

AMENDMENTS TO LB1106

Introduced by Garrett, 3.

1 1. Strike the original sections and all amendments thereto and
2 insert the following new sections:

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

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

11 (b) The following property shall be subject to ~~civil~~ forfeiture if
12 used or intended for use as an instrumentality in or used in furtherance
13 of a violation of the Child Pornography Prevention Act or section 28-813,
14 28-831, 28-1102, 28-1103, 28-1104, 28-1105, 28-1105.01, or 28-1107
15 ~~section 28-831~~:

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

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

18 (iii) Money or weapons;

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

22 (v) Negotiable instruments and securities;

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

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

26 (viii) Any real property, including any right, title, and interest
27 in the whole of or any part of any lot or tract of land, used in

1 furtherance of a violation of the Child Pornography Prevention Act or
2 section 28-813, 28-831, 28-1102, 28-1103, 28-1104, 28-1105, 28-1105.01,
3 or 28-1107 section 28-831.

4 (c)(i) No property used by any person as a common carrier in the
5 transaction of business as a common carrier is subject to forfeiture
6 under this section unless it appears that the owner or other person in
7 charge of the property is a consenting party or privy to a violation of
8 the Child Pornography Prevention Act or section 28-813, 28-831, 28-1102,
9 28-1103, 28-1104, 28-1105, 28-1105.01, or 28-1107 section 28-831.

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

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

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

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

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

31 (b) A petition for forfeiture shall be filed by the Attorney General

1 or a county attorney in the name of the State of Nebraska and may be
2 filed in the county in which the seizure is made, the county in which the
3 criminal prosecution is brought, or the county in which the owner of the
4 seized property is found. Forfeiture proceedings may be brought in the
5 district court or the county court. A copy of the petition shall be
6 served upon the following persons by service of process in the same
7 manner as in civil cases:

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

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

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

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

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

27 (6) If the property is a motor vehicle or vessel and is not titled
28 in the State of Nebraska, then an attempt shall be made to ascertain the
29 name and address of the person in whose name the motor vehicle or vessel
30 is licensed, and if the motor vehicle or vessel is licensed in a state
31 which has in effect a certificate of title law, inquiry of the

1 appropriate agency of that state shall be made as to what the records of
2 the agency show as to who is the record owner of the motor vehicle or
3 vessel and who, if anyone, holds any lien, security interest, or other
4 instrument in the nature of a security device that affects the motor
5 vehicle or vessel.

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

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

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

29 (10) If the owner of the property cannot be found and served with a
30 copy of the petition of forfeiture or if no person was in possession of
31 the property subject to forfeiture at the time that it was seized and the

1 owner of the property is unknown, there shall be filed with the clerk of
2 the court in which the proceeding is pending an affidavit to such effect,
3 whereupon the clerk of the court shall publish notice of the hearing
4 addressed to "the Unknown Owner of, " filling in the blank
5 space with a reasonably detailed description of the property subject to
6 forfeiture. Service by publication shall be completed in the same manner
7 as is provided in the code of civil procedure for the service of process
8 in civil actions in the district courts of this state.

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

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

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

1 evidence.

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

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

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

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

28 (15) All real estate forfeited under this section shall be sold to
29 the highest bidder at a public auction for cash, the auction to be
30 conducted by the county sheriff or his or her designee at such place, on
31 such notice, and in accordance with the same procedure, as far as

1 practicable, as is required in the case of sales of land under execution
2 at law. The proceeds of the sale shall first be applied to the cost and
3 expense in administering and conducting the sale, then to the
4 satisfaction of all mortgages, deeds of trust, liens, and encumbrances of
5 record on the property. The remaining proceeds shall be remitted in the
6 same manner as provided in subsection (13) of this section.

