

LEGISLATIVE BILL 1303

Approved by the Governor April 19, 2002

Introduced by Bromm, 23

AN ACT relating to motor vehicles; to amend sections 29-3601, 29-3603, and 29-3604, Reissue Revised Statutes of Nebraska, section 29-3602, Revised Statutes Supplement, 2000, and section 60-601, Revised Statutes Supplement, 2001; to provide for a driver's safety training program as pretrial diversion; to provide duties for the Department of Motor Vehicles; to prohibit the use of nitrous oxide as prescribed; to harmonize provisions; to provide an operative date; and to repeal the original sections.

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

Section 1. Section 29-3601, Reissue Revised Statutes of Nebraska, is amended to read:

29-3601. The Legislature finds that pretrial diversion offers persons charged with criminal offenses and minor traffic violations an alternative to traditional criminal justice or juvenile justice proceedings in that: (1) It permits participation by the accused only on a voluntary basis; (2) the accused has access to counsel for criminal offenses prior to a decision to participate; (3) it occurs prior to an adjudication but after arrest and a decision has been made by the prosecutor that the offense will support criminal charges; and (4) it results in dismissal of charges, or its equivalent, if the individual successfully completes the diversion process.

Sec. 2. Section 29-3602, Revised Statutes Supplement, 2000, is amended to read:

29-3602. The county attorney of any county may establish a pretrial diversion program with the concurrence of the county board. Any city attorney may establish a pretrial diversion program with the concurrence of the governing body of the city. Such programs shall be established pursuant to section 29-3603 and sections 5 to 9 of this act.

Sec. 3. Section 29-3603, Reissue Revised Statutes of Nebraska, is amended to read:

29-3603. A pretrial diversion plan for criminal offenses shall include, but not be limited to:

(1) Formal eligibility guidelines established following consultation with criminal justice officials and program representatives. The guidelines shall be written and made available and routinely disseminated to all interested parties;

(2) A maximum time limit for any defendant's participation in a diversion program, beyond which no defendant shall be required or permitted to participate. Such maximum term shall be long enough to effect sufficient change in participants to deter them from criminal activity, but not so long as to prejudice the prosecution or defense of the case should the participant be returned to the ordinary course of prosecution;

(3) The opportunity for eligible defendants to review, with their counsel present, a copy of general diversion program requirements including average program duration and possible outcome, prior to making the decision to enter a diversion program;

(4) Dismissal of the diverted case upon completion of the program;

(5) A provision that participants shall be able to withdraw at any time before the program is completed and be remanded to the court process without prejudice to them during the ordinary course of prosecution;

(6) Enrollment shall not be conditioned on a plea of guilty; and

(7) Defendants who are denied enrollment in a diversion program shall be afforded an administrative review of the decision and written reasons for denial.

Sec. 4. Section 29-3604, Reissue Revised Statutes of Nebraska, is amended to read:

29-3604. No person charged with a violation of section 60-6,196 or 60-6,197 shall be eligible for pretrial diversion under a program established pursuant to sections 29-3601 to 29-3603 and sections 5 to 9 of this act.

Sec. 5. For purposes of sections 6 to 9 of this act:

(1) Department means the Department of Motor Vehicles; and

(2) Minor traffic violation does not include leaving the scene of an accident, sections 60-696 to 60-698, driving under the influence of alcoholic liquor or drugs, sections 60-4,164, 60-6,196, and 60-6,211.01, reckless driving or willful reckless driving, sections 60-6,213 and 60-6,214,

participating in a speed competition, section 60-6,195, operating a motor vehicle to avoid arrest, section 28-905, refusing a breath or blood test, sections 60-4,164, 60-6,197, and 60-6,211.02, driving on a suspended or revoked operator's license, sections 60-4,107 to 60-4,110, speeding twenty or more miles per hour over the speed limit, operating a motor vehicle without insurance or other financial responsibility in violation of the Motor Vehicle Safety Responsibility Act, any injury accident, or any violation which is classified as a misdemeanor or a felony.

Sec. 6. (1) A pretrial diversion plan for minor traffic violations shall consist of a driver's safety training program.

(2) A driver's safety training program shall:

(a) Provide a curriculum of driver's safety training, as approved by the department, which is designed to educate persons committing minor traffic violations and to deter future violations; and

(b) Require payment of a fee approved by the department which is reasonable and appropriate to defray the cost of the presentation of the program. A jurisdiction shall charge a uniform fee for participation in a driver's safety training program regardless of the traffic violation for which the applicant was cited. Fees received by a jurisdiction offering a driver's safety training program may be utilized by such jurisdiction to pay for the costs of administering and operating such program, to promote driver safety, and to pay for the costs of administering and operating other safety and educational programs within such jurisdiction.

(3) The program administrator of each driver's safety training program shall keep a record of attendees and shall be responsible for determining eligibility. A report of attendees at all driver's safety training programs in the state shall be shared only with similar programs throughout the state. All procedures for sharing records of attendees among such programs shall conform with the rules and regulations adopted and promulgated by the department to assure that no individual takes the approved course more than once within any three-year period in Nebraska. Such record of attendees and any related records shall not be considered a public record as defined in section 84-712.01.

(4) The department shall approve the curriculum and fees of each program and shall adopt and promulgate rules and regulations governing such programs, including guidelines for fees, curriculum, and instructor certification.

Sec. 7. Any organization or governmental entity desiring to offer a driver's safety training program shall first obtain a certificate from the department, to be renewed annually. The certificate fee and the annual renewal fee shall each be fifty dollars. The fee collected by the department from the organization or governmental entity shall be remitted to the State Treasurer for credit to the Department of Motor Vehicles Cash Fund.

Sec. 8. Any driver holding a commercial driver's license issued pursuant to sections 60-4,138 to 60-4,172 shall not be eligible to participate in a program under sections 5 to 9 of this act if such participation would be in noncompliance with federal law or regulation and subject the state to possible loss of federal funds.

Sec. 9. Sections 5 to 9 of this act shall not apply to programs of pretrial diversion for offenses other than minor traffic violations.

Sec. 10. Section 60-601, Revised Statutes Supplement, 2001, is amended to read:

60-601. Sections 60-601 to 60-6,374 and section 11 of this act shall be known and may be cited as the Nebraska Rules of the Road.

Sec. 11. It is unlawful to use nitrous oxide in any motor vehicle operated on any highway in this state.

Sec. 12. This act becomes operative on January 1, 2003.

Sec. 13. Original sections 29-3601, 29-3603, and 29-3604, Reissue Revised Statutes of Nebraska, section 29-3602, Revised Statutes Supplement, 2000, and section 60-601, Revised Statutes Supplement, 2001, are repealed.