

LEGISLATURE OF NEBRASKA  
ONE HUNDRED FOURTH LEGISLATURE  
SECOND SESSION

**LEGISLATIVE BILL 1106**

FINAL READING

Introduced by Garrett, 3; Coash, 27; Ebke, 32; Kintner, 2; Pansing  
Brooks, 28.

Read first time January 20, 2016

Committee: Judiciary

1 A BILL FOR AN ACT relating to forfeiture of property; to amend sections  
2 28-431, 28-1111, and 28-1463.01, Reissue Revised Statutes of  
3 Nebraska, and sections 25-21,302, 28-101, 28-109, 28-416, and  
4 28-813.01, Revised Statutes Supplement, 2015; to change and provide  
5 forfeiture provisions for certain offenses as prescribed; to provide  
6 for reports regarding forfeitures; to provide duties for a  
7 prosecuting attorney seeking forfeiture; to provide restrictions on  
8 the disposition of money or property seized as prescribed; to  
9 harmonize provisions; to provide severability; and to repeal the  
10 original sections.  
11 Be it enacted by the people of the State of Nebraska,

1 Section 1. Section 25-21,302, Revised Statutes Supplement, 2015, is  
2 amended to read:

3 25-21,302 (1)(a) In addition to any other civil or criminal  
4 penalties provided by law, any property used in the commission of a  
5 violation of the Child Pornography Prevention Act or section 28-813,  
6 28-831, 28-1102, 28-1103, 28-1104, 28-1105, 28-1105.01, or 28-1107  
7 ~~section 28-831~~ may be forfeited through a ~~civil~~ proceeding as provided in  
8 this section.

9 (b) The following property shall be subject to ~~civil~~ forfeiture if  
10 used or intended for use as an instrumentality in or used in furtherance  
11 of a violation of the Child Pornography Prevention Act or section 28-813,  
12 28-831, 28-1102, 28-1103, 28-1104, 28-1105, 28-1105.01, or 28-1107  
13 ~~section 28-831~~:

14 (i) Conveyances, including aircraft, vehicles, or vessels;

15 (ii) Books, records, telecommunication equipment, or computers;

16 (iii) Money or weapons;

17 (iv) Everything of value furnished, or intended to be furnished, in  
18 exchange for an act in violation and all proceeds traceable to the  
19 exchange;

20 (v) Negotiable instruments and securities;

21 (vi) Any property, real or personal, directly or indirectly acquired  
22 or received in a violation or as an inducement to violate;

23 (vii) Any property traceable to proceeds from a violation; and

24 (viii) Any real property, including any right, title, and interest  
25 in the whole of or any part of any lot or tract of land, used in  
26 furtherance of a violation of the Child Pornography Prevention Act or  
27 section 28-813, 28-831, 28-1102, 28-1103, 28-1104, 28-1105, 28-1105.01,  
28 or 28-1107 ~~section 28-831~~.

29 (c)(i) No property used by any person as a common carrier in the  
30 transaction of business as a common carrier is subject to forfeiture  
31 under this section unless it appears that the owner or other person in

1 charge of the property is a consenting party or privy to a violation of  
2 the Child Pornography Prevention Act or section 28-813, 28-831, 28-1102,  
3 28-1103, 28-1104, 28-1105, 28-1105.01, or 28-1107 ~~section 28-831.~~

4 (ii) No property is subject to forfeiture under this section by  
5 reason of any act or omission proved by the owner thereof to have been  
6 committed or omitted without his or her actual knowledge or consent. If  
7 the confiscating authority has reason to believe that the property is  
8 leased or rented property, then the confiscating authority shall notify  
9 the owner of the property within five days after the confiscation or  
10 within five days after forming reason to believe that the property is  
11 leased or rented property.

12 (iii) Forfeiture of property encumbered by a bona fide security  
13 interest is subject to the interest of the secured party if such party  
14 neither had actual knowledge of nor consented to the act or omission.

15 (2) No property shall be forfeited under this section, to the extent  
16 of the interest of an owner, by reason of any act or omission established  
17 by the owner to have been committed or omitted without his or her actual  
18 knowledge or consent.

19 (3) Seizure without process may be made if the seizure is incident  
20 to an arrest or a search under a search warrant.

21 (4)(a) When any property is seized under this section, proceedings  
22 shall be instituted within a reasonable period of time from the date of  
23 seizure or the subject property shall be immediately returned to the  
24 party from whom seized.

25 (b) A petition for forfeiture shall be filed by the Attorney General  
26 or a county attorney in the name of the State of Nebraska and may be  
27 filed in the county in which the seizure is made, the county in which the  
28 criminal prosecution is brought, or the county in which the owner of the  
29 seized property is found. Forfeiture proceedings may be brought in the  
30 district court or the county court. A copy of the petition shall be  
31 served upon the following persons by service of process in the same

1 manner as in civil cases:

2 (i) The owner of the property if the owner's address is known;

3 (ii) Any secured party who has registered a lien or filed a  
4 financing statement as provided by law if the identity of the secured  
5 party can be ascertained by the entity filing the petition by making a  
6 good faith effort to ascertain the identity of the secured party;

7 (iii) Any other bona fide lienholder or secured party or other  
8 person holding an interest in the property in the nature of a security  
9 interest of whom the seizing law enforcement agency has actual knowledge;  
10 and

11 (iv) Any person in possession of property subject to forfeiture at  
12 the time that it was seized.

13 (5) If the property is a motor vehicle subject to titling under the  
14 Motor Vehicle Certificate of Title Act or a vessel subject to titling  
15 under the State Boat Act, and if there is any reasonable cause to believe  
16 that the motor vehicle or vessel has been titled, inquiry of the  
17 Department of Motor Vehicles shall be made as to what the records of the  
18 department show as to who is the record owner of the motor vehicle or  
19 vessel and who, if anyone, holds any lien or security interest that  
20 affects the motor vehicle or vessel.

