

## LEGISLATIVE BILL 808

Approved by the Governor April 20, 1978

Introduced by Venditte, 7

AN ACT to amend sections 29-422, 29-424, and 29-425, Reissue Revised Statutes of Nebraska, 1943, and section 28-416, Revised Statutes Supplement, 1977, relating to drugs and narcotics; to provide penalties for possession of marijuana as prescribed; to provide for citations; to define a term; to provide for a course of instruction; to provide duties; to repeal the original sections; to provide an operative date; and to declare an emergency.

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

Section 1. As used in this act unless the context otherwise requires, infraction shall mean the violation of any law, ordinance, order, rule, or regulation which is not otherwise declared to be a misdemeanor or a felony and which shall be a civil offense.

Sec. 2. That section 28-416, Revised Statutes Supplement, 1977, be amended to read as follows:

28-416. (1) Except as authorized by this article, 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) Any person who violates subsection (1) of this section with respect to: (a) A controlled substance classified in Schedule I or II of section 28-405 which is a narcotic drug shall be guilty of a Class III felony; (b) any other controlled substance classified in Schedule I, II, or III of section 28-405, shall be guilty of a Class IV felony; or (c) a controlled substance classified in Schedule IV or V of section 28-405, shall be guilty of a Class IV felony.

(3) A person knowingly or intentionally possessing a controlled substance, except marijuana, unless such substance was obtained directly, or pursuant to a valid prescription or order from a practitioner, while acting in the course of his professional practice,

or except as otherwise authorized by this article, shall be guilty of a Class IV felony.

(4) Any person knowingly or intentionally possessing marijuana weighing one-pound-or-less more than one ounce, but not more than one pound shall be guilty of a Class IIIA misdemeanor.

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

(6) Any person knowingly or intentionally possessing marijuana weighing one ounce or less shall:

(a) For the first offense, be guilty of an infraction, receive a citation, be fined one hundred dollars, and be assigned to attend a course as prescribed in section 4 of this act 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 two 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 three hundred dollars, and be imprisoned not to exceed seven days.

(6) (7) If a person is placed on probation, as a condition of probation he shall satisfactorily attend and complete appropriate treatment and counseling on drug abuse conducted by one of the community mental health facilities as provided by Chapter 71, article 50, or other licensed drug treatment facility.

(7) (8) Any person who knowingly or intentionally delivers, distributes, or dispenses a substance that he expressly or implicitly represents to be a controlled substance which is not in fact such a substance and which endangers the life of the person using the substance or which may cause bodily injury is guilty of a Class IV felony.

Sec. 3. Any peace officer may take a person alleged to have committed an infraction into custody if harm is likely to occur to either the individual or society if such person is not taken into custody.



Sec. 4. A person cited for an infraction pursuant to section 2 of this act shall be assigned to attend a course of instruction relating to the effects of the misuse of drugs, including alcohol and controlled substances. Such instruction shall include counseling on the legal, medical, psychological, and social effects of drug use and abuse. Such course shall consist of a minimum of five hours and a maximum of ten hours of instruction and counseling. Upon completion of the assigned course the instructor shall notify the court in writing of such completion and the notification shall be made a part of the record of the citation. Any person failing to complete such course within thirty days after the assignment shall be guilty of an infraction.

Sec. 5. All drug treatment centers established pursuant to Chapter 71, article 50 shall provide the necessary facilities and programs to carry out the provisions of section 4 of this act.

Sec. 6. That section 29-422, Reissue Revised Statutes of Nebraska, 1943, be amended to read as follows:

29-422. It is hereby declared to be the policy of the State of Nebraska to issue citations in lieu of arrest or continued custody to the maximum extent consistent with the effective enforcement of the law and the protection of the public. In furtherance of that policy, any peace officer shall be authorized to issue a citation in lieu of arrest or continued custody for any offense which is a traffic infraction, any other infraction, or misdemeanor and for any violation of a city or village ordinance. Such authorization shall be carried out in the manner specified in sections 29-422 to 29-430, 39-6,105, 39-6,107, 39-6,108, and 39-6,112.

Sec. 7. That section 29-424, Reissue Revised Statutes of Nebraska, 1943, be amended to read as follows:

29-424. When a citation is used by a peace officer, he shall enter thereon all required information, including the name and address of the cited person, the offense charged, and the time and place the person cited is to appear in court. Unless the person cited requests an earlier date, the time of appearance shall be at least three days after the issuance of the citation. One copy of the citation shall be delivered to the person cited, and a duplicate thereof shall be signed by such person, giving his promise to appear at the time and place stated therein. Such person thereupon shall be released from custody. As soon as practicable, one copy of the

citation shall be filed with the court specified therein, and the copy signed by the person cited shall be delivered to the prosecuting attorney. At least twenty-four hours before the time set for appearance of the cited person, the prosecuting attorney or other person authorized by law to issue a complaint for the particular offense shall either issue and file a complaint charging such person with an offense, or file with the court and deliver to such person a notice that a complaint has been refused and that such person is released from his obligation to appear or that the offense charged in the original citation has been changed or amended as specified. A person cited pursuant to sections 29-422 to 29-430 may waive his or her right to trial. The Supreme Court may prescribe uniform rules for such waivers.

Sec. 8. That section 29-425, Reissue Revised Statutes of Nebraska, 1943, be amended to read as follows:

29-425. Citations may also be issued under the following circumstances:

(1) In any case in which the prosecuting officer is convinced that a citation would serve all of the purposes of an arrest warrant; and

(2) Whenever any complaint or information is filed in any court in this state charging a felony, misdemeanor, ~~traffic~~ infraction, or violation of a city or village ordinance when the court is convinced that a citation would serve all of the purposes of the arrest warrant procedure.

The citations provided for in this section may be served in the same manner as an arrest warrant, in the same manner as a summons in a civil action, or may be served by certified mail.

Sec. 9. This act shall become operative on July 1, 1978.

Sec. 10. That original sections 29-422, 29-424, and 29-425, Reissue Revised Statutes of Nebraska, 1943, and section 28-416, Revised Statutes Supplement, 1977, are repealed.

Sec. 11. Since an emergency exists, this act shall be in full force and take effect, from and after its passage and approval, according to law.