

## LEGISLATIVE BILL 1106

Approved by the Governor April 19, 2016

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

A BILL FOR AN ACT relating to forfeiture of property; to amend sections 28-431, 28-1111, and 28-1463.01, Reissue Revised Statutes of Nebraska, and sections 25-21,302, 28-101, 28-109, 28-416, and 28-813.01, Revised Statutes Supplement, 2015; to change and provide forfeiture provisions for certain offenses as prescribed; to provide for reports regarding forfeitures; to provide duties for a prosecuting attorney seeking forfeiture; to provide restrictions on the disposition of money or property seized as prescribed; to harmonize provisions; to provide severability; and to repeal the original sections.

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

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

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

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

- (i) Conveyances, including aircraft, vehicles, or vessels;
- (ii) Books, records, telecommunication equipment, or computers;
- (iii) Money or weapons;
- (iv) Everything of value furnished, or intended to be furnished, in exchange for an act in violation and all proceeds traceable to the exchange;
- (v) Negotiable instruments and securities;
- (vi) Any property, real or personal, directly or indirectly acquired or received in a violation or as an inducement to violate;
- (vii) Any property traceable to proceeds from a violation; and
- (viii) Any real property, including any right, title, and interest in the whole of or any part of any lot or tract of land, used in furtherance of a violation of the Child Pornography Prevention Act or section 28-813, 28-831, 28-1102, 28-1103, 28-1104, 28-1105, 28-1105.01, or 28-1107 section 28-831.

(c)(i) No property used by any person as a common carrier in the transaction of business as a common carrier is subject to forfeiture under this section unless it appears that the owner or other person in charge of the property is a consenting party or privy to a violation of the Child Pornography Prevention Act or section 28-813, 28-831, 28-1102, 28-1103, 28-1104, 28-1105, 28-1105.01, or 28-1107 section 28-831.

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

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

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

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

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

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

- (i) The owner of the property if the owner's address is known;
- (ii) Any secured party who has registered a lien or filed a financing statement as provided by law if the identity of the secured party can be ascertained by the entity filing the petition by making a good faith effort to ascertain the identity of the secured party;

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

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

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

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

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

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

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

(10) If the owner of the property cannot be found and served with a copy of the petition of forfeiture or if no person was in possession of the property subject to forfeiture at the time that it was seized and the owner of the property is unknown, there shall be filed with the clerk of the court in which the proceeding is pending an affidavit to such effect, whereupon the clerk of the court shall publish notice of the hearing addressed to "the Unknown Owner of ....., " filling in the blank space with a reasonably detailed description of the property subject to forfeiture. Service by publication shall be completed in the same manner as is provided in the code of civil procedure for the service of process in civil actions in the district courts of this state.

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

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

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

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

(d) If it is found that the property is subject to forfeiture, then the judge shall forfeit the property. However, if proof at the hearing discloses

that the interest of any bona fide lienholder, any secured party, any other person holding an interest in the property in the nature of a security interest, or any holder of a bona fide encumbrance, mortgage, or deed of trust is greater than or equal to the present value of the property, the court shall order the property released to him or her. If the interest is less than the present value of the property and if the proof shows that the property is subject to forfeiture, the court shall order the property forfeited.

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

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

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

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

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

- (a) The date of the seizure;
- (b) The type of property seized, such as a vehicle, currency, or a firearm;
- (c) A description of the property seized, including, if applicable, the make, model, year, and serial number of the property seized;
- (d) The street name and traffic direction where the seizure occurred, such as eastbound, westbound, southbound, or northbound;
- (e) The crime for which the suspect was charged;
- (f) The disposition of the property seized through the forfeiture process, such as the property was returned to the suspect, returned to a third-party owner, sold, destroyed, or retained by law enforcement;
- (g) The basis for disposition of the seized property, such as the suspect was found not guilty, agreement for disposition, criminal forfeiture, or civil forfeiture;
- (h) The value of the property forfeited;
- (i) If the seizure resulted from a motor vehicle stop, (i) whether a warning or citation was issued, an arrest was made, or a search was conducted and (ii) the characteristics of the race or ethnicity of the suspect. The identification of such characteristics shall be based on the observation and perception of the law enforcement officer responsible for reporting the motor vehicle stop. The information shall not be required to be provided by the suspect; and
- (j) Any additional information the Nebraska State Patrol, a county sheriff, any city or village police department, or any other law enforcement agency in this state, as the case may be, deems appropriate.