21 (6) If the property is a motor vehicle or vessel and is not titled  
22 in the State of Nebraska, then an attempt shall be made to ascertain the  
23 name and address of the person in whose name the motor vehicle or vessel  
24 is licensed, and if the motor vehicle or vessel is licensed in a state  
25 which has in effect a certificate of title law, inquiry of the  
26 appropriate agency of that state shall be made as to what the records of  
27 the agency show as to who is the record owner of the motor vehicle or  
28 vessel and who, if anyone, holds any lien, security interest, or other  
29 instrument in the nature of a security device that affects the motor  
30 vehicle or vessel.

31 (7) If the property is of a nature that a financing statement is

1 required by the laws of this state to be filed to perfect a security  
2 interest affecting the property and if there is any reasonable cause to  
3 believe that a financing statement covering the security interest has  
4 been filed under the laws of this state, inquiry shall be made as to what  
5 the records show as to who is the record owner of the property and who,  
6 if anyone, has filed a financing statement affecting the property.

7 (8) If the property is an aircraft or part thereof and if there is  
8 any reasonable cause to believe that an instrument in the nature of a  
9 security device affects the property, inquiry shall be made as to what  
10 the records of the Federal Aviation Administration show as to who is the  
11 record owner of the property and who, if anyone, holds an instrument in  
12 the nature of a security device which affects the property.

13 (9) If the answer to an inquiry states that the record owner of the  
14 property is any person other than the person who was in possession of it  
15 when it was seized or states that any person holds any lien, encumbrance,  
16 security interest, other interest in the nature of a security interest,  
17 mortgage, or deed of trust that affects the property, the record owner  
18 and also any lienholder, secured party, other person who holds an  
19 interest in the property in the nature of a security interest, or holder  
20 of an encumbrance, mortgage, or deed of trust that affects the property  
21 is to be named in the petition of forfeiture and is to be served with  
22 process in the same manner as in civil cases.

23 (10) If the owner of the property cannot be found and served with a  
24 copy of the petition of forfeiture or if no person was in possession of  
25 the property subject to forfeiture at the time that it was seized and the  
26 owner of the property is unknown, there shall be filed with the clerk of  
27 the court in which the proceeding is pending an affidavit to such effect,  
28 whereupon the clerk of the court shall publish notice of the hearing  
29 addressed to "the Unknown Owner of ....., " filling in the blank  
30 space with a reasonably detailed description of the property subject to  
31 forfeiture. Service by publication shall be completed in the same manner

1 as is provided in the code of civil procedure for the service of process  
2 in civil actions in the district courts of this state.

3 (11) No proceedings instituted pursuant to this section shall  
4 proceed to hearing unless the judge conducting the hearing is satisfied  
5 that this section has been complied with. Any answer received from an  
6 inquiry required by this section shall be introduced into evidence at the  
7 hearing.

8 (12)(a) An owner of property that has been seized shall file an  
9 answer within thirty days after the completion of service of process. If  
10 an answer is not filed, the court shall hear evidence that the property  
11 is subject to forfeiture and forfeit the property to the seizing law  
12 enforcement agency. If an answer is filed, a time for hearing on  
13 forfeiture shall be set within thirty days after filing the answer or at  
14 the succeeding term of court if court would not be in session within  
15 thirty days after filing the answer. The court may postpone the  
16 forfeiture hearing to a date past the time any criminal action is pending  
17 against the owner upon request of any party.

18 (b) If the owner of the property has filed an answer denying that  
19 the property is subject to forfeiture, then the burden is on the  
20 petitioner to prove that the property is subject to forfeiture. However,  
21 if an answer has not been filed by the owner of the property, the  
22 petition for forfeiture may be introduced into evidence and is prima  
23 facie evidence that the property is subject to forfeiture. The burden of  
24 proof placed upon the petitioner in regard to property forfeited under  
25 this section shall be by clear and convincing a ~~preponderance of the~~  
26 evidence.

27 (c) At the hearing any claimant of any right, title, or interest in  
28 the property may prove his or her lien, encumbrance, security interest,  
29 other interest in the nature of a security interest, mortgage, or deed of  
30 trust to be bona fide and created without actual knowledge or consent  
31 that the property was to be used so as to cause the property to be

1 subject to forfeiture.

2 (d) If it is found that the property is subject to forfeiture, then  
3 the judge shall forfeit the property. However, if proof at the hearing  
4 discloses that the interest of any bona fide lienholder, any secured  
5 party, any other person holding an interest in the property in the nature  
6 of a security interest, or any holder of a bona fide encumbrance,  
7 mortgage, or deed of trust is greater than or equal to the present value  
8 of the property, the court shall order the property released to him or  
9 her. If the interest is less than the present value of the property and  
10 if the proof shows that the property is subject to forfeiture, the court  
11 shall order the property forfeited.

12 (13) Unless otherwise provided in this section, all personal  
13 property which is forfeited under this section shall be liquidated and,  
14 after deduction of court costs and the expense of liquidation, the  
15 proceeds shall be remitted to the county treasurer of the county in which  
16 the seizure was made. The county treasurer shall remit all such proceeds  
17 from property forfeited pursuant to this section to the State Treasurer  
18 for distribution in accordance with Article VII, section 5, of the  
19 Constitution of Nebraska.

20 (14) All money forfeited under this section shall be remitted in the  
21 same manner as provided in subsection (13) of this section.

22 (15) All real estate forfeited under this section shall be sold to  
23 the highest bidder at a public auction for cash, the auction to be  
24 conducted by the county sheriff or his or her designee at such place, on  
25 such notice, and in accordance with the same procedure, as far as  
26 practicable, as is required in the case of sales of land under execution  
27 at law. The proceeds of the sale shall first be applied to the cost and  
28 expense in administering and conducting the sale, then to the  
29 satisfaction of all mortgages, deeds of trust, liens, and encumbrances of  
30 record on the property. The remaining proceeds shall be remitted in the  
31 same manner as provided in subsection (13) of this section.

1           (16) The ~~civil~~ forfeiture procedure set forth in this section is the  
2 sole remedy of any claimant, and no court shall have jurisdiction to  
3 interfere therewith by replevin, by injunction, by supersedeas, or by any  
4 other manner.