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

11 Sec. 2. (1) For all money and property seized pursuant to section
12 25-21,302, the appropriate law enforcement agency or, as provided in
13 subsection (5) of this section, the prosecuting attorney shall provide a
14 written report of the forfeiture to the Auditor of Public Accounts. The
15 report shall include:

16 (a) The date of the seizure;

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

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

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

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

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

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

30 (h) The value of the property forfeited;

31 (i) If the seizure resulted from a motor vehicle stop, (i) whether a

1 warning or citation was issued, an arrest was made, or a search was
2 conducted and (ii) the characteristics of the race or ethnicity of the
3 suspect. The identification of such characteristics shall be based on the
4 observation and perception of the law enforcement officer responsible for
5 reporting the motor vehicle stop. The information shall not be required
6 to be provided by the suspect; and

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

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

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

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

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

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

29 28-101 Sections 28-101 to ~~28-468~~, ~~28-470~~ to 28-1357, 28-1418.01, and
30 28-1429.03 and sections 11 and 12 of this act shall be known and may be
31 cited as the Nebraska Criminal Code.

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

3 28-109 For purposes of the Nebraska Criminal Code, unless the
4 context otherwise requires:

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

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

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

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

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

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

19 (~~7~~ 6) Deadly physical force shall mean force, the intended, natural,
20 and probable consequence of which is to produce death, or which does, in
21 fact, produce death;

22 (~~8~~ 7) Deadly weapon shall mean any firearm, knife, bludgeon, or
23 other device, instrument, material, or substance, whether animate or
24 inanimate, which in the manner it is used or intended to be used is
25 capable of producing death or serious bodily injury;

26 (~~9~~ 8) Deface shall mean to alter the appearance of something by
27 removing, distorting, adding to, or covering all or a part of the thing;

28 (~~10~~ 9) Dwelling shall mean a building or other thing which is used,
29 intended to be used, or usually used by a person for habitation;

30 (~~11~~ 10) Government shall mean the United States, any state, county,
31 municipality, or other political unit, any branch, department, agency, or

1 subdivision of any of the foregoing, and any corporation or other entity
2 established by law to carry out any governmental function;

3 (~~12 11~~) Governmental function shall mean any activity which a public
4 servant is legally authorized to undertake on behalf of government;

5 (~~13 12~~) Motor vehicle shall mean every self-propelled land vehicle,
6 not operated upon rails, except self-propelled chairs used by persons who
7 are disabled, electric personal assistive mobility devices as defined in
8 section 60-618.02, and bicycles as defined in section 60-611;

9 (~~14 13~~) Omission shall mean a failure to perform an act as to which
10 a duty of performance is imposed by law;

11 (~~15 14~~) Peace officer shall mean any officer or employee of the
12 state or a political subdivision authorized by law to make arrests, and
13 shall include members of the National Guard on active service by
14 direction of the Governor during periods of emergency or civil disorder;

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

18 (~~17 16~~) Person shall mean any natural person and where relevant a
19 corporation or an unincorporated association;

20 (~~18 17~~) Public place shall mean a place to which the public or a
21 substantial number of the public has access, and includes but is not
22 limited to highways, transportation facilities, schools, places of
23 amusement, parks, playgrounds, and the common areas of public and private
24 buildings and facilities;

25 (~~19 18~~) Public servant shall mean any officer or employee of
26 government, whether elected or appointed, and any person participating as
27 an advisor, consultant, process server, or otherwise in performing a
28 governmental function, but the term does not include witnesses;

29 (~~20 19~~) Recklessly shall mean acting with respect to a material
30 element of an offense when any person disregards a substantial and
31 unjustifiable risk that the material element exists or will result from

1 his or her conduct. The risk must be of such a nature and degree that,
2 considering the nature and purpose of the actor's conduct and the
3 circumstances known to the actor, its disregard involves a gross
4 deviation from the standard of conduct that a law-abiding person would
5 observe in the actor's situation;

6 (21 ~~20~~) Serious bodily injury shall mean bodily injury which
7 involves a substantial risk of death, or which involves substantial risk
8 of serious permanent disfigurement, or protracted loss or impairment of
9 the function of any part or organ of the body;

10 (22 ~~21~~) Tamper shall mean to interfere with something improperly or
11 to make unwarranted alterations in its condition;

12 (23 ~~22~~) Thing of value shall mean real property, tangible and
13 intangible personal property, contract rights, choses in action,
14 services, and any rights of use or enjoyment connected therewith; and

15 (24 ~~23~~) Voluntary act shall mean an act performed as a result of
16 effort or determination, and includes the possession of property if the
17 actor was aware of his or her physical possession or control thereof for
18 a sufficient period to have been able to terminate it.

