

LEGISLATURE OF NEBRASKA
ONE HUNDRED FOURTH LEGISLATURE
SECOND SESSION

LEGISLATIVE BILL 1106

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

Read first time January 20, 2016

Committee: Judiciary

- 1 A BILL FOR AN ACT relating to civil procedure; to amend sections 28-1111
- 2 and 28-1463.01, Reissue Revised Statutes of Nebraska, and sections
- 3 28-101, 28-109, 28-416, and 28-813.01, Revised Statutes Supplement,
- 4 2015; to change civil forfeiture provisions as prescribed; to
- 5 harmonize provisions; to provide severability; and to repeal the
- 6 original sections.
- 7 Be it enacted by the people of the State of Nebraska,

1 Section 1. Section 28-101, Revised Statutes Supplement, 2015, is
2 amended to read:

3 28-101 Sections 28-101 to ~~28-468, 28-470~~ to 28-1357, 28-1418.01, and
4 28-1429.03 and sections 8 to 11 of this act shall be known and may be
5 cited as the Nebraska Criminal Code.

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

8 28-109 For purposes of the Nebraska Criminal Code, unless the
9 context otherwise requires:

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

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

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

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

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

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

24 (7 6) Deadly physical force shall mean force, the intended, natural,
25 and probable consequence of which is to produce death, or which does, in
26 fact, produce death;

27 (8 7) Deadly weapon shall mean any firearm, knife, bludgeon, or
28 other device, instrument, material, or substance, whether animate or
29 inanimate, which in the manner it is used or intended to be used is
30 capable of producing death or serious bodily injury;

31 (9 8) Deface shall mean to alter the appearance of something by

1 removing, distorting, adding to, or covering all or a part of the thing;

2 (10 9) Dwelling shall mean a building or other thing which is used,
3 intended to be used, or usually used by a person for habitation;

4 (11 10) Government shall mean the United States, any state, county,
5 municipality, or other political unit, any branch, department, agency, or
6 subdivision of any of the foregoing, and any corporation or other entity
7 established by law to carry out any governmental function;

8 (12 11) Governmental function shall mean any activity which a public
9 servant is legally authorized to undertake on behalf of government;

10 (13 12) Motor vehicle shall mean every self-propelled land vehicle,
11 not operated upon rails, except self-propelled chairs used by persons who
12 are disabled, electric personal assistive mobility devices as defined in
13 section 60-618.02, and bicycles as defined in section 60-611;

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

16 (15 14) Peace officer shall mean any officer or employee of the
17 state or a political subdivision authorized by law to make arrests, and
18 shall include members of the National Guard on active service by
19 direction of the Governor during periods of emergency or civil disorder;

20 (16 15) Pecuniary benefit shall mean benefit in the form of money,
21 property, commercial interest, or anything else, the primary significance
22 of which is economic gain;

23 (17 16) Person shall mean any natural person and where relevant a
24 corporation or an unincorporated association;

25 (18 17) Public place shall mean a place to which the public or a
26 substantial number of the public has access, and includes but is not
27 limited to highways, transportation facilities, schools, places of
28 amusement, parks, playgrounds, and the common areas of public and private
29 buildings and facilities;

30 (19 18) Public servant shall mean any officer or employee of
31 government, whether elected or appointed, and any person participating as

1 an advisor, consultant, process server, or otherwise in performing a
2 governmental function, but the term does not include witnesses;

3 (~~20~~ 19) Recklessly shall mean acting with respect to a material
4 element of an offense when any person disregards a substantial and
5 unjustifiable risk that the material element exists or will result from
6 his or her conduct. The risk must be of such a nature and degree that,
7 considering the nature and purpose of the actor's conduct and the
8 circumstances known to the actor, its disregard involves a gross
9 deviation from the standard of conduct that a law-abiding person would
10 observe in the actor's situation;

11 (~~21~~ 20) Serious bodily injury shall mean bodily injury which
12 involves a substantial risk of death, or which involves substantial risk
13 of serious permanent disfigurement, or protracted loss or impairment of
14 the function of any part or organ of the body;

15 (~~22~~ 21) Tamper shall mean to interfere with something improperly or
16 to make unwarranted alterations in its condition;

17 (~~23~~ 22) Thing of value shall mean real property, tangible and
18 intangible personal property, contract rights, choses in action,
19 services, and any rights of use or enjoyment connected therewith; and

20 (~~24~~ 23) Voluntary act shall mean an act performed as a result of
21 effort or determination, and includes the possession of property if the
22 actor was aware of his or her physical possession or control thereof for
23 a sufficient period to have been able to terminate it.

