

LEGISLATURE OF NEBRASKA  
ONE HUNDRED FIFTH LEGISLATURE  
FIRST SESSION

**LEGISLATIVE BILL 487**

Introduced by Morfeld, 46.

Read first time January 17, 2017

Committee:

1 A BILL FOR AN ACT relating to the Uniform Controlled Substances Act; to  
2 amend sections 28-101, 28-401.01, 28-416, 28-441, and 28-470,  
3 Reissue Revised Statutes of Nebraska; to provide an exception from  
4 criminal liability for certain violations relating to or committed  
5 by persons experiencing or witnessing a controlled substance  
6 overdose; to provide protection from civil liability for emergency  
7 responders and peace officers administering naloxone as prescribed;  
8 to harmonize provisions; and to repeal the original sections.  
9 Be it enacted by the people of the State of Nebraska,

1 Section 1. Section 28-101, Reissue Revised Statutes of Nebraska, is  
2 amended to read:

3 28-101 Sections 28-101 to 28-1357, ~~28-1418.01, 28-1429.03,~~ and  
4 28-1601 to 28-1603 and section 5 of this act shall be known and may be  
5 cited as the Nebraska Criminal Code.

6 Sec. 2. Section 28-401.01, Reissue Revised Statutes of Nebraska, is  
7 amended to read:

8 28-401.01 Sections 28-401 to 28-456.01, ~~and 28-458 to 28-471,~~ and  
9 section 5 of this act shall be known and may be cited as the Uniform  
10 Controlled Substances Act.

11 Sec. 3. Section 28-416, Reissue Revised Statutes of Nebraska, is  
12 amended to read:

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

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

28 (3) A person knowingly or intentionally possessing a controlled  
29 substance, except marijuana or any substance containing a quantifiable  
30 amount of the substances, chemicals, or compounds described, defined, or  
31 delineated in subdivision (c)(25) of Schedule I of section 28-405, unless

1 such substance was obtained directly or pursuant to a medical order  
2 issued by a practitioner authorized to prescribe while acting in the  
3 course of his or her professional practice, or except as otherwise  
4 authorized by the act, shall be guilty of a Class IV felony. A person  
5 shall not be in violation of this subsection if section 5 of this act  
6 applies.

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

25 (b) For purposes of this subsection:

26 (i) Playground means ~~shall mean~~ any outdoor facility, including any  
27 parking lot appurtenant to the facility, intended for recreation, open to  
28 the public, and with any portion containing three or more apparatus  
29 intended for the recreation of children, including sliding boards,  
30 swingsets, and teeterboards;

31 (ii) Video arcade facility means ~~shall mean~~ any facility legally

1 accessible to persons under eighteen years of age, intended primarily for  
2 the use of pinball and video machines for amusement, and containing a  
3 minimum of ten pinball or video machines; and

4 (iii) Youth center means ~~shall mean~~ any recreational facility or  
5 gymnasium, including any parking lot appurtenant to the facility or  
6 gymnasium, intended primarily for use by persons under eighteen years of  
7 age which regularly provides athletic, civic, or cultural activities.

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

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

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

31 (6) It shall not be a defense to prosecution for violation of

1 subsection (4) or (5) of this section that the defendant did not know the  
2 age of the person through whom the defendant violated such subsection.

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

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

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

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

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

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

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

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

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

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

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

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

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

1 isomers, or with respect to methamphetamine, its salts, optical isomers,  
2 and salts of its isomers, in a quantity of:

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

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

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

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

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

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

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

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

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

29 (14) Any person convicted of violating this section, if placed on  
30 probation, shall, as a condition of probation, satisfactorily attend and  
31 complete appropriate treatment and counseling on drug abuse provided by a

1 program authorized under the Nebraska Behavioral Health Services Act or  
2 other licensed drug treatment facility.

