

LEGISLATIVE BILL 519

Approved by the Governor April 18, 2022

Introduced by Morfeld, 46.

A BILL FOR AN ACT relating to public safety; to amend section 53-180.05, Reissue Revised Statutes of Nebraska, and sections 25-21,271, 28-101, 28-416, and 28-441, Revised Statutes Cumulative Supplement, 2020; to change provisions relating to notice for petitions to change a person's name; to provide immunity for certain alcohol and controlled substances violations by witnesses and victims of sexual assaults and persons cooperating with law enforcement; to define terms; to harmonize provisions; and to repeal the original sections.

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

Section 1. Section 25-21,271, Revised Statutes Cumulative Supplement, 2020, is amended to read:

25-21,271 (1) Any person desiring to change his or her name shall file a petition in the district court of the county in which such person may be a resident, setting forth (a) that the petitioner has been a bona fide citizen of such county for at least one year prior to the filing of the petition, (b) the address of the petitioner, (c) the date of birth of the petitioner, (d) the cause for which the change of petitioner's name is sought, and (e) the name asked for.

(2)(a) Except as provided in subdivision (2)(b) of this section, notice
~~(2) Notice~~ of the filing of the petition shall be published in a newspaper in the county, and if no newspaper is printed in the county, then in a newspaper of general circulation therein. The notice shall be published (i) (a) once a week for four consecutive weeks if the petitioner is nineteen years of age or older at the time the action is filed and (ii) (b) once a week for two consecutive weeks if the petitioner is under nineteen years of age at the time the action is filed.

(b) The court may waive the notice requirement of subdivision (2)(a) of this section upon a showing by the petitioner that such notice would endanger the petitioner.

(3) In an action involving a petitioner under nineteen years of age who has a noncustodial parent, notice of the filing of the petition shall be sent by certified mail within five days after publication to the noncustodial parent at the address provided to the clerk of the district court pursuant to subsection (1) of section 42-364.13 for the noncustodial parent if he or she has provided an address. The clerk of the district court shall provide the petitioner with the address upon request.

(4) (3) It shall be the duty of the district court, upon being duly satisfied by proof in open court of the truth of the allegations set forth in the petition, that there exists proper and reasonable cause for changing the name of the petitioner, and that notice of the filing of the petition has been given as required by this section, to order and direct a change of name of such petitioner and that an order for the purpose be entered by the court.

(5) (4) The clerk of the district court shall deliver a copy of any name-change order issued by the court pursuant to this section to the Department of Health and Human Services for use pursuant to sections 28-376 and 28-718 and to the sex offender registration and community notification division of the Nebraska State Patrol for use pursuant to section 29-4004.

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

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

Sec. 3. (1) A person shall not be arrested or prosecuted for an eligible alcohol or drug offense if such person witnessed or was the victim of a sexual assault and such person:

(a) Either:

(i) In good faith, reported such sexual assault to law enforcement; or

(ii) Requested emergency medical assistance for the victim of the sexual assault; and

(b) Evidence supporting the arrest or prosecution of the eligible alcohol or drug offense was obtained or discovered as a result of such person reporting such sexual assault to law enforcement or requesting emergency medical assistance.

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

(a) Evidence supporting the arrest or prosecution of the person for the offense was obtained or discovered as a result of the investigation or prosecution of a sexual assault; and

(b) Such person cooperates with law enforcement in the investigation or prosecution of the sexual assault.

(3) For purposes of this section:

(a) Eligible alcohol or drug offense means:

(i) A violation of subsection (3) or (13) of section 28-416 or of section

28-441;

(ii) A violation of section 53-180.02 committed by a person older than eighteen years of age and under the age of twenty-one years, as described in subdivision (4)(a) of section 53-180.05;

(iii) A violation of a city or village ordinance similar to subdivision (3)(a)(i) or (ii) of this section; or

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

(b) Sexual assault means:

(i) A violation of section 28-316.01, 28-319, 28-319.01, 28-320, 28-320.01, 28-320.02, 28-322.01, 28-322.02, 28-322.03, 28-322.04, 28-322.05, 28-703, or 28-1463.03, sex trafficking or sex trafficking of a minor under section 28-831, or subdivision (1)(c) or (g) of section 28-386 or subdivision (1)(d), (e), or (f) of section 28-707; or