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

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

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

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

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

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

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

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

(1) Act shall mean a bodily movement, and includes words and possession of property;

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

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

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

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

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

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

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

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

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

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

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

(13 ~~12~~) Motor vehicle shall mean every self-propelled land vehicle, not operated upon rails, except self-propelled chairs used by persons who are disabled, electric personal assistive mobility devices as defined in section 60-618.02, and bicycles as defined in section 60-611;

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(b) For purposes of this subsection:

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(iii) For a third or subsequent offense, the court may, as a part of the judgment of conviction or adjudication, (A) impound any such licenses or permits for twelve months and (B) require such person to complete no fewer than sixty hours of community service, to attend a drug education class, and to

submit to a drug assessment by a licensed alcohol and drug counselor; and

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

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

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

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

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

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

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

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

(3) All money that a law enforcement agency proves was furnished by such agency shall be returned to the agency. All property seized without a search warrant shall not be subject to a replevin action and: (a) All property described in subdivisions (1)(a) through ~~to~~ (1)(e) of this section shall be kept by the property division of the law enforcement agency which employs the officer who seized such property for so long as it is needed as evidence in any trial; and (b) when no longer required as evidence, all property described in subdivision (1)(e) of this section shall be disposed of on order of a court of record of this state in such manner as the court in its sound discretion shall direct, and all property described in subdivisions (1)(a), (b), (c), and (d) of this section, that has been used or is intended to be used in violation of the act, when no longer needed as evidence shall be destroyed by the law enforcement agency holding the same or turned over to the department for custody or destruction, except that a law enforcement agency may keep a small quantity of the property described in subdivisions (1)(a), (b), (c), and (d) of this section for training purposes or use in investigations. Any large quantity of property described in subdivisions (1)(a), (b), (c), and (d) of this section, whether seized under a search warrant or validly seized without a warrant, may be disposed of on order of a court of record of this state in such manner as the court in its sound discretion shall direct. Such an order may be given only after a proper laboratory examination and report of such property has been completed and after a hearing has been held by the court after notice to the defendant of the proposed disposition of the property. The findings in such court order as to the nature, kind, and quantity of the property so disposed of may be accepted as evidence at subsequent court proceedings in lieu of the property ordered destroyed by the court order.

(4) When any property described in subdivision (1)(f) or (g) of this section is seized, the person seizing the same shall cause to be filed, within ten days thereafter, in the district court of the county in which seizure was made, petition for disposition of such property. The proceedings shall be brought in the name of the state by the county attorney of the county in which

such property was seized. The petition shall describe the property, state the name of the owner if known, allege the essential elements of the violation which is claimed to exist, and conclude with a prayer for disposition. The county attorney shall have a copy of the petition served upon the owner or any person having an interest in the property, if known, in person or by registered or certified mail at his or her last-known address. If the owner is unknown or there is a reasonable probability that there are unknown persons with interests in the property, the county attorney shall provide notice of the seizure and petition for disposition by publication once a week for four consecutive weeks in a newspaper of general circulation in the county of the seizure. At least five days shall elapse between each publication of notice.

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

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

(7) Any court costs and fees and storage and other proper expenses shall be charged against any person intervening as claimant or owner of the property unless such person shall establish his or her claim. If a sale is ordered, the officer holding the sale shall make a return to the court showing to whom the property was sold and for what price. This return together with the court order shall authorize the county clerk to issue a title to the purchaser of the property if such title is required under the laws of this state.

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

- (i) The date of the seizure;
- (ii) The type of property seized, such as a vehicle or currency;
- (iii) A description of the property seized, including, if applicable, the make, model, year, and serial number of the property seized;
- (iv) The street name and traffic direction where the seizure occurred, such as eastbound, westbound, southbound, or northbound;
- (v) The crime for which the suspect was charged;
- (vi) The disposition of the property seized through the forfeiture process, such as the property was returned to the suspect, returned to a third-party owner, sold, destroyed, or retained by law enforcement;
- (vii) The basis for disposition of the seized property, such as the suspect was found not guilty, agreement for disposition, criminal forfeiture, or civil forfeiture;

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

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

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

(c) For seizures resulting from the activities of multijurisdictional law



enforcement entities, a law enforcement entity other than a Nebraska law enforcement entity shall, on its own initiative, report the information required by this subsection.

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

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

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

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

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

(c) Any person who violates this section and has previously been convicted of a violation of this section or section 28-308, 28-309, 28-310, 28-311, 28-313, 28-314, 28-315, 28-319, 28-319.01, 28-320.01, 28-833, 28-1463.03, or 28-1463.05 or subsection (1) or (2) of section 28-320 shall be guilty of a Class IC felony for each offense.