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

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

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

1 controlled substance classified in Schedule I, II, or III of section
2 28-405 shall be guilty of a Class IIA felony; or (c) a controlled
3 substance classified in Schedule IV or V of section 28-405 shall be
4 guilty of a Class IIIA felony.

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

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

31 (b) For purposes of this subsection:

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

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

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

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

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

29 (c) Any person who violates subdivision (a) or (b) of this
30 subsection shall be punished by the next higher penalty classification
31 than the penalty prescribed in subsection (2), (7), (8), (9), or (10) of

1 this section, depending upon the controlled substance involved, for the
2 first violation and for a second or subsequent violation shall be
3 punished by the next higher penalty classification than that prescribed
4 for a first violation of this subsection, but in no event shall such
5 person be punished by a penalty greater than a Class IB felony.

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

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

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

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

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

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

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

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

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

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

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

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

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

5 (10) Any person who violates subsection (1) of this section with
6 respect to amphetamine, its salts, optical isomers, and salts of its
7 isomers, or with respect to methamphetamine, its salts, optical isomers,
8 and salts of its isomers, 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 (11) Any person knowingly or intentionally possessing marijuana
16 weighing more than one ounce but not more than one pound shall be guilty
17 of a Class III misdemeanor.

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

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

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

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

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

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

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

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

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

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

1 property was derived from, used, or intended to be used to facilitate a
2 violation of subsection (1) of this section.

3 (19) A law enforcement agency or prosecuting authority shall not
4 enter into an agreement to transfer or refer seized property to a federal
5 agency directly, indirectly, by adoption, through an intergovernmental
6 joint task force, or by other means for the purposes of forfeiture
7 litigation and instead shall refer the seized property to appropriate
8 local or state prosecuting authorities for forfeiture litigation unless
9 the seized property includes United States currency in excess of fifty
10 thousand dollars.

11 (20 18) In addition to the penalties provided in this section:

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

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

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

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

30 (b) If the person convicted or adjudicated of violating this section
31 is eighteen years of age or younger and does not have a permit or license

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

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

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

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

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

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

28 28-431 (1) The following shall be seized without warrant by an
29 officer of the Division of Drug Control or by any peace officer and the
30 same shall be subject to forfeiture: (a) All controlled substances which
31 have been manufactured, distributed, dispensed, acquired, or possessed in

1 violation of the Uniform Controlled Substances Act; (b) all raw
2 materials, products, and equipment of any kind which are used, or
3 intended for use, in manufacturing, compounding, processing,
4 administering, delivering, importing, or exporting any controlled
5 substance in violation of the act; (c) all property which is used, or is
6 intended for use, as a container for property described in subdivisions
7 (a) and (b) of this subsection; (d) all drug paraphernalia defined in
8 section 28-439; (e) all books, records, and research, including, but not
9 limited to, formulas, microfilm, tapes, and data, which are used, or
10 intended for use, in violation of the act; (f) all conveyances including,
11 but not limited to, aircraft, vehicles, or vessels which are used, or
12 intended for use, in transporting any controlled substance with intent to
13 manufacture, distribute, deliver, dispense, export, or import such
14 controlled substance in violation of the act; and (g) all money used, or
15 intended to be used, to facilitate a violation of the act.

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

22 (3) All money that a law enforcement agency proves was furnished by
23 such agency shall be returned to the agency. All property seized without
24 a search warrant shall not be subject to a replevin action and: (a) All
25 property described in subdivisions (1)(a) through ~~to~~ (1)(e) of this
26 section shall be kept by the property division of the law enforcement
27 agency which employs the officer who seized such property for so long as
28 it is needed as evidence in any trial; and (b) when no longer required as
29 evidence, all property described in subdivision (1)(e) of this section
30 shall be disposed of on order of a court of record of this state in such
31 manner as the court in its sound discretion shall direct, and all

1 property described in subdivisions (1)(a), (b), (c), and (d) of this
2 section, that has been used or is intended to be used in violation of the
3 act, when no longer needed as evidence shall be destroyed by the law
4 enforcement agency holding the same or turned over to the department for
5 custody or destruction, except that a law enforcement agency may keep a
6 small quantity of the property described in subdivisions (1)(a), (b),
7 (c), and (d) of this section for training purposes or use in
8 investigations. Any large quantity of property described in subdivisions
9 (1)(a), (b), (c), and (d) of this section, whether seized under a search
10 warrant or validly seized without a warrant, may be disposed of on order
11 of a court of record of this state in such manner as the court in its
12 sound discretion shall direct. Such an order may be given only after a
13 proper laboratory examination and report of such property has been
14 completed and after a hearing has been held by the court after notice to
15 the defendant of the proposed disposition of the property. The findings
16 in such court order as to the nature, kind, and quantity of the property
17 so disposed of may be accepted as evidence at subsequent court
18 proceedings in lieu of the property ordered destroyed by the court order.

