

LEGISLATURE OF NEBRASKA
ONE HUNDRED FIFTH LEGISLATURE
SECOND SESSION

LEGISLATIVE BILL 971

Introduced by Wayne, 13.

Read first time January 10, 2018

Committee: Judiciary

- 1 A BILL FOR AN ACT relating to the Uniform Controlled Substances Act; to
- 2 amend section 28-416, Revised Statutes Supplement, 2017; to change a
- 3 penalty for possession as prescribed; and to repeal the original
- 4 section.
- 5 Be it enacted by the people of the State of Nebraska,

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

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

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

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

27 (i) If the controlled substance is in an amount weighing up to and
28 including one gram, or if the controlled substance is in an amount of
29 fewer than ten pills or tablets, weighing no more than eighty milligrams
30 each, such person shall be guilty of a Class I misdemeanor; or

31 (ii) If the controlled substance is in an amount weighing more than

1 one gram but less than ten grams, or if the controlled substance is in an
2 amount of ten pills or tablets or more but weighing less than ten grams,
3 such person shall be guilty of a Class IV felony.

4 (b) A person shall not be in violation of this subsection if section
5 28-472 applies.

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

24 (b) For purposes of this subsection:

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

30 (ii) Video arcade facility means any facility legally accessible to
31 persons under eighteen years of age, intended primarily for the use of

1 pinball and video machines for amusement, and containing a minimum of ten
2 pinball or video machines; and

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

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

14 (b) Except as authorized by the Uniform Controlled Substances Act,
15 it shall be unlawful for any person eighteen years of age or older to
16 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 aid and abet any person in the manufacture, transportation,
19 distribution, carrying, delivery, dispensing, preparation for delivery,
20 offering for delivery, or possession with intent to do the same of a
21 controlled substance or a counterfeit controlled substance.

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

30 (6) It shall not be a defense to prosecution for violation of
31 subsection (4) or (5) of this section that the defendant did not know the

1 age of the person through whom the defendant violated such subsection.

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

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

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

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

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

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

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

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

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

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

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

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

29 (10) Any person who violates subsection (1) of this section with
30 respect to amphetamine, its salts, optical isomers, and salts of its
31 isomers, or with respect to methamphetamine, its salts, optical isomers,

1 and salts of its isomers, in a quantity of:

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

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

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

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

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

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

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

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

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

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

1 other licensed drug treatment facility.

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

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

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

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

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

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

31 (i) For the first offense, the court may, as a part of the judgment

1 of conviction or adjudication, (A) impound any such licenses or permits
2 for thirty days and (B) require such person to attend a drug education
3 class;

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

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

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

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

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

30 (iii) For a third or subsequent offense, the court may, as part of
31 the judgment of conviction or adjudication, (A) prohibit such person from

1 obtaining any permit or any license pursuant to the act for which such
2 person would otherwise be eligible until twelve months after the date of
3 such order and (B) require such person to complete no fewer than sixty
4 hours of community service, to attend a drug education class, and to
5 submit to a drug assessment by a licensed alcohol and drug counselor.

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

11 Sec. 2. Original section 28-416, Revised Statutes Supplement, 2017,
12 is repealed.