

LEGISLATURE OF NEBRASKA  
ONE HUNDRED SEVENTH LEGISLATURE  
FIRST SESSION

**LEGISLATIVE BILL 32**

Introduced by Pansing Brooks, 28.

Read first time January 07, 2021

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, 28-1205, 28-1212.02,  
3 28-1212.04, 28-1463.04, and 29-2204.02, Reissue Revised Statutes of  
4 Nebraska, and sections 28-101, 28-105, 28-115, 28-201, 28-202,  
5 28-416, 28-813.01, 28-929, 28-1206, 28-1463.05, 29-1816, and  
6 83-1,122.01, Revised Statutes Cumulative Supplement, 2020; to  
7 provide for new felony classifications; to change penalties; to  
8 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, Revised Statutes Cumulative Supplement,  
2 2020, is 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 Cumulative Supplement,  
7 2020, is 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) Except as provided in subsection (2) of this section,  
21 any Any person who commits one or more of the following criminal offenses  
22 against a person or a person's property because of the person's race,  
23 color, religion, ancestry, national origin, gender, sexual orientation,  
24 age, or disability or because of the person's association with a person  
25 of a certain race, color, religion, ancestry, national origin, gender,  
26 sexual orientation, age, or disability shall be punished by the  
27 imposition of the next higher penalty classification than the penalty  
28 classification prescribed for the criminal offense, ~~unless such criminal~~  
29 ~~offense is already punishable as a Class IB felony or higher~~  
30 ~~classification~~: Manslaughter, section 28-305; assault in the first  
31 degree, section 28-308; assault in the second degree, section 28-309;

1 assault in the third degree, section 28-310; terroristic threats, section  
2 28-311.01; stalking, section 28-311.03; kidnapping, section 28-313; false  
3 imprisonment in the first degree, section 28-314; false imprisonment in  
4 the second degree, section 28-315; sexual assault in the first degree,  
5 section 28-319; sexual assault in the second or third degree, section  
6 28-320; sexual assault of a child, sections 28-319.01 and 28-320.01;  
7 arson in the first degree, section 28-502; arson in the second degree,  
8 section 28-503; arson in the third degree, section 28-504; criminal  
9 mischief, section 28-519; unauthorized application of graffiti, section  
10 28-524; criminal trespass in the first degree, section 28-520; or  
11 criminal trespass in the second degree, section 28-521.

12 (2) The enhancement in subsection (1) of this section does not apply  
13 to any criminal offense listed in subsection (1) of this section that is  
14 already punishable as a Class I, IA, or IB felony.

15 (3) If any criminal offense listed in subsection (1) of this section  
16 is punishable as a:

17 (a) Class I misdemeanor, the penalty under this section is a Class  
18 IIIA felony;

19 (b) Class ID or IDA felony, the penalty under this section is a  
20 Class IC or ICA felony, subject to section 3 of this act; and

21 (c) Class IC or ICA felony, the penalty under this section is a  
22 Class IB felony.

23 Sec. 5. Section 28-115, Revised Statutes Cumulative Supplement,  
24 2020, is amended to read:

25 28-115 (1) Except as provided in subsection (2) of this section, any  
26 person who commits any of the following criminal offenses against a  
27 pregnant woman shall be punished by the imposition of the next higher  
28 penalty classification than the penalty classification prescribed for the  
29 criminal offense:

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

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

- 1 (c) Assault in the third degree, section 28-310;
- 2 (d) Assault by strangulation or suffocation, section 28-310.01;
- 3 (e) Sexual assault in the first degree, section 28-319;
- 4 (f) Sexual assault in the second or third degree, section 28-320;
- 5 (g) Sexual assault of a child in the first degree, section
- 6 28-319.01;
- 7 (h) Sexual assault of a child in the second or third degree, section
- 8 28-320.01;
- 9 (i) Sexual abuse of an inmate or parolee in the first degree,
- 10 section 28-322.02;
- 11 (j) Sexual abuse of an inmate or parolee in the second degree,
- 12 section 28-322.03;
- 13 (k) Sexual abuse of a protected individual in the first or second
- 14 degree, section 28-322.04;
- 15 (l) Sexual abuse of a detainee under section 28-322.05;
- 16 (m) Domestic assault in the first, second, or third degree, section
- 17 28-323;
- 18 (n) Assault on an officer, an emergency responder, a state
- 19 correctional employee, a Department of Health and Human Services
- 20 employee, or a health care professional in the first degree, section
- 21 28-929;
- 22 (o) Assault on an officer, an emergency responder, a state
- 23 correctional employee, a Department of Health and Human Services
- 24 employee, or a health care professional in the second degree, section
- 25 28-930;
- 26 (p) Assault on an officer, an emergency responder, a state
- 27 correctional employee, a Department of Health and Human Services
- 28 employee, or a health care professional in the third degree, section
- 29 28-931;
- 30 (q) Assault on an officer, an emergency responder, a state
- 31 correctional employee, a Department of Health and Human Services

1 employee, or a health care professional using a motor vehicle, section  
2 28-931.01;

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

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

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

8 (2) The enhancement in subsection (1) of this section does not apply  
9 to any criminal offense listed in subsection (1) of this section that is  
10 already punishable as a Class I, IA, or IB felony.

11 (3) If any criminal offense listed in subsection (1) of this section  
12 is punishable as a:

13 (a) Class I misdemeanor, the penalty under this section is a Class  
14 IIIA felony; -

15 (b) Class ID or IDA felony, the penalty under this section is a  
16 Class IC or ICA felony, subject to section 3 of this act; and

17 (c) Class IC or ICA felony, the penalty under this section is a  
18 Class IB felony.

19 (4) ~~(3)~~ The prosecution shall allege and prove beyond a reasonable  
20 doubt that the victim was pregnant at the time of the offense.

21 Sec. 6. Section 28-201, Revised Statutes Cumulative Supplement,  
22 2020, is amended to read:

23 28-201 (1) A person shall be guilty of an attempt to commit a crime  
24 if he or she:

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

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

1           (2) When causing a particular result is an element of the crime, a  
2 person shall be guilty of an attempt to commit the crime if, acting with  
3 the state of mind required to establish liability with respect to the  
4 attendant circumstances specified in the definition of the crime, he or  
5 she intentionally engages in conduct which is a substantial step in a  
6 course of conduct intended or known to cause such a result.

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

10          (4) Criminal attempt is:

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

13          (b) A Class IIA felony when the crime attempted is a Class II  
14 felony;

15          (c) A Class IIIA felony when the crime attempted is a Class IIA  
16 felony;

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

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

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

23          (g) A Class III misdemeanor when the crime attempted is a Class II  
24 misdemeanor.

25          Sec. 7. Section 28-202, Revised Statutes Cumulative Supplement,  
26 2020, is amended to read:

27          28-202 (1) A person shall be guilty of criminal conspiracy if, with  
28 intent to promote or facilitate the commission of a felony:

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



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

3 (2) If a person knows that one with whom he conspires to commit a  
4 crime has conspired with another person or persons to commit the same  
5 crime, he is guilty of conspiring to commit such crime with such other  
6 person or persons whether or not he knows their identity.

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

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

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

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

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

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

24 28-204 (1) A person is guilty of being an accessory to felony if  
25 with intent to interfere with, hinder, delay, or prevent the discovery,  
26 apprehension, prosecution, conviction, or punishment of another for an  
27 offense, he or she:

28 (a) Harbors or conceals the other;

29 (b) Provides or aids in providing a weapon, transportation,  
30 disguise, or other means of effecting escape or avoiding discovery or  
31 apprehension;

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

4 (d) Warns the other of impending discovery or apprehension other  
5 than in connection with an effort to bring another into compliance with  
6 the law;

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

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

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

15 (b) Accessory to felony is a Class IIIA 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 II or IIA felony.

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

23 (d) Accessory to felony is a Class I misdemeanor if the actor  
24 violates subdivision (1)(a), (1)(b), or (1)(c) of this section, the actor  
25 knows of the conduct of the other, and the conduct of the other  
26 constitutes a Class IV felony.