19 (4) When any property described in subdivision (1)(f) or (g) of this
20 section is seized, the person seizing the same shall cause to be filed,
21 within ten days thereafter, in the district court of the county in which
22 seizure was made, petition for disposition of such property. The
23 proceedings shall be brought in the name of the state by the county
24 attorney of the county in which such property was seized. The petition
25 shall describe the property, state the name of the owner if known, allege
26 the essential elements of the violation which is claimed to exist, and
27 conclude with a prayer for disposition. The county attorney shall have a
28 copy of the petition served upon the owner of or any person having an
29 interest in the property, if known, in person or by registered or
30 certified mail at his or her last-known address. If the owner is unknown
31 or there is a reasonable probability that there are unknown persons with

1 interests in the property, the county attorney shall provide notice of
2 the seizure and petition for disposition by publication once a week for
3 four consecutive weeks in a newspaper of general circulation in the
4 county of the seizure. At least five days shall elapse between each
5 publication of notice.

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

12 (6) Any person having an interest in the property proceeded against
13 or any person against whom civil or criminal liability would exist if
14 such property is in violation of the act may, within thirty days after
15 seizure, appear and file an answer or demurrer to the petition. The
16 answer or demurrer shall allege the claimant's interest in or liability
17 involving such property. At least thirty but not more than ninety days
18 after seizure, there shall be a hearing before the court. If the claimant
19 proves by a preponderance of the evidence that he or she (a) has not used
20 or intended to use the property to facilitate an offense in violation of
21 the act, (b) has an interest in such property as owner or lienor or
22 otherwise, acquired by him or her in good faith, and (c) at no time had
23 any actual knowledge that such property was being or would be used in, or
24 to facilitate, the violation of the act, the court shall order that such
25 property or the value of the claimant's interest in such property be
26 returned to the claimant. If there are no claims, if all claims are
27 denied, or if the value of the property exceeds all claims granted and it
28 is shown by clear and convincing evidence ~~beyond a reasonable doubt~~ that
29 such property was used in violation of the act, the court shall order
30 disposition of such property at such time as the property is no longer
31 required as evidence in any criminal proceeding. The court may order that

1 property described in subdivision (1)(f) of this section be sold or put
2 to official use by the confiscating agency for a period of not more than
3 one year and that when such property is no longer necessary for official
4 use or at the end of two years, whichever comes first, such property
5 shall be sold. Proceeds from the sale of the property and any money
6 described in subdivision (1)(g) of this section shall be distributed
7 pursuant to section 28-1439.02. Official use shall mean use directly in
8 connection with enforcement of the act.

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

17 (8)(a) For all money and property seized pursuant to this section,
18 the Division of Drug Control, any peace officer, or, as provided in
19 subdivision (d) of this subsection, the prosecuting attorney shall
20 provide a written report of the seizure to the Auditor of Public
21 Accounts. The report shall include:

22 (i) The date of the seizure;

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

25 (iii) A description of the property seized, including, if
26 applicable, the make, model, year, and serial number of the property
27 seized;

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

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

31 (vi) The disposition of the property seized through the forfeiture

1 process, such as the property was returned to the suspect, returned to a
2 third-party owner, sold, destroyed, or retained by law enforcement;

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

6 (viii) The value of the property forfeited;

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

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

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

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

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

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

31 28-813.01 (1) It shall be unlawful for a person to knowingly possess

1 any visual depiction of sexually explicit conduct, as defined in section
2 28-1463.02, which has a child, as defined in such section, as one of its
3 participants or portrayed observers.