5           Sec. 2. (1) For all money, securities, negotiable instruments,  
6 firearms, conveyances, or real estate seized pursuant to section  
7 25-21,302, the appropriate law enforcement agency or, as provided in  
8 subsection (5) of this section, the prosecuting attorney shall provide a  
9 written report of the forfeiture to the Auditor of Public Accounts. The  
10 report shall include:

11           (a) The date of the seizure;

12           (b) The type of property seized, such as a vehicle, currency, or a  
13 firearm;

14           (c) A description of the property seized, including, if applicable,  
15 the make, model, year, and serial number of the property seized;

16           (d) The street name and traffic direction where the seizure  
17 occurred, such as eastbound, westbound, southbound, or northbound;

18           (e) The crime for which the suspect was charged;

19           (f) The disposition of the property seized through the forfeiture  
20 process, such as the property was returned to the suspect, returned to a  
21 third-party owner, sold, destroyed, or retained by law enforcement;

22           (g) The basis for disposition of the seized property, such as the  
23 suspect was found not guilty, agreement for disposition, criminal  
24 forfeiture, or civil forfeiture;

25           (h) The value of the property forfeited;

26           (i) If the seizure resulted from a motor vehicle stop, (i) whether a  
27 warning or citation was issued, an arrest was made, or a search was  
28 conducted and (ii) the characteristics of the race or ethnicity of the  
29 suspect. The identification of such characteristics shall be based on the  
30 observation and perception of the law enforcement officer responsible for  
31 reporting the motor vehicle stop. The information shall not be required



1 to be provided by the suspect; and

2 (j) Any additional information the Nebraska State Patrol, a county  
3 sheriff, any city or village police department, or any other law  
4 enforcement agency in this state, as the case may be, deems appropriate.

5 (2) The appropriate law enforcement agency or prosecuting attorney  
6 shall report to the Auditor of Public Accounts all instances in which  
7 property seized for forfeiture was returned to its owner either because  
8 the forfeiture was not pursued or for any other reason.

9 (3) Reports shall be made on an annual basis in a manner prescribed  
10 by the Auditor of Public Accounts. The Auditor of Public Accounts shall  
11 submit a report to the Legislature on the nature and extent of such  
12 seizures on an annual basis. Such report shall be submitted  
13 electronically.

14 (4) For forfeitures resulting from the activities of  
15 multijurisdictional law enforcement entities, a law enforcement entity  
16 other than a Nebraska law enforcement entity shall, on its own  
17 initiative, report the information required by this section.

18 (5) The prosecuting attorney is not required to report information  
19 required by this section unless he or she has been notified by the  
20 Auditor of Public Accounts that the appropriate law enforcement agency  
21 has not reported the information required by this section.

22 Sec. 3. Section 28-101, Revised Statutes Supplement, 2015, is  
23 amended to read:

24 28-101 Sections 28-101 to ~~28-468, 28-470~~ to 28-1357, 28-1418.01, and  
25 28-1429.03 and sections 11 to 13 of this act shall be known and may be  
26 cited as the Nebraska Criminal Code.

27 Sec. 4. Section 28-109, Revised Statutes Supplement, 2015, is  
28 amended to read:

29 28-109 For purposes of the Nebraska Criminal Code, unless the  
30 context otherwise requires:

31 (1) Act shall mean a bodily movement, and includes words and

1 possession of property;

2 (2) Aid or assist shall mean knowingly to give or lend money or  
3 credit to be used for, or to make possible or available, or to further  
4 activity thus aided or assisted;

5 (3) Benefit shall mean any gain or advantage to the beneficiary  
6 including any gain or advantage to another person pursuant to the desire  
7 or consent of the beneficiary;

8 (4) Bodily injury shall mean physical pain, illness, or any  
9 impairment of physical condition;

10 (5) Conduct shall mean an action or omission and its accompanying  
11 state of mind, or, where relevant, a series of acts and omissions;

12 (6) Conveyance shall mean a mode of transportation that includes any  
13 vehicle, aircraft, or watercraft;

14 (~~7~~ 6) Deadly physical force shall mean force, the intended, natural,  
15 and probable consequence of which is to produce death, or which does, in  
16 fact, produce death;

17 (~~8~~ 7) Deadly weapon shall mean any firearm, knife, bludgeon, or  
18 other device, instrument, material, or substance, whether animate or  
19 inanimate, which in the manner it is used or intended to be used is  
20 capable of producing death or serious bodily injury;

21 (~~9~~ 8) Deface shall mean to alter the appearance of something by  
22 removing, distorting, adding to, or covering all or a part of the thing;

23 (~~10~~ 9) Dwelling shall mean a building or other thing which is used,  
24 intended to be used, or usually used by a person for habitation;

25 (~~11~~ 10) Government shall mean the United States, any state, county,  
26 municipality, or other political unit, any branch, department, agency, or  
27 subdivision of any of the foregoing, and any corporation or other entity  
28 established by law to carry out any governmental function;

29 (~~12~~ 11) Governmental function shall mean any activity which a public  
30 servant is legally authorized to undertake on behalf of government;

31 (~~13~~ 12) Motor vehicle shall mean every self-propelled land vehicle,

1 not operated upon rails, except self-propelled chairs used by persons who  
2 are disabled, electric personal assistive mobility devices as defined in  
3 section 60-618.02, and bicycles as defined in section 60-611;

4 (~~14~~ 13) Omission shall mean a failure to perform an act as to which  
5 a duty of performance is imposed by law;

6 (~~15~~ 14) Peace officer shall mean any officer or employee of the  
7 state or a political subdivision authorized by law to make arrests, and  
8 shall include members of the National Guard on active service by  
9 direction of the Governor during periods of emergency or civil disorder;

10 (~~16~~ 15) Pecuniary benefit shall mean benefit in the form of money,  
11 property, commercial interest, or anything else, the primary significance  
12 of which is economic gain;