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

31 (f) Accessory to felony is a Class I misdemeanor if the actor

1 violates subdivision (1)(d), (1)(e), or (1)(f) of this section, the actor  
2 knows of the conduct of the other, and the conduct of the other  
3 constitutes a Class IV felony.

4 Sec. 9. Section 28-320.01, Reissue Revised Statutes of Nebraska, is  
5 amended to read:

6 28-320.01 (1) A person commits sexual assault of a child in the  
7 second or third degree if he or she subjects another person fourteen  
8 years of age or younger to sexual contact and the actor is at least  
9 nineteen years of age or older.

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

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

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

26 (5) Any person who is found guilty of third degree sexual assault of  
27 a child under this section and who has previously been convicted (a)  
28 under this section, (b) under section 28-319 of first degree or attempted  
29 first degree sexual assault, (c) under section 28-319.01 for first degree  
30 or attempted first degree sexual assault of a child, or (d) in any other  
31 state or federal court under laws with essentially the same elements as

1 this section, section 28-319, or section 28-319.01 shall be guilty of a  
2 Class IC felony or a Class ICA felony, subject to section 3 of this act.

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

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

18 (2) A person who violates this section is guilty of a Class ID  
19 felony or a Class IDA felony, subject to section 3 of this act. If a  
20 person who violates this section has previously been convicted of a  
21 violation of this section or section 28-308, 28-309, 28-310, 28-311,  
22 28-313, 28-314, 28-315, 28-319, 28-319.01, 28-320.01, 28-813.01, 28-833,  
23 28-1463.03, or 28-1463.05 or subsection (1) or (2) of section 28-320, the  
24 person is guilty of a Class IC felony or a Class ICA felony, subject to  
25 section 3 of this act.

26 Sec. 11. Section 28-416, Revised Statutes Cumulative Supplement,  
27 2020, is amended to read:

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

1 (b) to create, distribute, or possess with intent to distribute a  
2 counterfeit controlled substance.

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

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

21 (4)(a) Except as authorized by the Uniform Controlled Substances  
22 Act, any person eighteen years of age or older who knowingly or  
23 intentionally manufactures, distributes, delivers, dispenses, or  
24 possesses with intent to manufacture, distribute, deliver, or dispense a  
25 controlled substance or a counterfeit controlled substance (i) to a  
26 person under the age of eighteen years, (ii) in, on, or within one  
27 thousand feet of the real property comprising a public or private  
28 elementary, vocational, or secondary school, a community college, a  
29 public or private college, junior college, or university, or a  
30 playground, or (iii) within one hundred feet of a public or private youth  
31 center, public swimming pool, or video arcade facility shall be punished

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

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

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

12 (ii) 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 (c) ~~(b)~~ For purposes of this subsection:

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

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

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

29 (5)(a) Except as authorized by the Uniform Controlled Substances  
30 Act, it shall be unlawful for any person eighteen years of age or older  
31 to knowingly and intentionally employ, hire, use, cause, persuade, coax,

1 induce, entice, seduce, or coerce any person under the age of eighteen  
2 years to manufacture, transport, distribute, carry, deliver, dispense,  
3 prepare for delivery, offer for delivery, or possess with intent to do  
4 the same a controlled substance or a counterfeit controlled substance.

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

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

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

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

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

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

31 (7) Any person who violates subsection (1) of this section with

1 respect to cocaine or any mixture or substance containing a detectable  
2 amount of cocaine 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 a Class ICA felony, subject  
7 to section 3 of this act; or

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

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

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

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

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

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

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

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

30 (c) At least ten grams but less than twenty-eight grams shall be  
31 guilty of a Class ID felony or a Class IDA felony, subject to section 3



1 of this act.