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

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

10 (c) Any person who violates this section and has previously been
11 convicted of a violation of this section or section 28-308, 28-309,
12 28-310, 28-311, 28-313, 28-314, 28-315, 28-319, 28-319.01, 28-320.01,
13 28-833, 28-1463.03, or 28-1463.05 or subsection (1) or (2) of section
14 28-320 shall be guilty of a Class IC felony for each offense.

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

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

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

30 (4) In addition to the penalties provided in this section, a
31 sentencing court may order that any money, securities, negotiable

1 instruments, firearms, conveyances, or electronic communication devices
2 as defined in section 28-833 or any equipment, components, peripherals,
3 software, hardware, or accessories related to electronic communication
4 devices be forfeited as a part of the sentence imposed if it finds by
5 clear and convincing evidence adduced at a separate hearing in the same
6 prosecution, conducted pursuant to section 11 of this act, that any or
7 all such property was derived from, used, or intended to be used to
8 facilitate a violation of this section.

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

11 28-1111 In addition to any penalty provided in section 28-1102,
12 28-1103, 28-1104, 28-1105, 28-1105.01, or 28-1107, a sentencing court may
13 order that any money, securities, negotiable instruments, firearms,
14 conveyances, or electronic communication devices as defined in section
15 28-833 or any equipment, components, peripherals, software, hardware, or
16 accessories related to electronic communication devices, or any gambling
17 devices be forfeited as a part of the sentence imposed if it finds by
18 clear and convincing evidence adduced at a separate hearing in the same
19 prosecution, conducted pursuant to section 11 of this act, that any or
20 all such property was derived from, used, or intended to be used to
21 facilitate a violation of section 28-1102, 28-1103, 28-1104, 28-1105,
22 28-1105.01, or 28-1107 Any gambling device or gambling record possessed
23 in violation of any provision of this article, or any money used as a bet
24 or stake in gambling activity in violation of any provision of this
25 article, shall be forfeited to the state.

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

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

31 Sec. 10. In addition to the penalties provided in the Child

1 Pornography Prevention Act, a sentencing court may order that any money,
2 securities, negotiable instruments, firearms, conveyances, or electronic
3 communication devices as defined in section 28-833 or any equipment,
4 components, peripherals, software, hardware, or accessories related to
5 electronic communication devices be forfeited as a part of the sentence
6 imposed if it finds by clear and convincing evidence adduced at a
7 separate hearing in the same prosecution, conducted pursuant to section
8 11 of this act, that any or all such property was derived from, used, or
9 intended to be used to facilitate a violation of the Child Pornography
10 Prevention Act.

11 Sec. 11. (1) In addition to existing penalties for a violation of
12 the Child Pornography Prevention Act, subsection (1) of section 28-416,
13 or section 28-813.01, 28-1102, 28-1103, 28-1104, 28-1105, 28-1105.01, or
14 28-1107, a court may order forfeiture of any money, securities,
15 negotiable instruments, firearms, conveyances, or electronic
16 communication devices as defined in section 28-833, any equipment,
17 components, peripherals, software, hardware, or accessories related to
18 electronic communication devices, or any gambling devices as defined in
19 section 28-1101 if:

20 (a) The owner or possessor of the property has been convicted of a
21 violation of the Child Pornography Prevention Act, subsection (1) of
22 section 28-416, or section 28-813.01, 28-1102, 28-1103, 28-1104, 28-1105,
23 28-1105.01, or 28-1107;

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

27 (c) The property is found by clear and convincing evidence to have
28 been derived from, used, or intended to be used to facilitate a violation
29 of the Child Pornography Prevention Act, subsection (1) of section
30 28-416, or section 28-813.01, 28-1102, 28-1103, 28-1104, 28-1105,
31 28-1105.01, or 28-1107.

1 (2) Following the filing of an information charging a violation of
2 the Child Pornography Prevention Act, subsection (1) of section 28-416,
3 or section 28-813.01, 28-1102, 28-1103, 28-1104, 28-1105, 28-1105.01, or
4 28-1107 that specifically seeks forfeiture of any property listed in
5 subsection (1) of this section, the defendant may request a pretrial
6 hearing to determine the existence of probable cause to believe that the
7 property specifically sought to be forfeited was derived from, used, or
8 intended to be used to facilitate a violation of the Child Pornography
9 Prevention Act, subsection (1) of section 28-416, or section 28-813.01,
10 28-1102, 28-1103, 28-1104, 28-1105, 28-1105.01, or 28-1107. The request
11 for a hearing pursuant to this section must be filed with the district
12 court in which the criminal proceeding is pending within thirty days
13 after the filing of the information.