13 (~~17~~ 16) Person shall mean any natural person and where relevant a  
14 corporation or an unincorporated association;

15 (~~18~~ 17) Public place shall mean a place to which the public or a  
16 substantial number of the public has access, and includes but is not  
17 limited to highways, transportation facilities, schools, places of  
18 amusement, parks, playgrounds, and the common areas of public and private  
19 buildings and facilities;

20 (~~19~~ 18) Public servant shall mean any officer or employee of  
21 government, whether elected or appointed, and any person participating as  
22 an advisor, consultant, process server, or otherwise in performing a  
23 governmental function, but the term does not include witnesses;

24 (~~20~~ 19) Recklessly shall mean acting with respect to a material  
25 element of an offense when any person disregards a substantial and  
26 unjustifiable risk that the material element exists or will result from  
27 his or her conduct. The risk must be of such a nature and degree that,  
28 considering the nature and purpose of the actor's conduct and the  
29 circumstances known to the actor, its disregard involves a gross  
30 deviation from the standard of conduct that a law-abiding person would  
31 observe in the actor's situation;

1           (21 ~~20~~) Serious bodily injury shall mean bodily injury which  
2 involves a substantial risk of death, or which involves substantial risk  
3 of serious permanent disfigurement, or protracted loss or impairment of  
4 the function of any part or organ of the body;

5           (22 ~~21~~) Tamper shall mean to interfere with something improperly or  
6 to make unwarranted alterations in its condition;

7           (23 ~~22~~) Thing of value shall mean real property, tangible and  
8 intangible personal property, contract rights, choses in action,  
9 services, and any rights of use or enjoyment connected therewith; and

10           (24 ~~23~~) Voluntary act shall mean an act performed as a result of  
11 effort or determination, and includes the possession of property if the  
12 actor was aware of his or her physical possession or control thereof for  
13 a sufficient period to have been able to terminate it.

14           Sec. 5. Section 28-416, Revised Statutes Supplement, 2015, is  
15 amended to read:

16           28-416 (1) Except as authorized by the Uniform Controlled Substances  
17 Act, it shall be unlawful for any person knowingly or intentionally: (a)  
18 To manufacture, distribute, deliver, dispense, or possess with intent to  
19 manufacture, distribute, deliver, or dispense a controlled substance; or  
20 (b) to create, distribute, or possess with intent to distribute a  
21 counterfeit controlled substance.

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

31           (3) A person knowingly or intentionally possessing a controlled

1 substance, except marijuana or any substance containing a quantifiable  
2 amount of the substances, chemicals, or compounds described, defined, or  
3 delineated in subdivision (c)(25) of Schedule I of section 28-405, unless  
4 such substance was obtained directly or pursuant to a medical order  
5 issued by a practitioner authorized to prescribe while acting in the  
6 course of his or her professional practice, or except as otherwise  
7 authorized by the act, shall be guilty of a Class IV felony.

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

26 (b) For purposes of this subsection:

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

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

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

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

16           (b) Except as authorized by the Uniform Controlled Substances Act,  
17 it shall be unlawful for any person eighteen years of age or older to  
18 knowingly and intentionally employ, hire, use, cause, persuade, coax,  
19 induce, entice, seduce, or coerce any person under the age of eighteen  
20 years to aid and abet any person in the manufacture, transportation,  
21 distribution, carrying, delivery, dispensing, preparation for delivery,  
22 offering for delivery, or possession with intent to do the same of a  
23 controlled substance or a counterfeit controlled substance.

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

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

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

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

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

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

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

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

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

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

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

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

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

1 respect to amphetamine, its salts, optical isomers, and salts of its  
2 isomers, or with respect to methamphetamine, its salts, optical isomers,  
3 and salts of its isomers, in a quantity of:

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

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

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

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.

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

16 (18) In addition to the existing penalties available for a violation  
17 of subsection (1) of this section, including any criminal attempt or  
18 conspiracy to violate subsection (1) of this section, a sentencing court  
19 may order that any money, securities, negotiable instruments, firearms,  
20 conveyances, or electronic communication devices as defined in section  
21 28-833 or any equipment, components, peripherals, software, hardware, or  
22 accessories related to electronic communication devices be forfeited as a  
23 part of the sentence imposed if it finds by clear and convincing evidence  
24 adduced at a separate hearing in the same prosecution, following  
25 conviction for a violation of subsection (1) of this section, and  
26 conducted pursuant to section 11 of this act, that any or all such  
27 property was derived from, used, or intended to be used to facilitate a  
28 violation of subsection (1) of this section.

29 (~~19~~ 18) In addition to the penalties provided in this section:

30 (a) If the person convicted or adjudicated of violating this section  
31 is eighteen years of age or younger and has one or more licenses or

1 permits issued under the Motor Vehicle Operator's License Act:

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

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

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

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

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

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

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

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

13 Sec. 6. Section 28-431, Reissue Revised Statutes of Nebraska, is  
14 amended to read:

15 28-431 (1) The following shall be seized without warrant by an  
16 officer of the Division of Drug Control or by any peace officer and the  
17 same shall be subject to forfeiture: (a) All controlled substances which  
18 have been manufactured, distributed, dispensed, acquired, or possessed in  
19 violation of the Uniform Controlled Substances Act; (b) all raw  
20 materials, products, and equipment of any kind which are used, or  
21 intended for use, in manufacturing, compounding, processing,  
22 administering, delivering, importing, or exporting any controlled  
23 substance in violation of the act; (c) all property which is used, or is  
24 intended for use, as a container for property described in subdivisions  
25 (a) and (b) of this subsection; (d) all drug paraphernalia defined in  
26 section 28-439; (e) all books, records, and research, including, but not  
27 limited to, formulas, microfilm, tapes, and data, which are used, or  
28 intended for use, in violation of the act; (f) all conveyances including,  
29 but not limited to, aircraft, vehicles, or vessels which are used, or  
30 intended for use, in transporting any controlled substance with intent to  
31 manufacture, distribute, deliver, dispense, export, or import such

1 controlled substance in violation of the act; and (g) all money used, or  
2 intended to be used, to facilitate a violation of the act.