2 (10) Any person who violates subsection (1) of this section with  
3 respect to amphetamine, its salts, optical isomers, and salts of its  
4 isomers, or with respect to methamphetamine, its salts, optical isomers,  
5 and salts of its isomers, 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 a Class ICA felony, subject  
10 to section 3 of this act; or

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

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

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

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

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

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

31 (c) For the third and all subsequent offenses, be guilty of a Class

1 IIIA misdemeanor, receive a citation, be fined five hundred dollars, and  
2 be imprisoned not to exceed seven days.

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

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

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

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

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

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

25 (18) In addition to the existing penalties available for a violation  
26 of subsection (1) of this section, including any criminal attempt or  
27 conspiracy to violate subsection (1) of this section, a sentencing court  
28 may order that any money, securities, negotiable instruments, firearms,  
29 conveyances, or electronic communication devices as defined in section  
30 28-833 or any equipment, components, peripherals, software, hardware, or  
31 accessories related to electronic communication devices be forfeited as a

1 part of the sentence imposed if it finds by clear and convincing evidence  
2 adduced at a separate hearing in the same prosecution, following  
3 conviction for a violation of subsection (1) of this section, and  
4 conducted pursuant to section 28-1601, that any or all such property was  
5 derived from, used, or intended to be used to facilitate a violation of  
6 subsection (1) of this section.

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

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

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

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

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

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

29 (i) For the first offense, the court may, as part of the judgment of  
30 conviction or adjudication, (A) prohibit such person from obtaining any  
31 permit or any license pursuant to the act for which such person would

1 otherwise be eligible until thirty days after the date of such order and  
2 (B) require such person to attend a drug education class;

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

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

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

22 Sec. 12. Section 28-813.01, Revised Statutes Cumulative Supplement,  
23 2020, is amended to read:

24 28-813.01 (1) It shall be unlawful for a person nineteen years of  
25 age or older to knowingly possess any visual depiction of sexually  
26 explicit conduct which has a child as one of its participants or  
27 portrayed observers. Violation of this subsection is a Class IIA felony.

28 (2) It shall be unlawful for a person under nineteen years of age to  
29 knowingly and intentionally possess any visual depiction of sexually  
30 explicit conduct which has a child other than the defendant as one of its  
31 participants or portrayed observers. Violation of this subsection is a

1 Class I misdemeanor. A second or subsequent conviction under this  
2 subsection is a Class IV felony.

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

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

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

27 (4) Any person who violates subsection (1) or (2) of this section  
28 and has previously been convicted of a violation of this section or  
29 section 28-308, 28-309, 28-310, 28-311, 28-313, 28-314, 28-315, 28-319,  
30 28-319.01, 28-320.01, 28-833, 28-1463.03, or 28-1463.05 or subsection (1)  
31 or (2) of section 28-320 shall be guilty of a Class IC felony or a Class

1 ICA felony for each offense, subject to section 3 of this act.

2 (5) In addition to the penalties provided in this section, a  
3 sentencing court may order that any money, securities, negotiable  
4 instruments, firearms, conveyances, or electronic communication devices  
5 as defined in section 28-833 or any equipment, components, peripherals,  
6 software, hardware, or accessories related to electronic communication  
7 devices be forfeited as a part of the sentence imposed if it finds by  
8 clear and convincing evidence adduced at a separate hearing in the same  
9 prosecution, conducted pursuant to section 28-1601, that any or all such  
10 property was derived from, used, or intended to be used to facilitate a  
11 violation of this section.

12 (6) The definitions in section 28-1463.02 shall apply to this  
13 section.

14 Sec. 13. Section 28-929, Revised Statutes Cumulative Supplement,  
15 2020, is amended to read:

16 28-929 (1) A person commits the offense of assault on an officer, an  
17 emergency responder, a state correctional employee, a Department of  
18 Health and Human Services employee, or a health care professional in the  
19 first degree if:

20 (a) He or she intentionally or knowingly causes serious bodily  
21 injury:

22 (i) To a peace officer, a probation officer, a firefighter, an  
23 emergency care provider, or an employee of the Department of Correctional  
24 Services;

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

28 (iii) To a health care professional; and

29 (b) The offense is committed while such officer, firefighter,  
30 emergency care provider, or employee is engaged in the performance of his  
31 or her official duties or while the health care professional is on duty

1 at a hospital or a health clinic.

2 (2) Assault on an officer, an emergency responder, a state  
3 correctional employee, a Department of Health and Human Services  
4 employee, or a health care professional in the first degree shall be a  
5 Class ID felony or a Class IDA felony, subject to section 3 of this act.