14 (3) At any time after the filing of the information in district
15 court and prior to final disposition of the criminal case, any person or
16 entity, other than the defendant, with a claimed legal interest in the
17 property may petition to intervene in the district court with
18 jurisdiction over the criminal case for the specific and limited purpose
19 of demonstrating his, her, or its legal interest in the property and his,
20 her, or its lack of actual knowledge that such property was derived from,
21 used, or intended to be used in violation of the Child Pornography
22 Prevention Act, subsection (1) of section 28-416, or section 28-813.01,
23 28-1102, 28-1103, 28-1104, 28-1105, 28-1105.01, or 28-1107. In the
24 petition to intervene, the intervening person or entity shall, at a
25 minimum, state facts demonstrating his, her, or its legal interest in the
26 property and his, her, or its lack of actual knowledge regarding the use
27 or intended use of the property. Within thirty days after filing a motion
28 to intervene, the district court shall conduct an evidentiary hearing on
29 the matter. At the conclusion of such hearing, the court may order that
30 any or all of the property be returned to the intervening claimant after
31 it is no longer needed as evidence in the criminal case upon a showing by

1 the claimant by a preponderance of the evidence (a) that he, she, or it
2 has a legally recognized interest in the property and (b) either (i) that
3 such property was acquired by the claimant in good faith and he, she, or
4 it did not have actual knowledge that such property was derived from,
5 used, or intended to be used to facilitate a violation of the Child
6 Pornography Prevention Act, subsection (1) of section 28-416, or section
7 28-813.01, 28-1102, 28-1103, 28-1104, 28-1105, 28-1105.01, or 28-1107 or
8 (ii) that the property seized was not derived from, used, or intended to
9 be used to facilitate a violation of the Child Pornography Prevention
10 Act, subsection (1) of section 28-416, or section 28-813.01, 28-1102,
11 28-1103, 28-1104, 28-1105, 28-1105.01, or 28-1107. The court, on its own
12 motion or upon application of the intervening claimant, may permit such
13 person to proceed in forma pauperis under sections 25-2301 to 25-2310.
14 The court, on its own motion or upon application of the intervening
15 claimant, may appoint counsel to represent such person if such person is
16 indigent. If he or she asserts indigency, the court shall make a
17 reasonable inquiry to determine such person's financial condition and may
18 require him or her to execute an affidavit of indigency for filing with
19 the clerk of the court.

20 (4) After conviction but prior to sentencing for a violation of the
21 Child Pornography Prevention Act, subsection (1) of section 28-416, or
22 section 28-813.01, 28-1102, 28-1103, 28-1104, 28-1105, 28-1105.01, or
23 28-1107 in cases in which the prosecuting authority has specifically
24 requested forfeiture of property, the district court shall conduct an
25 evidentiary hearing at which the prosecuting authority must prove by
26 clear and convincing evidence what specific amount or portion of the
27 property specifically enumerated in the criminal information was derived
28 from, used, or intended for use in furtherance of a violation of the
29 Child Pornography Prevention Act, subsection (1) of section 28-416, or
30 section 28-813.01, 28-1102, 28-1103, 28-1104, 28-1105, 28-1105.01, or
31 28-1107. At the conclusion of such hearing, the court shall make specific

1 findings of fact indicating what amount or portion of the property sought
2 to be forfeited by the state was derived from, used, or intended to be
3 used to facilitate a violation of the Child Pornography Prevention Act,
4 subsection (1) of section 28-416, or section 28-813.01, 28-1102, 28-1103,
5 28-1104, 28-1105, 28-1105.01, or 28-1107. The court shall order any
6 amount or portion of the property not proven by the state to be derived
7 from, used, or intended to be used to facilitate a violation of the Child
8 Pornography Prevention Act, subsection (1) of section 28-416, or section
9 28-813.01, 28-1102, 28-1103, 28-1104, 28-1105, 28-1105.01, or 28-1107 or
10 the fair market value of the legally recognized interest in such property
11 be returned to its rightful and legal owner or interest holder.

