

LEGISLATURE OF NEBRASKA
ONE HUNDRED SIXTH LEGISLATURE
FIRST SESSION

LEGISLATIVE BILL 652

Introduced by Wayne, 13.

Read first time January 23, 2019

Committee: Judiciary

- 1 A BILL FOR AN ACT relating to the Uniform Controlled Substances Act; to
- 2 amend section 28-416, Revised Statutes Cumulative Supplement, 2018;
- 3 to change a penalty for possession as prescribed; and to repeal the
- 4 original section.
- 5 Be it enacted by the people of the State of Nebraska,

1 Section 1. Section 28-416, Revised Statutes Cumulative Supplement,
2 2018, is 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) of this section, any person who violates subsection (1) of this
11 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) (3) A person knowingly or intentionally possessing a
19 controlled substance, except marijuana or any substance containing a
20 quantifiable amount of the substances, chemicals, or compounds described,
21 defined, or delineated in subdivision (c)(25) of Schedule I of section
22 28-405, unless such substance was obtained directly or pursuant to a
23 medical order issued by a practitioner authorized to prescribe while
24 acting in the course of his or her professional practice, or except as
25 otherwise authorized by the act, is subject to the following penalties:
26 ~~shall be guilty of a Class IV felony.~~

27 (i) If the controlled substance is an amount constituting only
28 residue, such person is guilty of a Class I misdemeanor; or

29 (ii) If the controlled substance is an amount constituting more than
30 residue, such person is guilty of a Class IV felony.

31 (b) For purposes of this subsection, residue means:

1 (i) For a controlled substance customarily sold by weight, amounts
2 of one-tenth of a gram or less;

3 (ii) For a controlled substance not customarily sold by weight,
4 amounts of less than one dosage unit; or

5 (iii) The ashes, resin, or other actual physical remains of a
6 controlled substance that has already been consumed and is not a usable
7 amount.

8 (c) A person shall not be in violation of this subsection if section
9 28-472 applies.

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

28 (b) For purposes of this subsection:

29 (i) Playground means any outdoor facility, including any parking lot
30 appurtenant to the facility, intended for recreation, open to the public,
31 and with any portion containing three or more apparatus intended for the

1 recreation of children, including sliding boards, swingsets, and
2 teeterboards;

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

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

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

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

26 (c) Any person who violates subdivision (a) or (b) of this
27 subsection shall be punished by the next higher penalty classification
28 than the penalty prescribed in subsection (2), (7), (8), (9), or (10) of
29 this section, depending upon the controlled substance involved, for the
30 first violation and for a second or subsequent violation shall be
31 punished by the next higher penalty classification than that prescribed

1 for a first violation of this subsection, but in no event shall such
2 person be punished by a penalty greater than a Class IB felony.

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

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

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

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

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

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

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

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

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

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

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

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

31 (c) At least ten grams but less than twenty-eight grams shall be

1 guilty of a Class ID felony.

2 (10) Any person who violates subsection (1) of this section with
3 respect to amphetamine, its salts, optical isomers, and salts of its
4 isomers, or with respect to methamphetamine, its salts, optical isomers,
5 and salts of its isomers, in a quantity of:

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

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

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

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

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

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

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

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

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

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

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

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

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. 2. Original section 28-416, Revised Statutes Cumulative
16 Supplement, 2018, is repealed.