3 (2) Any property described in subdivision (1)(f) of this section  
4 which is used, or intended for use, to transport any property described  
5 in subdivision (1)(a) or (b) of this section is hereby declared to be a  
6 common nuisance, and any peace officer having probable cause to believe  
7 that such property is so used, or intended for such use, shall make a  
8 search thereof with or without a warrant.

9 (3) All money that a law enforcement agency proves was furnished by  
10 such agency shall be returned to the agency. All property seized without  
11 a search warrant shall not be subject to a replevin action and: (a) All  
12 property described in subdivisions (1)(a) through ~~to~~ (1)(e) of this  
13 section shall be kept by the property division of the law enforcement  
14 agency which employs the officer who seized such property for so long as  
15 it is needed as evidence in any trial; and (b) when no longer required as  
16 evidence, all property described in subdivision (1)(e) of this section  
17 shall be disposed of on order of a court of record of this state in such  
18 manner as the court in its sound discretion shall direct, and all  
19 property described in subdivisions (1)(a), (b), (c), and (d) of this  
20 section, that has been used or is intended to be used in violation of the  
21 act, when no longer needed as evidence shall be destroyed by the law  
22 enforcement agency holding the same or turned over to the department for  
23 custody or destruction, except that a law enforcement agency may keep a  
24 small quantity of the property described in subdivisions (1)(a), (b),  
25 (c), and (d) of this section for training purposes or use in  
26 investigations. Any large quantity of property described in subdivisions  
27 (1)(a), (b), (c), and (d) of this section, whether seized under a search  
28 warrant or validly seized without a warrant, may be disposed of on order  
29 of a court of record of this state in such manner as the court in its  
30 sound discretion shall direct. Such an order may be given only after a  
31 proper laboratory examination and report of such property has been

1 completed and after a hearing has been held by the court after notice to  
2 the defendant of the proposed disposition of the property. The findings  
3 in such court order as to the nature, kind, and quantity of the property  
4 so disposed of may be accepted as evidence at subsequent court  
5 proceedings in lieu of the property ordered destroyed by the court order.

6 (4) When any property described in subdivision (1)(f) or (g) of this  
7 section is seized, the person seizing the same shall cause to be filed,  
8 within ten days thereafter, in the district court of the county in which  
9 seizure was made, petition for disposition of such property. The  
10 proceedings shall be brought in the name of the state by the county  
11 attorney of the county in which such property was seized. The petition  
12 shall describe the property, state the name of the owner if known, allege  
13 the essential elements of the violation which is claimed to exist, and  
14 conclude with a prayer for disposition. The county attorney shall have a  
15 copy of the petition served upon the owner of or any person having an  
16 interest in the property, if known, in person or by registered or  
17 certified mail at his or her last-known address. If the owner is unknown  
18 or there is a reasonable probability that there are unknown persons with  
19 interests in the property, the county attorney shall provide notice of  
20 the seizure and petition for disposition by publication once a week for  
21 four consecutive weeks in a newspaper of general circulation in the  
22 county of the seizure. At least five days shall elapse between each  
23 publication of notice.

24 (5) At any time after seizure and prior to court disposition, the  
25 owner of record of such property may petition the district court of the  
26 county in which seizure was made to release such property, and the court  
27 shall order the release of the property upon a showing by the owner that  
28 he or she had no actual knowledge that such property was being used in  
29 violation of the Uniform Controlled Substances Act.

30 (6) Any person having an interest in the property proceeded against  
31 or any person against whom civil or criminal liability would exist if

1 such property is in violation of the act may, within thirty days after  
2 seizure, appear and file an answer or demurrer to the petition. The  
3 answer or demurrer shall allege the claimant's interest in or liability  
4 involving such property. At least thirty but not more than ninety days  
5 after seizure, there shall be a hearing before the court. If the claimant  
6 proves by a preponderance of the evidence that he or she (a) has not used  
7 or intended to use the property to facilitate an offense in violation of  
8 the act, (b) has an interest in such property as owner or lienor or  
9 otherwise, acquired by him or her in good faith, and (c) at no time had  
10 any actual knowledge that such property was being or would be used in, or  
11 to facilitate, the violation of the act, the court shall order that such  
12 property or the value of the claimant's interest in such property be  
13 returned to the claimant. If there are no claims, if all claims are  
14 denied, or if the value of the property exceeds all claims granted and it  
15 is shown by clear and convincing evidence ~~beyond a reasonable doubt~~ that  
16 such property was used in violation of the act, the court shall order  
17 disposition of such property at such time as the property is no longer  
18 required as evidence in any criminal proceeding. The court may order that  
19 property described in subdivision (1)(f) of this section be sold or put  
20 to official use by the confiscating agency for a period of not more than  
21 one year and that when such property is no longer necessary for official  
22 use or at the end of two years, whichever comes first, such property  
23 shall be sold. Proceeds from the sale of the property and any money  
24 described in subdivision (1)(g) of this section shall be distributed  
25 pursuant to section 28-1439.02. Official use shall mean use directly in  
26 connection with enforcement of the act.

27 (7) Any court costs and fees and storage and other proper expenses  
28 shall be charged against any person intervening as claimant or owner of  
29 the property unless such person shall establish his or her claim. If a  
30 sale is ordered, the officer holding the sale shall make a return to the  
31 court showing to whom the property was sold and for what price. This

1 return together with the court order shall authorize the county clerk to  
2 issue a title to the purchaser of the property if such title is required  
3 under the laws of this state.

