

AMENDMENTS TO LB447

Introduced by Linehan, 39.

1 1. Strike the original sections and insert the following new
2 sections:

3 Section 1. Section 28-202, Reissue Revised Statutes of Nebraska,
4 2008, is amended to read:

5 28-202 (1) A person shall be guilty of criminal conspiracy if, with
6 intent to promote or facilitate the commission of a felony:

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

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

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

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

19 (4) Conspiracy is a crime of the same class as the most serious
20 offense which is an object of the conspiracy, except that conspiracy to
21 commit a Class I felony is a Class II felony. If the most serious offense
22 which is the object of the conspiracy is a violation of section 28-416
23 which specifically precludes imposition of a mandatory minimum term of
24 imprisonment, the minimum term for such conspiracy shall likewise not be
25 a mandatory minimum but a minimum only.

26 A person prosecuted for a criminal conspiracy shall be acquitted if
27 such person proves by a preponderance of the evidence that his or her

1 conduct occurred in response to an entrapment.

2 Sec. 2. Section 28-416, Reissue Revised Statutes of Nebraska, is
3 amended to read:

4 28-416 (1) Except as authorized by the Uniform Controlled Substances
5 Act, it shall be unlawful for any person knowingly or intentionally: (a)
6 To manufacture, distribute, deliver, dispense, or possess with intent to
7 manufacture, distribute, deliver, or dispense a controlled substance; or
8 (b) to create, distribute, or possess with intent to distribute a
9 counterfeit controlled substance.

10 (2) Except as provided in subsections (4), (5), (7), (8), (9), and
11 (10) of this section, any person who violates subsection (1) of this
12 section with respect to: (a) A controlled substance classified in
13 Schedule I, II, or III of section 28-405 which is an exceptionally
14 hazardous drug shall be guilty of a Class II felony; (b) any other
15 controlled substance classified in Schedule I, II, or III of section
16 28-405 shall be guilty of a Class IIA felony; or (c) a controlled
17 substance classified in Schedule IV or V of section 28-405 shall be
18 guilty of a Class IIIA felony.

19 (3) A person knowingly or intentionally possessing a controlled
20 substance, except marijuana 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, unless
23 such substance was obtained directly or pursuant to a medical order
24 issued by a practitioner authorized to prescribe while acting in the
25 course of his or her professional practice, or except as otherwise
26 authorized by the act, shall be guilty of a Class IV felony.

27 (4)(a) Except as authorized by the Uniform Controlled Substances
28 Act, any person eighteen years of age or older who knowingly or
29 intentionally manufactures, distributes, delivers, dispenses, or
30 possesses with intent to manufacture, distribute, deliver, or dispense a
31 controlled substance or a counterfeit controlled substance (i) to a

1 person under the age of eighteen years, (ii) in, on, or within one
2 thousand feet of the real property comprising a public or private
3 elementary, vocational, or secondary school, a community college, a
4 public or private college, junior college, or university, or a
5 playground, or (iii) within one hundred feet of a public or private youth
6 center, public swimming pool, or video arcade facility shall be punished
7 by the next higher penalty classification than the penalty prescribed in
8 subsection (2), (7), (8), (9), or (10) of this section, depending upon
9 the controlled substance involved, for the first violation and for a
10 second or subsequent violation shall be punished by the next higher
11 penalty classification than that prescribed for a first violation of this
12 subsection, but in no event shall such person be punished by a penalty
13 greater than a Class IB felony. If an enhancement under this subdivision
14 (4)(a) results in the imposition of a Class IC or ID felony, the minimum
15 term shall not be a mandatory minimum.

16 (b) For purposes of this subsection:

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

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

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

30 (5)(a) Except as authorized by the Uniform Controlled Substances
31 Act, it shall be unlawful for any person eighteen years of age or older

1 to knowingly and intentionally employ, hire, use, cause, persuade, coax,
2 induce, entice, seduce, or coerce any person under the age of eighteen
3 years to manufacture, transport, distribute, carry, deliver, dispense,
4 prepare for delivery, offer for delivery, or possess with intent to do
5 the same a controlled substance or a counterfeit controlled substance.

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

14 (c) Any person who violates subdivision (a) or (b) of this
15 subsection shall be punished by the next higher penalty classification
16 than the penalty prescribed in subsection (2), (7), (8), (9), or (10) of
17 this section, depending upon the controlled substance involved, for the
18 first violation and for a second or subsequent violation shall be
19 punished by the next higher penalty classification than that prescribed
20 for a first violation of this subsection, but in no event shall such
21 person be punished by a penalty greater than a Class IB felony. If an
22 enhancement under this subdivision (5)(c) results in the imposition of a
23 Class IC or ID felony, the minimum term shall not be a mandatory minimum.

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

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

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

1 (b) At least twenty-eight grams but less than one hundred forty
2 grams shall be guilty of a Class IC felony, except that the minimum term
3 shall not be a mandatory minimum; or

4 (c) At least ten grams but less than twenty-eight grams shall be
5 guilty of a Class ID felony, except that the minimum term shall not be a
6 mandatory minimum.

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

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

12 (b) At least twenty-eight grams but less than one hundred forty
13 grams shall be guilty of a Class IC felony, except that the minimum term
14 shall not be a mandatory minimum; or

15 (c) At least ten grams but less than twenty-eight grams shall be
16 guilty of a Class ID felony, except that the minimum term shall not be a
17 mandatory minimum.

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

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

23 (b) At least twenty-eight grams but less than one hundred forty
24 grams shall be guilty of a Class IC felony, except that the minimum term
25 shall not be a mandatory minimum; or

26 (c) At least ten grams but less than twenty-eight grams shall be
27 guilty of a Class ID felony, except that the minimum term shall not be a
28 mandatory minimum.

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

1 and salts of its isomers, in a quantity of:

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

4 (b) At least twenty-eight grams but less than one hundred forty
5 grams shall be guilty of a Class IC felony, except that the minimum term
6 shall not be a mandatory minimum; or

7 (c) At least ten grams but less than twenty-eight grams shall be
8 guilty of a Class ID felony, except that the minimum term shall not be a
9 mandatory minimum.

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

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

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

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

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

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

30 (14) Any person convicted of violating this section, if placed on
31 probation, shall, as a condition of probation, satisfactorily attend and

1 complete appropriate treatment and counseling on drug abuse provided by a
2 program authorized under the Nebraska Behavioral Health Services Act or
3 other licensed drug treatment facility.

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

7 (16) Any person knowingly or intentionally possessing a firearm
8 while in violation of subsection (1) of this section shall be punished by
9 the next higher penalty classification than the penalty prescribed in
10 subsection (2), (7), (8), (9), or (10) of this section, but in no event
11 shall such person be punished by a penalty greater than a Class IB
12 felony. If an enhancement under this subsection (16) results in the
13 imposition of a Class IC or ID felony, the minimum term shall not be a
14 mandatory minimum.

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

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

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

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

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

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

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

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

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

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

1 more than forty hours of community service and to attend a drug education
2 class; and

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

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

15 Sec. 3. Original section 28-202, Reissue Revised Statutes of
16 Nebraska, 2008, and section 28-416, Reissue Revised Statutes of Nebraska,
17 are repealed.