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

8 28-1205 (1)(a) Any person who uses a firearm, a knife, brass or iron  
9 knuckles, or any other deadly weapon to commit any felony which may be  
10 prosecuted in a court of this state commits the offense of use of a  
11 deadly weapon to commit a felony.

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

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

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

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

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

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

29 (4) Possession of a deadly weapon may be proved through evidence  
30 demonstrating either actual or constructive possession of a firearm, a  
31 knife, brass or iron knuckles, or a destructive device during,

1 immediately prior to, or immediately after the commission of a felony.

2 (5) For purposes of this section:

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

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

15 Sec. 15. Section 28-1206, Revised Statutes Cumulative Supplement,  
16 2020, is amended to read:

17 28-1206 (1) A person commits the offense of possession of a deadly  
18 weapon by a prohibited person if he or she:

19 (a) Possesses a firearm, a knife, or brass or iron knuckles and he  
20 or she:

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

22 (ii) Is a fugitive from justice;

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

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

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

31 (2) The felony conviction may have been had in any court in the



1 United States, the several states, territories, or possessions, or the  
2 District of Columbia.

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

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

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

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

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

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

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

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

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

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

- 1 (i) Assault in the third degree under section 28-310;
- 2 (ii) Stalking under subsection (1) of section 28-311.04;
- 3 (iii) False imprisonment in the second degree under section 28-315;
- 4 (iv) First offense domestic assault in the third degree under
- 5 subsection (1) of section 28-323; or
- 6 (v) Any attempt or conspiracy to commit any of such offenses.
- 7 (c) A person shall not be considered to have been convicted of a
- 8 misdemeanor crime of domestic violence unless:
- 9 (i) The person was represented by counsel in the case or knowingly
- 10 and intelligently waived the right to counsel in the case; and
- 11 (ii) In the case of a prosecution for a misdemeanor crime of
- 12 domestic violence for which a person was entitled to a jury trial in the
- 13 jurisdiction in which the case was tried, either:
- 14 (A) The case was tried to a jury; or
- 15 (B) The person knowingly and intelligently waived the right to have
- 16 the case tried to a jury.
- 17 (6) In addition, for purposes of this section:
- 18 (a) Archery equipment means:
- 19 (i) A longbow, recurve bow, compound bow, or nonelectric crossbow
- 20 that is drawn or cocked with human power and released by human power; and
- 21 (ii) Target or hunting arrows, including arrows with broad, fixed,
- 22 or removable heads or that contain multiple sharp cutting edges;
- 23 (b) Domestic violence protection order means a protection order
- 24 issued pursuant to section 42-924;
- 25 (c) Harassment protection order means a protection order issued
- 26 pursuant to section 28-311.09 or that meets or exceeds the criteria set
- 27 forth in section 28-311.10 regarding protection orders issued by a court
- 28 in any other state or a territory, possession, or tribe;
- 29 (d) Recreational license means a state-issued license, certificate,
- 30 registration, permit, tag, sticker, or other similar document or
- 31 identifier evidencing permission to hunt, fish, or trap for furs in the

1 State of Nebraska; and

2 (e) Sexual assault protection order means a protection order issued  
3 pursuant to section 28-311.11 or that meets or exceeds the criteria set  
4 forth in section 28-311.12 regarding protection orders issued by a court  
5 in any other state or a territory, possession, or tribe.

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

8 28-1212.02 Any person who unlawfully and intentionally discharges a  
9 firearm at an inhabited dwelling house, occupied building, occupied motor  
10 vehicle, occupied aircraft, inhabited motor home as defined in section  
11 71-4603, or inhabited camper unit as defined in section 60-1801 shall be  
12 guilty of a Class ID felony or a Class IDA felony, subject to section 3  
13 of this act.

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

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

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

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

31 (2) Any person who is nineteen years of age or older at the time he

1 or she violates section 28-1463.03 shall be guilty of a Class ID felony  
2 or a Class IDA felony for each offense, subject to section 3 of this act.

3 (3) Any person who violates section 28-1463.03 and has previously  
4 been convicted of a violation of section 28-1463.03 or section 28-308,  
5 28-309, 28-310, 28-311, 28-313, 28-314, 28-315, 28-319, 28-319.01,  
6 28-320.01, 28-813, 28-833, or 28-1463.05 or subsection (1) or (2) of  
7 section 28-320 shall be guilty of a Class IC felony or a Class ICA felony  
8 for each offense, subject to section 3 of this act.