24 Sec. 3. Section 28-416, Revised Statutes Supplement, 2015, is
25 amended to read:

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

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

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

18 (4)(a) Except as authorized by the Uniform Controlled Substances
19 Act, any person eighteen years of age or older who knowingly or
20 intentionally manufactures, distributes, delivers, dispenses, or
21 possesses with intent to manufacture, distribute, deliver, or dispense a
22 controlled substance or a counterfeit controlled substance (i) to a
23 person under the age of eighteen years, (ii) in, on, or within one
24 thousand feet of the real property comprising a public or private
25 elementary, vocational, or secondary school, a community college, a
26 public or private college, junior college, or university, or a
27 playground, or (iii) within one hundred feet of a public or private youth
28 center, public swimming pool, or video arcade facility shall be punished
29 by the next higher penalty classification than the penalty prescribed in
30 subsection (2), (7), (8), (9), or (10) of this section, depending upon
31 the controlled substance involved, for the first violation and for a

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

5 (b) For purposes of this subsection:

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

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

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

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

26 (b) Except as authorized by the Uniform Controlled Substances Act,
27 it shall be unlawful for any person eighteen years of age or older to
28 knowingly and intentionally employ, hire, use, cause, persuade, coax,
29 induce, entice, seduce, or coerce any person under the age of eighteen
30 years to aid and abet any person in the manufacture, transportation,
31 distribution, carrying, delivery, dispensing, preparation for delivery,

1 offering for delivery, or possession with intent to do the same of a
2 controlled substance or a counterfeit controlled substance.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

29 (a) For the first offense, be guilty of an infraction, receive a
30 citation, be fined three hundred dollars, and be assigned to attend a
31 course as prescribed in section 29-433 if the judge determines that

1 attending such course is in the best interest of the individual
2 defendant;

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

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

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

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

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

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

26 (18) In addition to the existing penalties available for a violation
27 of subsection (1) of this section, including any criminal attempt or
28 conspiracy to violate subsection (1) of this section, a sentencing court
29 may order that any money, securities, negotiable instruments,
30 conveyances, electronic communication devices as defined in section
31 28-833, or any equipment, components, peripherals, software, hardware, or

1 accessories related to electronic communication devices be forfeited as a
2 part of the sentence imposed if it finds by clear and convincing evidence
3 adduced at a separate hearing, following conviction for a violation of
4 subsection (1) of this section, and conducted pursuant to section 8 of
5 this act, that some or all of the money, securities, negotiable
6 instruments, or conveyances sought to be forfeited were derived from,
7 used, or intended to be used to facilitate a violation of subsection (1)
8 of this section.

9 (19 18) In addition to the penalties provided in this section:

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

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

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

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

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

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

1 conviction or adjudication, (A) prohibit such person from obtaining any
2 permit or any license pursuant to the act for which such person would
3 otherwise be eligible until thirty days after the date of such order and
4 (B) require such person to attend a drug education class;

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

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

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

24 Sec. 4. Section 28-813.01, Revised Statutes Supplement, 2015, is
25 amended to read:

26 28-813.01 (1) It shall be unlawful for a person to knowingly possess
27 any visual depiction of sexually explicit conduct, as defined in section
28 28-1463.02, which has a child, as defined in such section, as one of its
29 participants or portrayed observers.

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

1 each offense.

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

5 (c) Any person who violates this section and has previously been
6 convicted of a violation of this section or section 28-308, 28-309,
7 28-310, 28-311, 28-313, 28-314, 28-315, 28-319, 28-319.01, 28-320.01,
8 28-833, 28-1463.03, or 28-1463.05 or subsection (1) or (2) of section
9 28-320 shall be guilty of a Class IC felony for each offense.

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

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

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

25 (4) In addition to the penalties provided in this section, a
26 sentencing court may order that any money, securities, negotiable
27 instruments, conveyances, electronic communication devices as defined in
28 section 28-833, or any equipment, components, peripherals, software,
29 hardware, or accessories related to electronic communication devices be
30 forfeited as a part of the sentence imposed, if it finds, by clear and
31 convincing evidence adduced at a separate hearing, conducted pursuant to

1 section 8 of this act, that any or all such property was derived from,
2 used, or intended to be used to facilitate a violation of this section.