4 (8)(a) For all money, securities, negotiable instruments, firearms,  
5 conveyances, or real estate seized pursuant to this section, the Division  
6 of Drug Control, any peace officer, or, as provided in subdivision (d) of  
7 this subsection, the prosecuting attorney shall provide a written report  
8 of the seizure to the Auditor of Public Accounts. The report shall  
9 include:

10 (i) The date of the seizure;

11 (ii) The type of property seized, such as a vehicle or currency;

12 (iii) A description of the property seized, including, if  
13 applicable, the make, model, year, and serial number of the property  
14 seized;

15 (iv) The street name and traffic direction where the seizure  
16 occurred, such as eastbound, westbound, southbound, or northbound;

17 (v) The crime for which the suspect was charged;

18 (vi) The disposition of the property seized through the forfeiture  
19 process, such as the property was returned to the suspect, returned to a  
20 third-party owner, sold, destroyed, or retained by law enforcement;

21 (vii) The basis for disposition of the seized property, such as the  
22 suspect was found not guilty, agreement for disposition, criminal  
23 forfeiture, or civil forfeiture;

24 (viii) The value of the property forfeited;

25 (ix) If the seizure resulted from a motor vehicle stop, (A) whether  
26 a warning or citation was issued, an arrest was made, or a search was  
27 conducted and (B) the characteristics of the race or ethnicity of the  
28 suspect. The identification of such characteristics shall be based on the  
29 observation and perception of the law enforcement officer responsible for  
30 reporting the motor vehicle stop. The information shall not be required  
31 to be provided by the suspect; and

1       (x) Any additional information the Division of Drug Control or peace  
2 officer deems appropriate.

3       (b) Reports shall be made on an annual basis in a manner prescribed  
4 by the Auditor of Public Accounts. The Auditor of Public Accounts shall  
5 submit a report to the Legislature on the nature and extent of such  
6 seizures on an annual basis. Such report shall be submitted  
7 electronically.

8       (c) For seizures resulting from the activities of  
9 multijurisdictional law enforcement entities, a law enforcement entity  
10 other than a Nebraska law enforcement entity shall, on its own  
11 initiative, report the information required by this subsection.

12       (d) The prosecuting attorney is not required to report information  
13 required by this subsection unless he or she has been notified by the  
14 Auditor of Public Accounts that the Division of Drug Control or any peace  
15 officer has not reported the information required by this subsection.

16       Sec. 7. Section 28-813.01, Revised Statutes Supplement, 2015, is  
17 amended to read:

18       28-813.01 (1) It shall be unlawful for a person to knowingly possess  
19 any visual depiction of sexually explicit conduct, as defined in section  
20 28-1463.02, which has a child, as defined in such section, as one of its  
21 participants or portrayed observers.

22       (2)(a) Any person who is under nineteen years of age at the time he  
23 or she violates this section shall be guilty of a Class IV felony for  
24 each offense.

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

28       (c) Any person who violates this section and has previously been  
29 convicted of a violation of this section or section 28-308, 28-309,  
30 28-310, 28-311, 28-313, 28-314, 28-315, 28-319, 28-319.01, 28-320.01,  
31 28-833, 28-1463.03, or 28-1463.05 or subsection (1) or (2) of section



1 28-320 shall be guilty of a Class IC felony for each offense.

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

4 (a) The visual depiction portrays no person other than the  
5 defendant; or

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

17 (4) In addition to the penalties provided in this section, a  
18 sentencing court may order that any money, securities, negotiable  
19 instruments, firearms, conveyances, or electronic communication devices  
20 as defined in section 28-833 or any equipment, components, peripherals,  
21 software, hardware, or accessories related to electronic communication  
22 devices be forfeited as a part of the sentence imposed if it finds by  
23 clear and convincing evidence adduced at a separate hearing in the same  
24 prosecution, conducted pursuant to section 11 of this act, that any or  
25 all such property was derived from, used, or intended to be used to  
26 facilitate a violation of this section.

27 Sec. 8. Section 28-1111, Reissue Revised Statutes of Nebraska, is  
28 amended to read:

29 28-1111 In addition to any penalty provided in section 28-1102,  
30 28-1103, 28-1104, 28-1105, 28-1105.01, or 28-1107, a sentencing court may  
31 order that any money, securities, negotiable instruments, firearms,

1 conveyances, or electronic communication devices as defined in section  
2 28-833 or any equipment, components, peripherals, software, hardware, or  
3 accessories related to electronic communication devices, or any gambling  
4 devices be forfeited as a part of the sentence imposed if it finds by  
5 clear and convincing evidence adduced at a separate hearing in the same  
6 prosecution, conducted pursuant to section 11 of this act, that any or  
7 all such property was derived from, used, or intended to be used to  
8 facilitate a violation of section 28-1102, 28-1103, 28-1104, 28-1105,  
9 28-1105.01, or 28-1107 Any gambling device or gambling record possessed  
10 in violation of any provision of this article, or any money used as a bet  
11 or stake in gambling activity in violation of any provision of this  
12 article, shall be forfeited to the state.

13       Sec. 9. Section 28-1463.01, Reissue Revised Statutes of Nebraska, is  
14 amended to read:

15       28-1463.01 Sections 28-1463.01 to 28-1463.05 and section 10 of this  
16 act shall be known and may be cited as the Child Pornography Prevention  
17 Act.

18       Sec. 10. In addition to the penalties provided in the Child  
19 Pornography Prevention Act, a sentencing court may order that any money,  
20 securities, negotiable instruments, firearms, conveyances, or electronic  
21 communication devices as defined in section 28-833 or any equipment,  
22 components, peripherals, software, hardware, or accessories related to  
23 electronic communication devices be forfeited as a part of the sentence  
24 imposed if it finds by clear and convincing evidence adduced at a  
25 separate hearing in the same prosecution, conducted pursuant to section  
26 11 of this act, that any or all such property was derived from, used, or  
27 intended to be used to facilitate a violation of the Child Pornography  
28 Prevention Act.