9 Sec. 19. Section 28-1463.05, Revised Statutes Cumulative Supplement,  
10 2020, is amended to read:

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

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

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

22 (c) Any person who violates this section and has previously been  
23 convicted of a violation of this section or section 28-308, 28-309,  
24 28-310, 28-311, 28-313, 28-314, 28-315, 28-319, 28-319.01, 28-320.01,  
25 28-813, 28-833, or 28-1463.03 or subsection (1) or (2) of section 28-320  
26 shall be guilty of a Class IC felony or a Class ICA felony for each  
27 offense, subject to section 3 of this act.

28 Sec. 20. Section 29-1816, Revised Statutes Cumulative Supplement,  
29 2020, is amended to read:

30 29-1816 (1)(a) The accused may be arraigned in county court or  
31 district court:

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

3 (ii) If the accused was younger than eighteen years of age and was  
4 fourteen years of age or older when an alleged offense punishable as a  
5 Class I, IA, IB, IC, ICA, ID, IDA, II, or IIA felony was committed;

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

8 (iv) Until January 1, 2017, if the accused was seventeen years of  
9 age when an alleged offense described in subdivision (1) of section  
10 43-247 was committed.

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

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

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

30 (a) The county court or district court shall schedule a hearing on  
31 such motion within fifteen days. The customary rules of evidence shall

1 not be followed at such hearing. The accused shall be represented by an  
2 attorney. The criteria set forth in section 43-276 shall be considered at  
3 such hearing. After considering all the evidence and reasons presented by  
4 both parties, the case shall be transferred to juvenile court unless a  
5 sound basis exists for retaining the case in county court or district  
6 court; and

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

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

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

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

3           29-2204.02 (1) Except when a term of probation is required by law as  
4 provided in subsection (2) of this section or except as otherwise  
5 provided in subsection (4) of this section, in imposing a sentence upon  
6 an offender for a Class III, IIIA, or IV felony, the court shall:

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

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

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

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

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

18           (c) There are substantial and compelling reasons why the defendant  
19 cannot effectively and safely be supervised in the community, including,  
20 but not limited to, the criteria in subsections (2) and (3) of section  
21 29-2260. Unless other reasons are found to be present, that the offender  
22 has not previously succeeded on probation is not, standing alone, a  
23 substantial and compelling reason.

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

28           (4) For any sentence of imprisonment for a Class III, IIIA, or IV  
29 felony for an offense committed on or after August 30, 2015, imposed  
30 consecutively or concurrently with (a) a sentence for a Class III, IIIA,  
31 or IV felony for an offense committed prior to August 30, 2015, or (b) a

1 sentence of imprisonment for a Class I, IA, IB, IC, ICA, ID, IDA, II, or  
2 IIA felony, the court shall impose an indeterminate sentence within the  
3 applicable range in section 28-105 that does not include a period of  
4 post-release supervision, in accordance with the process set forth in  
5 section 29-2204.

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

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

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

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

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

28 (iii) When imposing a sentence following revocation of post-release  
29 supervision, advise the offender on the record the time the offender will  
30 serve on his or her term of imprisonment, including credit for time  
31 served, assuming that no good time for which the offender will be



1 eligible is lost.

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

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

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

13 Sec. 22. Section 83-1,122.01, Revised Statutes Cumulative  
14 Supplement, 2020, is amended to read:

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

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

1           (3) This section does not apply to medical parole under section  
2 83-1,110.02.

3           Sec. 23. Original sections 28-111, 28-204, 28-320.01, 28-320.02,  
4 28-1205, 28-1212.02, 28-1212.04, 28-1463.04, and 29-2204.02, Reissue  
5 Revised Statutes of Nebraska, and sections 28-101, 28-105, 28-115,  
6 28-201, 28-202, 28-416, 28-813.01, 28-929, 28-1206, 28-1463.05, 29-1816,  
7 and 83-1,122.01, Revised Statutes Cumulative Supplement, 2020, are  
8 repealed.