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

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

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

15 (18) In addition to the existing penalties available for a violation  
16 of subsection (1) of this section, including any criminal attempt or  
17 conspiracy to violate subsection (1) of this section, a sentencing court  
18 may order that any money, securities, negotiable instruments, firearms,  
19 conveyances, or electronic communication devices as defined in section  
20 28-833 or any equipment, components, peripherals, software, hardware, or  
21 accessories related to electronic communication devices be forfeited as a  
22 part of the sentence imposed if it finds by clear and convincing evidence  
23 adduced at a separate hearing in the same prosecution, following  
24 conviction for a violation of subsection (1) of this section, and  
25 conducted pursuant to section 28-1601, that any or all such property was  
26 derived from, used, or intended to be used to facilitate a violation of  
27 subsection (1) of this section.

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

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

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

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

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

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

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

24 (ii) For a second offense, the court may, as part of the judgment of  
25 conviction or adjudication, (A) prohibit such person from obtaining any  
26 permit or any license pursuant to the act for which such person would  
27 otherwise be eligible until ninety days after the date of such order and  
28 (B) require such person to complete no fewer than twenty hours and no  
29 more than forty hours of community service and to attend a drug education  
30 class; and

31 (iii) For a third or subsequent offense, the court may, as part of



1 the judgment of conviction or adjudication, (A) prohibit such person from  
2 obtaining any permit or any license pursuant to the act for which such  
3 person would otherwise be eligible until twelve months after the date of  
4 such order and (B) require such person to complete no fewer than sixty  
5 hours of community service, to attend a drug education class, and to  
6 submit to a drug assessment by a licensed alcohol and drug counselor.

7 A copy of an abstract of the court's conviction or adjudication  
8 shall be transmitted to the Director of Motor Vehicles pursuant to  
9 sections 60-497.01 to 60-497.04 if a license or permit is impounded or a  
10 juvenile is prohibited from obtaining a license or permit under this  
11 subsection.

12 Sec. 4. Section 28-441, Reissue Revised Statutes of Nebraska, is  
13 amended to read:

14 28-441 (1) It shall be unlawful for any person to use, or to possess  
15 with intent to use, drug paraphernalia to manufacture, inject, ingest,  
16 inhale, or otherwise introduce into the human body a controlled substance  
17 in violation of sections 28-101, 28-431, and 28-439 to 28-444.

18 (2) Any person who violates this section shall be guilty of an  
19 infraction.

20 (3) A person shall not be in violation of this section if section 5  
21 of this act applies.

22 Sec. 5. (1) A person shall not be in violation of section 28-441 or  
23 subsection (3) of section 28-416 if:

24 (a) Such person made a good faith request for emergency medical  
25 assistance in response to a drug overdose of himself, herself, or  
26 another;

27 (b) Such person was the first person to make a request for medical  
28 assistance as soon as the drug overdose was apparent;

29 (c) The evidence for the violation of section 28-441 or subsection  
30 (3) of section 28-416 was obtained as a result of the drug overdose and  
31 the request for medical assistance; and

1       (d) When emergency medical assistance was requested for the drug  
2 overdose of another person:

3       (i) Such requesting person remained on the scene until medical  
4 assistance or law enforcement personnel arrived; and

5       (ii) Such requesting person cooperated with medical assistance and  
6 law enforcement personnel.

7       (2) A person shall not be in violation of section 28-441 or  
8 subsection (3) of section 28-416 if such person was experiencing a drug  
9 overdose and the evidence for such violation was obtained as a result of  
10 the drug overdose and a request for medical assistance by another person  
11 made in compliance with subsection (1) of this section.

12       (3) A person shall not initiate or maintain an action against a  
13 peace officer or the state agency or political subdivision employing such  
14 officer based on the officer's compliance with subsection (1) or (2) of  
15 this section.

16       (4) Nothing in this section shall be interpreted to interfere with  
17 or prohibit the investigation, arrest, or prosecution of any person for,  
18 or affect the admissibility or use of evidence in cases involving:

19       (a) Drug-induced homicide;

20       (b) Except as provided in subsections (1) and (2) of this section,  
21 violations of section 28-441 or subsection (3) of section 28-416; or

22       (c) Any other criminal offense.