3 Sec. 5. Section 28-1111, Reissue Revised Statutes of Nebraska, is
4 amended to read:

5 28-1111 In addition to the penalties provided in sections 28-1102
6 to 28-1107, a sentencing court may order that any money, securities,
7 negotiable instruments, conveyances, electronic communication devices, as
8 defined in section 28-833, or any equipment, components, peripherals,
9 software, hardware, or accessories related to electronic communication
10 devices, or any gambling devices be forfeited as a part of the sentence
11 imposed, if it finds by clear and convincing evidence adduced at a
12 separate hearing, conducted pursuant to section 8 of this act, that any
13 or all such property was derived from, used, or intended to be used to
14 facilitate a violation of this section ~~Any gambling device or gambling~~
15 ~~record possessed in violation of any provision of this article, or any~~
16 ~~money used as a bet or stake in gambling activity in violation of any~~
17 ~~provision of this article, shall be forfeited to the state.~~

18 Sec. 6. Section 28-1463.01, Reissue Revised Statutes of Nebraska, is
19 amended to read:

20 28-1463.01 Sections 28-1463.01 to 28-1463.05 and section 7 of this
21 act shall be known and may be cited as the Child Pornography Prevention
22 Act.

23 Sec. 7. In addition to the penalties provided in sections
24 28-1463.04 and 28-1463.05, a sentencing court may order that any money,
25 securities, negotiable instruments, conveyances, electronic communication
26 devices as defined in section 28-833, or any equipment, components,
27 peripherals, software, hardware, or accessories related to electronic
28 communication devices be forfeited as a part of the sentence imposed, if
29 it finds by clear and convincing evidence adduced at a separate hearing,
30 conducted pursuant to section 8 of this act, that any or all such
31 property was derived from, used, or intended to be used to facilitate a

1 violation of this section.

2 Sec. 8. (1) In addition to existing penalties for a violation of
3 subsection (1) of section 28-416, or section 28-813.01, 28-1102, 28-1103,
4 28-1104, 28-1105, 28-1105.01, 28-1107, 28-1463.03, or 28-1463.05, a court
5 may order forfeiture of any money, securities, negotiable instruments,
6 conveyances, electronic communication devices as defined in section
7 28-833, any equipment, components, peripherals, software, hardware, or
8 accessories related to electronic communication devices, or any gambling
9 devices as defined in section 28-1101, if:

10 (a) The owner or possessor of the property has been convicted of a
11 violation of subsection (1) of section 28-416 or section 28-813.01,
12 28-1102, 28-1103, 28-1104, 28-1105, 28-1105.01, 28-1107, 28-1463.03, or
13 28-1463.05;

14 (b) The information charging such violation specifically requests
15 the forfeiture of property upon conviction and is prepared pursuant to
16 section 9 of this act; and

17 (c) The property is found by clear and convincing evidence to have
18 been derived from, used, or intended to be used to facilitate a violation
19 of subsection (1) of section 28-416 or section 28-813.01, 28-1102,
20 28-1103, 28-1104, 28-1105, 28-1105.01, 28-1107, 28-1463.03, or
21 28-1463.05.

22 (2) Following the filing of an information charging a violation of
23 subsection (1) of section 28-416 or section 28-813.01, 28-1102, 28-1103,
24 28-1104, 28-1105, 28-1105.01, 28-1107, 28-1463.03, or 28-1463.05 that
25 specifically seeks forfeiture of any property listed in subsection (1) of
26 this section, the defendant may request a pretrial hearing to determine
27 the existence of probable cause to believe that the property specifically
28 sought to be forfeited was derived from, used, or intended to be used to
29 facilitate a violation of subsection (1) of section 28-416 or section
30 28-813.01, 28-1102, 28-1103, 28-1104, 28-1105, 28-1105.01, 28-1107,
31 28-1463.03, or 28-1463.05. The request for a hearing pursuant to this

1 section must be filed with the district court in which the criminal
2 proceeding is pending within thirty days after the filing of the
3 information.