12 (5)(a) The court shall order that any amount or portion of property
13 proven by the state by clear and convincing evidence to be derived from,
14 used, or intended to be used to facilitate a violation of the Child
15 Pornography Prevention Act, subsection (1) of section 28-416, or section
16 28-813.01, 28-1102, 28-1103, 28-1104, 28-1105, 28-1105.01, or 28-1107 be
17 forfeited to the state and disposition of such property be conducted in
18 accordance with this subsection and section 28-1439.02 at such time as
19 the property is no longer required as evidence in any criminal
20 proceeding.

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

1 devices, or any gambling devices as defined in section 28-1101 be
2 destroyed by a law enforcement agency; and (iv) the disposition of
3 firearms shall be effectuated pursuant to section 29-820.

4 (c) As used in this subsection, official use means use directly in
5 connection with enforcement of the Child Pornography Prevention Act, the
6 Uniform Controlled Substances Act, or section 28-813.01, 28-1102,
7 28-1103, 28-1104, 28-1105, 28-1105.01, or 28-1107.

8 (6) Any money, securities, negotiable instruments, firearms,
9 conveyances, or electronic communication devices as defined in section
10 28-833, any equipment, components, peripherals, software, hardware, or
11 accessories related to electronic communication devices, or any gambling
12 devices as defined in section 28-1101 may be forfeited pursuant to a plea
13 agreement between the state and the defendant subject to notice to or
14 approval of the court.

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

18 (8) Subdivision (1)(b) of this section does not apply if the owner
19 or possessor of the property dies or is removed from the United States
20 before charges are filed so long as the statute of limitations for a
21 violation of the Child Pornography Prevention Act, subsection (1) of
22 section 28-416, or section 28-813.01, 28-1102, 28-1103, 28-1104, 28-1105,
23 28-1105.01, or 28-1107 has not expired.

24 (9) Subdivision (1)(a) of this section does not apply if the owner
25 or possessor of the property is unknown or incapable of being determined
26 for some legitimate reason or fails to appear in court as ordered after
27 prosecution for a violation of the Child Pornography Prevention Act,
28 subsection (1) of section 28-416, or section 28-813.01, 28-1102, 28-1103,
29 28-1104, 28-1105, 28-1105.01, or 28-1107 is commenced and is not
30 apprehended within twelve months after the failure to appear order was
31 issued by the court.

1 (10) If the owner or possessor of the property fails to appear in
2 court as ordered after prosecution for a violation of the Child
3 Pornography Prevention Act, subsection (1) of section 28-416, or section
4 28-813.01, 28-1102, 28-1103, 28-1104, 28-1105, 28-1105.01, or 28-1107 is
5 commenced but appears or is apprehended within twelve months after the
6 failure to appear order was issued by the court, the court may order the
7 owner or possessor of the property, as a part of any sentence imposed for
8 either the failure to appear or the conviction of the Child Pornography
9 Prevention Act, subsection (1) of section 28-416, or section 28-813.01,
10 28-1102, 28-1103, 28-1104, 28-1105, 28-1105.01, or 28-1107, to pay a
11 storage fee of one hundred dollars per month for each month the property
12 was held following the issuance of the failure to appear order.

13 Sec. 12. (1) The prosecuting authority must specifically plead its
14 intent to seek forfeiture of any property upon a conviction for a
15 violation of the Child Pornography Prevention Act, subsection (1) of
16 section 28-416, or section 28-813.01, 28-1102, 28-1103, 28-1104, 28-1105,
17 28-1105.01, or 28-1107 in the same criminal information charging the
18 underlying violation of the Child Pornography Prevention Act, subsection
19 (1) of section 28-416, or section 28-813.01, 28-1102, 28-1103, 28-1104,
20 28-1105, 28-1105.01, or 28-1107.

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

29 Sec. 13. If any section in this act or any part of any section is
30 declared invalid or unconstitutional, the declaration shall not affect
31 the validity or constitutionality of the remaining portions.

1 Sec. 14. Original sections 28-431, 28-1111, and 28-1463.01, Reissue
2 Revised Statutes of Nebraska, and sections 25-21,302, 28-101, 28-109,
3 28-416, and 28-813.01, Revised Statutes Supplement, 2015, are repealed.