29       Sec. 11. (1) In addition to existing penalties for a violation of  
30 the Child Pornography Prevention Act, subsection (1) of section 28-416,  
31 or section 28-813.01, 28-1102, 28-1103, 28-1104, 28-1105, 28-1105.01, or

1 28-1107, a court may order forfeiture of any money, securities,  
2 negotiable instruments, firearms, conveyances, or electronic  
3 communication devices as defined in section 28-833, any equipment,  
4 components, peripherals, software, hardware, or accessories related to  
5 electronic communication devices, or any gambling devices as defined in  
6 section 28-1101 if:

7       (a) The owner or possessor of the property has been convicted of a  
8 violation of the Child Pornography Prevention Act, subsection (1) of  
9 section 28-416, or section 28-813.01, 28-1102, 28-1103, 28-1104, 28-1105,  
10 28-1105.01, or 28-1107;

11       (b) The information charging such violation specifically requests  
12 the forfeiture of property upon conviction and is prepared pursuant to  
13 section 12 of this act; and

14       (c) The property is found by clear and convincing evidence to have  
15 been derived from, used, or intended to be used to facilitate a violation  
16 of the Child Pornography Prevention Act, subsection (1) of section  
17 28-416, or section 28-813.01, 28-1102, 28-1103, 28-1104, 28-1105,  
18 28-1105.01, or 28-1107.

19       (2) Following the filing of an information charging a violation of  
20 the Child Pornography Prevention Act, subsection (1) of section 28-416,  
21 or section 28-813.01, 28-1102, 28-1103, 28-1104, 28-1105, 28-1105.01, or  
22 28-1107 that specifically seeks forfeiture of any property listed in  
23 subsection (1) of this section, the defendant may request a pretrial  
24 hearing to determine the existence of probable cause to believe that the  
25 property specifically sought to be forfeited was derived from, used, or  
26 intended to be used to facilitate a violation of the Child Pornography  
27 Prevention Act, subsection (1) of section 28-416, or section 28-813.01,  
28 28-1102, 28-1103, 28-1104, 28-1105, 28-1105.01, or 28-1107. The request  
29 for a hearing pursuant to this section must be filed with the district  
30 court in which the criminal proceeding is pending within thirty days  
31 after the filing of the information.

1       (3) At any time after the filing of the information in district  
2 court and prior to final disposition of the criminal case, any person or  
3 entity, other than the defendant, with a claimed legal interest in the  
4 property may petition to intervene in the district court with  
5 jurisdiction over the criminal case for the specific and limited purpose  
6 of demonstrating his, her, or its legal interest in the property and his,  
7 her, or its lack of actual knowledge that such property was derived from,  
8 used, or intended to be used in violation of the Child Pornography  
9 Prevention Act, subsection (1) of section 28-416, or section 28-813.01,  
10 28-1102, 28-1103, 28-1104, 28-1105, 28-1105.01, or 28-1107. In the  
11 petition to intervene, the intervening person or entity shall, at a  
12 minimum, state facts demonstrating his, her, or its legal interest in the  
13 property and his, her, or its lack of actual knowledge regarding the use  
14 or intended use of the property. Within thirty days after filing a motion  
15 to intervene, the district court shall conduct an evidentiary hearing on  
16 the matter. At the conclusion of such hearing, the court may order that  
17 any or all of the property be returned to the intervening claimant after  
18 it is no longer needed as evidence in the criminal case upon a showing by  
19 the claimant by a preponderance of the evidence (a) that he, she, or it  
20 has a legally recognized interest in the property and (b) either (i) that  
21 such property was acquired by the claimant in good faith and he, she, or  
22 it did not have actual knowledge that such property was derived from,  
23 used, or intended to be used to facilitate a violation of the Child  
24 Pornography Prevention Act, subsection (1) of section 28-416, or section  
25 28-813.01, 28-1102, 28-1103, 28-1104, 28-1105, 28-1105.01, or 28-1107 or  
26 (ii) that the property seized was not derived from, used, or intended to  
27 be used to facilitate a violation of the Child Pornography Prevention  
28 Act, subsection (1) of section 28-416, or section 28-813.01, 28-1102,  
29 28-1103, 28-1104, 28-1105, 28-1105.01, or 28-1107. The court, on its own  
30 motion or upon application of the intervening claimant, may permit such  
31 person to proceed in forma pauperis under sections 25-2301 to 25-2310.

1 The court, on its own motion or upon application of the intervening  
2 claimant, may appoint counsel to represent such person if such person is  
3 indigent. If he or she asserts indigency, the court shall make a  
4 reasonable inquiry to determine such person's financial condition and may  
5 require him or her to execute an affidavit of indigency for filing with  
6 the clerk of the court.

7 (4) After conviction but prior to sentencing for a violation of the  
8 Child Pornography Prevention Act, subsection (1) of section 28-416, or  
9 section 28-813.01, 28-1102, 28-1103, 28-1104, 28-1105, 28-1105.01, or  
10 28-1107 in cases in which the prosecuting authority has specifically  
11 requested forfeiture of property, the district court shall conduct an  
12 evidentiary hearing at which the prosecuting authority must prove by  
13 clear and convincing evidence what specific amount or portion of the  
14 property specifically enumerated in the criminal information was derived  
15 from, used, or intended for use in furtherance of a violation of the  
16 Child Pornography Prevention Act, subsection (1) of section 28-416, or  
17 section 28-813.01, 28-1102, 28-1103, 28-1104, 28-1105, 28-1105.01, or  
18 28-1107. At the conclusion of such hearing, the court shall make specific  
19 findings of fact indicating what amount or portion of the property sought  
20 to be forfeited by the state was derived from, used, or intended to be  
21 used to facilitate a violation of the Child Pornography Prevention Act,  
22 subsection (1) of section 28-416, or section 28-813.01, 28-1102, 28-1103,  
23 28-1104, 28-1105, 28-1105.01, or 28-1107. The court shall order any  
24 amount or portion of the property not proven by the state to be derived  
25 from, used, or intended to be used to facilitate a violation of the Child  
26 Pornography Prevention Act, subsection (1) of section 28-416, or section  
27 28-813.01, 28-1102, 28-1103, 28-1104, 28-1105, 28-1105.01, or 28-1107 or  
28 the fair market value of the legally recognized interest in such property  
29 be returned to its rightful and legal owner or interest holder.

