

LEGISLATURE OF NEBRASKA
ONE HUNDRED FIFTH LEGISLATURE
SECOND SESSION

LEGISLATIVE BILL 970

Introduced by Wayne, 13.

Read first time January 10, 2018

Committee: Judiciary

1 A BILL FOR AN ACT relating to the Uniform Controlled Substances Act; to
2 amend section 28-416, Revised Statutes Supplement, 2017; to change
3 marijuana penalties as prescribed; and to repeal the original
4 section.

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

1 Section 1. Section 28-416, Revised Statutes Supplement, 2017, is
2 amended to read:

3 28-416 (1) Except as authorized by the Uniform Controlled Substances
4 Act, it shall be unlawful for any person knowingly or intentionally: (a)
5 To manufacture, distribute, deliver, dispense, or possess with intent to
6 manufacture, distribute, deliver, or dispense a controlled substance; or
7 (b) to create, distribute, or possess with intent to distribute a
8 counterfeit controlled substance.

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

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

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)~~, or (14) of this section,
9 depending upon the controlled substance involved, for the first violation
10 and for a second or subsequent violation shall be punished by the next
11 higher penalty classification than that prescribed for a first violation
12 of this subsection, but in no event shall such person be punished by a
13 penalty greater than a Class IB felony.

14 (b) For purposes of this subsection:

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

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

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

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

1 years to manufacture, transport, distribute, carry, deliver, dispense,
2 prepare for delivery, offer for delivery, or possess with intent to do
3 the same a controlled substance or a counterfeit controlled substance.

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

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

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

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

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

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

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

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

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

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

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

19 (10) Any person who violates subsection (1) of this section with
20 respect to amphetamine, its salts, optical isomers, and salts of its
21 isomers, or with respect to methamphetamine, its salts, optical isomers,
22 and salts of its isomers, in a quantity of:

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

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

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

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

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

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

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

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

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

18 (14) Any person who violates subsection (1) of this section with
19 respect to marijuana in a quantity of:

20 (a) One ounce or less shall be guilty of a Class IV felony; and

21 (b) More than one ounce shall be guilty of a Class IIA felony.

22 (15) {14} Any person convicted of violating this section, if placed
23 on probation, shall, as a condition of probation, satisfactorily attend
24 and complete appropriate treatment and counseling on drug abuse provided
25 by a program authorized under the Nebraska Behavioral Health Services Act
26 or other licensed drug treatment facility.

27 (16) {15} Any person convicted of violating this section, if
28 sentenced to the Department of Correctional Services, shall attend
29 appropriate treatment and counseling on drug abuse.

30 (17) {16} Any person knowingly or intentionally possessing a firearm
31 while in violation of subsection (1) of this section shall be punished by

1 the next higher penalty classification than the penalty prescribed in
2 subsection (2), (7), (8), (9), ~~or (10)~~, or (14) of this section, but in
3 no event shall such person be punished by a penalty greater than a Class
4 IB felony.

5 ~~(18)~~ ~~(17)~~ A person knowingly or intentionally in possession of money
6 used or intended to be used to facilitate a violation of subsection (1)
7 of this section shall be guilty of a Class IV felony.

8 ~~(19)~~ ~~(18)~~ In addition to the existing penalties available for a
9 violation of subsection (1) of this section, including any criminal
10 attempt or conspiracy to violate subsection (1) of this section, a
11 sentencing court may order that any money, securities, negotiable
12 instruments, firearms, conveyances, or electronic communication devices
13 as defined in section 28-833 or any equipment, components, peripherals,
14 software, hardware, or accessories related to electronic communication
15 devices be forfeited as a part of the sentence imposed if it finds by
16 clear and convincing evidence adduced at a separate hearing in the same
17 prosecution, following conviction for a violation of subsection (1) of
18 this section, and conducted pursuant to section 28-1601, that any or all
19 such property was derived from, used, or intended to be used to
20 facilitate a violation of subsection (1) of this section.

21 ~~(20)~~ ~~(19)~~ In addition to the penalties provided in this section:

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

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

29 (ii) For a second offense, the court may, as a part of the judgment
30 of conviction or adjudication, (A) impound any such licenses or permits
31 for ninety days and (B) require such person to complete no fewer than

1 twenty and no more than forty hours of community service and to attend a
2 drug education class; and

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

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

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

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

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

31 A copy of an abstract of the court's conviction or adjudication

1 shall be transmitted to the Director of Motor Vehicles pursuant to
2 sections 60-497.01 to 60-497.04 if a license or permit is impounded or a
3 juvenile is prohibited from obtaining a license or permit under this
4 subsection.

5 Sec. 2. Original section 28-416, Revised Statutes Supplement, 2017,
6 is repealed.