effective from the date of receipt by the compensation court and shall remain in effect until the waiver is terminated by the officer in writing and filed with the secretary of the corporation and the Nebraska Workmen's Compensation Court compensation court. The termination of the corporate executive officer's waiver shall be effective upon receipt of the termination by the compensation court. It shall not be permissible to terminate a waiver prior to one year after the waiver has become effective.

(4) Each individual employer, partner, or self-employed person who is actually engaged in the individual employer's, partnership's, or self-employed person's business on a substantially full-time basis may elect to bring himself or herself within the provisions of Chapter 48, article 1 the Nebraska Workers' Compensation Act, if he or she (a) files with his or her current workmen's workers' compensation insurer written notice of election to have the same rights as an employee only for purposes of workmen's workers' compensation insurance coverage acquired by and for such individual employer, partner, or self-employed person or (b) gives notice of such election and such insurer collects a premium for such coverage acquired by and for such individual employer, partner, or self-employed person. This election shall be effective from the date of receipt by the insurer for the current policy and

subsequent policies issued by such insurer until such time as such employer, partner, or self-employed person files a written statement withdrawing such election with the current workmen's workers' compensation insurer or until such coverage by such insurer is terminated, whichever occurs first. When so included, the individual employer, partner, or self-employed person shall have the same rights as an employee only with respect to the benefits provided under Chapter 48, article 1 the Nebraska Workers' Compensation Act. If any individual employer, partner, or self-employed person who is actually engaged in the individual employer's, partnership's, or self-employed person's business on a substantially full-time basis has not elected to bring himself or herself within the provisions of Chapter 48, article 1, the Nebraska Workers' Compensation Act pursuant to this subdivision and any health, accident, or other insurance policy issued to or renewed by such person after July 10, 1984, contains an exclusion of coverage, if the insured is otherwise entitled to workmen's workers' compensation coverage, such exclusion shall be null and void as to such person.

Sec. 7. That section 48-126.01, Reissue Revised Statutes of Nebraska, 1943, be amended to read as follows:

48-126.01. In determining the compensation to be paid any member of the military forces of this state, any member of a law enforcement reserve force, or any member of a volunteer fire department in any rural or suburban fire protection district, city, or village, or any member of the state Civil Defense Agency, any local organization for civil defense or civil defense mobile support unit, or member of a volunteer ambulance unit, which military forces, law enforcement reserve force, fire department, state Civil Defense Agency, local organization for civil defense or civil defense mobile support unit, or volunteer ambulance unit is regularly organized under the laws of the State of Nebraska, or any person fulfilling conditions of probation, or community service as defined in section 1 of this act, pursuant to any order of any court of this state who shall be working for a governmental body, or agency as defined in section 1 of this act, pursuant to any condition of probation, or community service as defined in section 1 of this act, for injuries resulting in disability or death received in the performance of his or her duties as a member of such military forces, reserve force, department, agency, organization, or

unit, or pursuant to an order of any court, the wages of such a member or person shall be taken to be those received by him or her from his or her regular employer, and he or she shall receive such proportion thereof as he or she is entitled to under the provisions of section 48-121; PROVIDED, if such member or person is not regularly employed by some other person, for the purpose of such determination, it shall be deemed and assumed that he or she is receiving income from his or her business or from other employment equivalent to wages in an amount one and one half times the maximum compensation rate for total disability. If the wages received for the performance of duties as a member of such military forces, reserve force, department, agency, organization, or unit exceed the wages received from a regular employer, such member shall be entitled to a rate of compensation based upon wages received as a member of such military forces, reserve force, department, agency, organization, or unit.

Sec. 8. That section 79-211, Reissue Revised Statutes of Nebraska, 1943, be amended to read as follows:

79-211. In all school districts in this state any superintendent, principal, teacher, or member of the board of education who shall know of any violation of section 79-201 on the part of any child ~~or children~~ of school age, ~~their~~ his or her parents, the ~~persons~~ person in actual or legal control of such child, ~~or children~~, or any other person, shall within three days report such violation to the city superintendent of schools in districts having an attendance officer and in other districts to the county superintendent of schools. The city or county superintendent of schools shall immediately cause an investigation of the case to be made by the attendance officers. When of his or her personal knowledge, by report or complaint from any resident of the district, or by report or complaint, as provided herein, the attendance officer believes that any child is unlawfully absent from school, he or she shall immediately investigate and render all service in his or her power to compel such child to attend some public, private, denominational, or parochial school which the person having control of the child shall designate. Upon failure to do so, he or she shall serve a written notice to the person ~~or persons~~ violating section 79-201 warning him or ~~them~~ her to comply with its provisions. If in one week from the time such ~~notices are~~ notice is given such person ~~or persons~~ are is still violating ~~said~~ the section, then such

attendance officers shall file a report with the county attorney of the county in which such person resides who may file a complaint against such person or persons before the judge of the juvenile county court of the county in which such person resides charging such person with violation of ~~the provisions of~~ section 79-201. If after such notice shall have been sent to any person ~~or persons~~ violating section 79-201 such person ~~or persons~~ may again violate the same section, no written notice shall be required, but a complaint may be filed at once.

Sec. 9. That original sections 29-2262, 29-2412, 48-115, 48-126.01, and 79-211, Reissue Revised Statutes of Nebraska, 1943, are repealed.