30 (5)(a) The court shall order that any amount or portion of property  
31 proven by the state by clear and convincing evidence to be derived from,

1 used, or intended to be used to facilitate a violation of the Child  
2 Pornography Prevention Act, subsection (1) of section 28-416, or section  
3 28-813.01, 28-1102, 28-1103, 28-1104, 28-1105, 28-1105.01, or 28-1107 be  
4 forfeited to the state and disposition of such property be conducted in  
5 accordance with this subsection and section 28-1439.02 at such time as  
6 the property is no longer required as evidence in any criminal  
7 proceeding.

8 (b) As part of any disposition of property, the court may order  
9 that: (i) Any money, securities, or negotiable instruments be distributed  
10 as provided in Article VII, section 5, of the Constitution of Nebraska;  
11 (ii) any conveyances be sold or put to official use by the seizing agency  
12 for a period of not more than one year and when such property is no  
13 longer necessary for official use or at the end of two years, whichever  
14 comes first, such property shall be sold. Proceeds from the sale of any  
15 conveyance shall be distributed as provided in Article VII, section 5, of  
16 the Constitution of Nebraska; (iii) any electronic communication devices  
17 as defined in section 28-833, any equipment, components, peripherals,  
18 software, hardware, or accessories related to electronic communication  
19 devices, or any gambling devices as defined in section 28-1101 be  
20 destroyed by a law enforcement agency; and (iv) the disposition of  
21 firearms shall be effectuated pursuant to section 29-820.

22 (c) As used in this subsection, official use means use directly in  
23 connection with enforcement of the Child Pornography Prevention Act, the  
24 Uniform Controlled Substances Act, or section 28-813.01, 28-1102,  
25 28-1103, 28-1104, 28-1105, 28-1105.01, or 28-1107.

26 (6) Any money, securities, negotiable instruments, firearms,  
27 conveyances, or electronic communication devices as defined in section  
28 28-833, any equipment, components, peripherals, software, hardware, or  
29 accessories related to electronic communication devices, or any gambling  
30 devices as defined in section 28-1101 may be forfeited pursuant to a plea  
31 agreement between the state and the defendant subject to notice to or

1 approval of the court.

2 (7) Subdivision (1)(a) of this section does not apply if the owner  
3 or possessor of the property dies or is removed from the United States  
4 before charges are filed or a conviction obtained.

5 (8) Subdivision (1)(b) of this section does not apply if the owner  
6 or possessor of the property dies or is removed from the United States  
7 before charges are filed so long as the statute of limitations for a  
8 violation of the Child Pornography Prevention Act, subsection (1) of  
9 section 28-416, or section 28-813.01, 28-1102, 28-1103, 28-1104, 28-1105,  
10 28-1105.01, or 28-1107 has not expired.

11 (9) Subdivision (1)(a) of this section does not apply if the owner  
12 or possessor of the property is unknown or incapable of being determined  
13 for some legitimate reason or fails to appear in court as ordered after  
14 prosecution for a violation of the Child Pornography Prevention Act,  
15 subsection (1) of section 28-416, or section 28-813.01, 28-1102, 28-1103,  
16 28-1104, 28-1105, 28-1105.01, or 28-1107 is commenced and is not  
17 apprehended within twelve months after the failure to appear order was  
18 issued by the court.

19 (10) If the owner or possessor of the property fails to appear in  
20 court as ordered after prosecution for a violation of the Child  
21 Pornography Prevention Act, subsection (1) of section 28-416, or section  
22 28-813.01, 28-1102, 28-1103, 28-1104, 28-1105, 28-1105.01, or 28-1107 is  
23 commenced but appears or is apprehended within twelve months after the  
24 failure to appear order was issued by the court, the court may order the  
25 owner or possessor of the property, as a part of any sentence imposed for  
26 either the failure to appear or the conviction of the Child Pornography  
27 Prevention Act, subsection (1) of section 28-416, or section 28-813.01,  
28 28-1102, 28-1103, 28-1104, 28-1105, 28-1105.01, or 28-1107, to pay a  
29 storage fee of one hundred dollars per month for each month the property  
30 was held following the issuance of the failure to appear order.

31 Sec. 12. (1) The prosecuting authority must specifically plead its

1 intent to seek forfeiture of any property upon a conviction for a  
2 violation of the Child Pornography Prevention Act, subsection (1) of  
3 section 28-416, or section 28-813.01, 28-1102, 28-1103, 28-1104, 28-1105,  
4 28-1105.01, or 28-1107 in the same criminal information charging the  
5 underlying violation of the Child Pornography Prevention Act, subsection  
6 (1) of section 28-416, or section 28-813.01, 28-1102, 28-1103, 28-1104,  
7 28-1105, 28-1105.01, or 28-1107.

8 (2) In pleading its intent to seek forfeiture, the information shall  
9 specifically (a) state the date the property was seized, (b) state the  
10 place the property was seized from, (c) describe the property sought to  
11 be forfeited, and (d) if known, state the name of the owner of the  
12 property, the name of the person or persons in possession of the property  
13 or in physical proximity to the property when it was seized, and the name  
14 of any other person or entity that may have a claim or interest in the  
15 property.

16 Sec. 13. No law enforcement agency or prosecuting authority of this  
17 state or its political subdivisions shall transfer or refer any money or  
18 property to a federal law enforcement authority or other federal agency  
19 by any means unless:

20 (1) The money or property seized exceeds twenty-five thousand  
21 dollars in currency or value;

22 (2) The money or property is physically seized by a federal agent  
23 who is employed by the federal government; or

24 (3) The person from whom the money or property was seized is the  
25 subject of a federal prosecution or the facts and circumstances  
26 surrounding the money or property seized are the subject of a federal  
27 prosecution.

28 Sec. 14. If any section in this act or any part of any section is  
29 declared invalid or unconstitutional, the declaration shall not affect  
30 the validity or constitutionality of the remaining portions.

31 Sec. 15. Original sections 28-431, 28-1111, and 28-1463.01, Reissue



- 1 Revised Statutes of Nebraska, and sections 25-21,302, 28-101, 28-109,
- 2 28-416, and 28-813.01, Revised Statutes Supplement, 2015, are repealed.