23       (5) As used in this section, drug overdose means an acute condition  
24 including, but not limited to, physical illness, coma, mania, hysteria,  
25 or death resulting from the consumption or use of a controlled substance  
26 or the consumption or use of another substance with which a controlled  
27 substance was combined and which condition a layperson would reasonably  
28 believe requires emergency medical assistance.

29       Sec. 6. Section 28-470, Reissue Revised Statutes of Nebraska, is  
30 amended to read:

31       28-470 (1) A health professional who is authorized to prescribe or

1 dispense naloxone, if acting with reasonable care, may prescribe,  
2 administer, or dispense naloxone to any of the following persons without  
3 being subject to administrative action or criminal prosecution:

4 (a) A person who is apparently experiencing or who is likely to  
5 experience an opioid-related overdose; or

6 (b) A family member, friend, or other person in a position to assist  
7 a person who is apparently experiencing or who is likely to experience an  
8 opioid-related overdose.

9 (2) A family member, friend, or other person who is in a position to  
10 assist a person who is apparently experiencing or who is likely to  
11 experience an opioid-related overdose, other than an emergency responder  
12 or peace officer, is not subject to actions under the Uniform  
13 Credentialing Act, administrative action, or criminal prosecution if the  
14 person, acting in good faith, obtains naloxone from a health professional  
15 or a prescription for naloxone from a health professional and administers  
16 the naloxone obtained from the health professional or acquired pursuant  
17 to the prescription to a person who is apparently experiencing an opioid-  
18 related overdose.

19 (3) An emergency responder ~~who is not subject to administrative~~  
20 ~~action or criminal prosecution if the emergency responder,~~ acting in good  
21 faith, obtains naloxone from the emergency responder's emergency medical  
22 service organization and administers the naloxone to a person who is  
23 apparently experiencing an opioid-related overdose shall not be: -

24 (a) Subject to administrative action or criminal prosecution; or

25 (b)  LIABLE in any civil action to respond in damages as a result of  
26  his or her acts of commission or omission arising out of and in the  
27  course of his or her rendering such care or services or arising out of  
28  his or her failure to act to provide or arrange for further medical  
29  treatment or care for the person who is apparently experiencing an  
30  opioid-related overdose, unless the emergency responder caused damage or  
31  injury by his or her willful, wanton, or grossly negligent act of

1 commission or omission.

2 (4) A peace officer ~~who is not subject to administrative action or~~  
3 ~~criminal prosecution if the peace officer,~~ acting in good faith, obtains  
4 naloxone from the peace officer's law enforcement agency and administers  
5 the naloxone to a person who is apparently experiencing an opioid-related  
6 overdose shall not be: -

7 (a) Subject to administrative action or criminal prosecution; or

8 (b)  LIABLE in any civil action to respond in damages as a result of  
9 his or her acts of commission or omission arising out of and in the  
10 course of his or her rendering such care or services or arising out of  
11 his or her failure to act to provide or arrange for further medical  
12 treatment or care for the person who is apparently experiencing an  
13 opioid-related overdose, unless the peace officer caused damage or injury  
14 by his or her willful, wanton, or grossly negligent act of commission or  
15 omission.

16 (5) For purposes of this section:

17 (a) Administer has the same meaning as in section 38-2806;

18 (b) Dispense has the same meaning as in section 38-2817;

19 (c) Emergency responder means an emergency medical first responder,  
20 an emergency medical technician, an advanced emergency medical technician  
21 technician-intermediate, or a paramedic emergency medical technician-  
22 paramedic licensed under the Emergency Medical Services Practice Act;

23 (d) Health professional means a physician, physician assistant,  
24 nurse practitioner, or pharmacist licensed under the Uniform  
25 Credentialing Act;

26 (e) Law enforcement agency means a police department, a town  
27 marshal, the office of sheriff, or the Nebraska State Patrol;

28 (f) Naloxone means naloxone hydrochloride; and

29 (g) Peace officer has the same meaning as in section 49-801.

30 Sec. 7. Original sections 28-101, 28-401.01, 28-416, 28-441, and  
31 28-470, Reissue Revised Statutes of Nebraska, are repealed.