4 (3) At any time after the filing of the information in district
5 court and prior to final disposition of the criminal case, any person or
6 entity, other than the defendant, with a claimed legal interest in the
7 property may petition to intervene in the district court with
8 jurisdiction over the criminal case for the specific and limited purpose
9 of demonstrating his or her legal interest in the property and his or her
10 lack of knowledge that such property was derived from, used, or intended
11 to be used in violation of subsection (1) of section 28-416 or section
12 28-813.01, 28-1102, 28-1103, 28-1104, 28-1105, 28-1105.01, 28-1107,
13 28-1463.03, or 28-1463.05. In the petition to intervene, the intervening
14 person or entity shall, at a minimum, state facts demonstrating their
15 legal interest in the property and their lack of knowledge regarding the
16 use or intended use of the property. Within thirty days after filing a
17 motion to intervene, the district court shall conduct an evidentiary
18 hearing on the matter. At the conclusion of such hearing, the court may
19 order that any or all of the property be returned to the intervening
20 claimant after it is no longer needed as evidence in the criminal case
21 upon a showing by the claimant by a preponderance of the evidence that he
22 or she: (a) Has a legally recognized interest in the property; and (b)
23 either (i) that such property was acquired by him or her in good faith
24 and he or she did not have knowledge that such property was derived from,
25 used, or intended to be used to facilitate, a violation of subsection (1)
26 of section 28-416 or section 28-813.01, 28-1102, 28-1103, 28-1104,
27 28-1105, 28-1105.01, 28-1107, 28-1463.03, or 28-1463.05 or (ii) that the
28 property seized was not derived from, used, or intended to be used to
29 facilitate a violation of subsection (1) of section 28-416 or section
30 28-813.01, 28-1102, 28-1103, 28-1104, 28-1105, 28-1105.01, 28-1107,
31 28-1463.03, or 28-1463.05. The court, on its own motion or upon

1 application of the intervening claimant, may permit such person to
2 proceed in forma pauperis under sections 25-2301 to 25-2310. The court,
3 on its own motion or upon application of the intervening claimant, may
4 appoint counsel to represent such person if such person is indigent. If
5 he or she asserts indigency, the court shall make a reasonable inquiry to
6 determine such person's financial condition and may require him or her to
7 execute an affidavit of indigency for filing with the clerk of the court.

8 (4) After conviction, but prior to sentencing for a violation of
9 subsection (1) of section 28-416 or section 28-813.01, 28-1102, 28-1103,
10 28-1104, 28-1105, 28-1105.01, 28-1107, 28-1463.03, or 28-1463.05 in cases
11 in which the prosecuting authority has specifically requested forfeiture
12 of property, the district court shall conduct an evidentiary hearing at
13 which the prosecuting authority must prove by clear and convincing
14 evidence what specific amount or portion of the property specifically
15 enumerated in the criminal information was derived from, used, or
16 intended for use in furtherance of a violation of subsection (1) of
17 section 28-416 or section 28-813.01, 28-1102, 28-1103, 28-1104, 28-1105,
18 28-1105.01, 28-1107, 28-1463.03, or 28-1463.05. At the conclusion of such
19 hearing, the court shall make specific findings of fact indicating what
20 amount or portion of the property sought to be forfeited by the state was
21 derived from, used, or intended to be used to facilitate a violation of
22 subsection (1) of section 28-416 or section 28-813.01, 28-1102, 28-1103,
23 28-1104, 28-1105, 28-1105.01, 28-1107, 28-1463.03, or 28-1463.05. The
24 court shall order any amount or portion of the property not proven by the
25 state to be derived from, used, or intended to be used to facilitate a
26 violation of subsection (1) of section 28-416 or section 28-813.01,
27 28-1102, 28-1103, 28-1104, 28-1105, 28-1105.01, 28-1107, 28-1463.03, or
28 28-1463.05 or the fair market value of the legally recognized interest in
29 such property, be returned to its rightful and legal owner or interest
30 holder.

31 (5) The court shall order that any amount or portion of property

1 proven by the state by clear and convincing evidence to be derived from,
2 used, or intended to be used to facilitate a violation of subsection (1)
3 of section 28-416 or section 28-813.01, 28-1102, 28-1103, 28-1104,
4 28-1105, 28-1105.01, 28-1107, 28-1463.03, or 28-1463.05 be forfeited to
5 the state and disposition of such property be conducted in accordance
6 with this subsection and section 28-1439.02, at such time as the property
7 is no longer required as evidence in any criminal proceeding. As part of
8 any disposition of property, the court may order that: (a) Any money,
9 securities, or negotiable instruments be distributed as provided in
10 Article VII, section 5, of the Constitution of Nebraska; (b) any
11 conveyances be sold or put to official use by the seizing agency for a
12 period of not more than one year, and that when such property is no
13 longer necessary for official use or at the end of two years, whichever
14 comes first, such property shall be sold. Proceeds from the sale of any
15 conveyance shall be distributed as provided in Article VII, section 5, of
16 the Constitution of Nebraska; and (c) any electronic communication
17 devices as defined in section 28-833 or any equipment, components,
18 peripherals, software, hardware, or accessories related to electronic
19 communication devices, or any gambling devices as defined in section
20 28-1101, be destroyed by a law enforcement agency.