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

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

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

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

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

28-1111 In addition to any penalty provided in section 28-1102, 28-1103, 28-1104, 28-1105, 28-1105.01, or 28-1107, a sentencing court may order that any money, securities, negotiable instruments, firearms, conveyances, or electronic communication devices as defined in section 28-833 or any equipment, components, peripherals, software, hardware, or accessories related to electronic communication devices, or any gambling devices be forfeited as a part of the sentence imposed if it finds by clear and convincing evidence adduced at a separate hearing in the same prosecution, conducted pursuant to section 11 of this act, that any or all such property was derived from, used, or intended to be used to facilitate a violation of section 28-1102, 28-1103, 28-1104, 28-1105, 28-1105.01, or 28-1107 Any gambling device or gambling record possessed in violation of any provision of this article, or any money used as a bet or stake in gambling activity in violation of any provision of this article, shall be forfeited to the state.

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

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

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

Sec. 11. (1) In addition to existing penalties for a violation of the Child Pornography Prevention Act, subsection (1) of section 28-416, or section 28-813.01, 28-1102, 28-1103, 28-1104, 28-1105, 28-1105.01, or 28-1107, a court may order forfeiture of any money, securities, negotiable instruments, firearms, conveyances, or electronic communication devices as defined in section 28-833, any equipment, components, peripherals, software, hardware, or accessories related to electronic communication devices, or any gambling devices as defined in section 28-1101 if:

(a) The owner or possessor of the property has been convicted of a

violation of the Child Pornography Prevention Act, subsection (1) of section 28-416, or section 28-813.01, 28-1102, 28-1103, 28-1104, 28-1105, 28-1105.01, or 28-1107;

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

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

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

(3) At any time after the filing of the information in district court and prior to final disposition of the criminal case, any person or entity, other than the defendant, with a claimed legal interest in the property may petition to intervene in the district court with jurisdiction over the criminal case for the specific and limited purpose of demonstrating his, her, or its legal interest in the property and his, her, or its lack of actual knowledge that such property was derived from, used, or intended to be used in violation of the Child Pornography Prevention Act, subsection (1) of section 28-416, or section 28-813.01, 28-1102, 28-1103, 28-1104, 28-1105, 28-1105.01, or 28-1107. In the petition to intervene, the intervening person or entity shall, at a minimum, state facts demonstrating his, her, or its legal interest in the property and his, her, or its lack of actual knowledge regarding the use or intended use of the property. Within thirty days after filing a motion to intervene, the district court shall conduct an evidentiary hearing on the matter. At the conclusion of such hearing, the court may order that any or all of the property be returned to the intervening claimant after it is no longer needed as evidence in the criminal case upon a showing by the claimant by a preponderance of the evidence (a) that he, she, or it has a legally recognized interest in the property and (b) either (i) that such property was acquired by the claimant in good faith and he, she, or it did not have actual knowledge that such property was derived from, used, or intended to be used to facilitate a violation of the Child Pornography Prevention Act, subsection (1) of section 28-416, or section 28-813.01, 28-1102, 28-1103, 28-1104, 28-1105, 28-1105.01, or 28-1107 or (ii) that the property seized was not derived from, used, or intended to be used to facilitate a violation of the Child Pornography Prevention Act, subsection (1) of section 28-416, or section 28-813.01, 28-1102, 28-1103, 28-1104, 28-1105, 28-1105.01, or 28-1107. The court, on its own motion or upon application of the intervening claimant, may permit such person to proceed in forma pauperis under sections 25-2301 to 25-2310. The court, on its own motion or upon application of the intervening claimant, may appoint counsel to represent such person if such person is indigent. If he or she asserts indigency, the court shall make a reasonable inquiry to determine such person's financial condition and may require him or her to execute an affidavit of indigency for filing with the clerk of the court.

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

(5)(a) The court shall order that any amount or portion of property proven by the state by clear and convincing evidence to be derived from, used, or intended to be used to facilitate a violation of the Child Pornography Prevention Act, subsection (1) of section 28-416, or section 28-813.01, 28-1102, 28-1103, 28-1104, 28-1105, 28-1105.01, or 28-1107 be forfeited to the

state and disposition of such property be conducted in accordance with this subsection and section 28-1439.02 at such time as the property is no longer required as evidence in any criminal proceeding.

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

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

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

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

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

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

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

Sec. 12. (1) The prosecuting authority must specifically plead its intent to seek forfeiture of any property upon a conviction for a violation of the Child Pornography Prevention Act, subsection (1) of section 28-416, or section 28-813.01, 28-1102, 28-1103, 28-1104, 28-1105, 28-1105.01, or 28-1107 in the same criminal information charging the underlying violation of the Child Pornography Prevention Act, subsection (1) of section 28-416, or section 28-813.01, 28-1102, 28-1103, 28-1104, 28-1105, 28-1105.01, or 28-1107.

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

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

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

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

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

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

Sec. 15. Original sections 28-431, 28-1111, and 28-1463.01, Reissue Revised Statutes of Nebraska, and sections 25-21,302, 28-101, 28-109, 28-416,

and 28-813.01, Revised Statutes Supplement, 2015, are repealed.