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

Sec. 4. Section 28-416, Revised Statutes Cumulative Supplement, 2020, is amended to read:

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

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

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

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

(b) For purposes of this subsection:

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

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

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

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

(b) Except as authorized by the Uniform Controlled Substances Act, it shall be unlawful for any person eighteen years of age or older to knowingly

and intentionally employ, hire, use, cause, persuade, coax, induce, entice, seduce, or coerce any person under the age of eighteen years to aid and abet any person in the manufacture, transportation, distribution, carrying, delivery, dispensing, preparation for delivery, offering for delivery, or possession with intent to do the same of a controlled substance or a counterfeit controlled substance.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(13) Except as provided in section 3 of this act, any Any person knowingly or intentionally possessing marijuana weighing one ounce or less or any substance containing a quantifiable amount of the substances, chemicals, or compounds described, defined, or delineated in subdivision (c)(25) of Schedule I of section 28-405 shall:

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

Sec. 5. Section 28-441, Revised Statutes Cumulative Supplement, 2020, is amended to read:

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

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

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

Sec. 6. Section 53-180.05, Reissue Revised Statutes of Nebraska, is amended to read:

53-180.05 (1) Except as provided in subsection (2) of this section, any person who violates section 53-180 shall be guilty of a Class I misdemeanor.

(2) Any person who knowingly and intentionally violates section 53-180 shall be guilty of a Class IIIA felony and serve a mandatory minimum of at least thirty days' imprisonment as part of any sentence he or she receives if serious bodily injury or death to any person resulted and was proximately caused by a minor's (a) consumption of the alcoholic liquor provided or (b) impaired condition which, in whole or in part, can be attributed to the alcoholic liquor provided.

(3) Any person who violates any of the provisions of section 53-180.01 or 53-180.03 shall be guilty of a Class III misdemeanor.

(4)(a) Except as otherwise provided in subdivisions (b), (c), and (d) of this subsection or section 3 of this act, any person older than eighteen years of age and under the age of twenty-one years violating section 53-180.02 is guilty of a Class III misdemeanor.

(b) Subdivision (a) of this subsection shall not apply if the person:

(i) Made a good faith request for emergency medical assistance in response to the possible alcohol overdose of himself or herself or another person as soon as the emergency situation is apparent after such violation of section 53-180.02;

(ii) Made the request for medical assistance under subdivision (b)(i) of this subsection as soon as the emergency situation is apparent after such violation of section 53-180.02; and

(iii) When emergency medical assistance was requested for the possible alcohol overdose of another person:

(A) Remained on the scene until the medical assistance arrived; and

(B) Cooperated with medical assistance and law enforcement personnel.

(c) The exception from criminal liability provided in subdivision (b) of this subsection applies to any person who makes a request for emergency medical assistance and complies with the requirements of subdivision (b) of this subsection.

(d) Subdivision (a) of this subsection shall not apply to the person experiencing a possible alcohol overdose if a request for emergency medical assistance in response to such possible alcohol overdose was made by another person in compliance with subdivision (b) of this subsection.

(e) A person shall not initiate or maintain an action against a peace officer or the employing state agency or political subdivision based on the officer's compliance with subdivision (b), (c), or (d) of this subsection.

(5) Any person eighteen years of age or younger violating section 53-180.02 is guilty of a misdemeanor as provided in section 53-181 and shall be punished as provided in such section.

(6) Any person who knowingly manufactures, creates, or alters any form of identification for the purpose of sale or delivery of such form of identification to a person under the age of twenty-one years shall be guilty of a Class I misdemeanor. For purposes of this subsection, form of identification means any card, paper, or legal document that may be used to establish the age of the person named thereon for the purpose of purchasing alcoholic liquor.

(7) When a minor is arrested for a violation of sections 53-180 to 53-180.02 or subsection (6) of this section, the law enforcement agency employing the arresting peace officer shall make a reasonable attempt to notify such minor's parent or guardian of the arrest.

Sec. 7. Original section 53-180.05, Reissue Revised Statutes of Nebraska, and sections 25-21,271, 28-101, 28-416, and 28-441, Revised Statutes Cumulative Supplement, 2020, are repealed.