21 As used in this subsection, official use means use directly in
22 connection with enforcement of the Uniform Controlled Substances Act or
23 section 28-813.01, 28-1102, 28-1103, 28-1104, 28-1105, 28-1105.01,
24 28-1107, 28-1463.03, or 28-1463.05.

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

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

4 (8) Subdivision (1)(b) of this section does not apply if the owner
5 or possessor of the property dies or is removed from the United States
6 before charges could be filed so long as the statute of limitations for a
7 violation of subsection (1) of section 28-416 or section 28-813.01,
8 28-1102, 28-1103, 28-1104, 28-1105, 28-1105.01, 28-1107, 28-1463.03, or
9 28-1463.05 has not expired.

10 (9) Subdivision (1)(a) of this section does not apply if the owner
11 or possessor of the property is unknown or incapable of being determined
12 for some legitimate reason or fails to appear in court as ordered after
13 prosecution for a violation of subsection (1) of section 28-416 or
14 section 28-813.01, 28-1102, 28-1103, 28-1104, 28-1105, 28-1105.01,
15 28-1107, 28-1463.03, or 28-1463.05 is commenced and is not apprehended
16 within twelve months after the failure to appear order was issued by the
17 court.

18 (10) In the event the owner or possessor of the property dies or is
19 removed from the United States before charges are filed, or is unknown or
20 incapable of being determined, subdivision (1)(b) of this section will be
21 satisfied if the prosecuting authority files a civil pleading that
22 conforms with the requirements set forth in section 10 of this act.

23 (11) If the owner or possessor of the property fails to appear in
24 court as ordered after prosecution for a violation of subsection (1) of
25 section 28-416 or section 28-813.01, 28-1102, 28-1103, 28-1104, 28-1105,
26 28-1105.01, 28-1107, 28-1463.03, or 28-1463.05 is commenced but appears
27 or is apprehended within twelve months after the failure to appear was
28 issued by the court, the court may order the owner or possessor of the
29 property, as a part of any sentence imposed for either the failure to
30 appear or conviction of subsection (1) of section 28-416 or section
31 28-813.01, 28-1102, 28-1103, 28-1104, 28-1105, 28-1105.01, 28-1107,

1 28-1463.03, or 28-1463.05 to pay a storage fee of one hundred dollars per
2 month for each month the property was held following the issuance of the
3 failure to appear.

4 Sec. 9. (1) The prosecuting authority must specifically plead its
5 intent to seek forfeiture of any property upon a conviction for a
6 violation of subsection (1) of section 28-416 or section 28-813.01,
7 28-1102, 28-1103, 28-1104, 28-1105, 28-1105.01, 28-1107, 28-1463.03, or
8 28-1463.05 in the same criminal information charging the underlying
9 violation of such section.

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

18 Sec. 10. (1) In the event the owner or possessor of the property:
19 (a) Dies or is removed from the United States before charges are filed or
20 a conviction of subsection (1) of section 28-416 or section 28-813.01,
21 28-1102, 28-1103, 28-1104, 28-1105, 28-1105.01, 28-1107, 28-1463.03, or
22 28-1463.05 can be obtained; (b) is unknown or incapable of being
23 determined; or (c) fails to appear in court as ordered, after prosecution
24 for a violation of subsection (1) of section 28-416 or section 28-813.01,
25 28-1102, 28-1103, 28-1104, 28-1105, 28-1105.01, 28-1107, 28-1463.03, or
26 28-1463.05 is commenced, and is not apprehended within twelve months
27 after the failure to appear was issued, the prosecuting authority may
28 commence an in rem civil action pursuant to section 11 of this act
29 against any property listed in subsection (1) of section 8 of this act
30 derived from, used, or intended to be used to facilitate a violation of
31 subsection (1) of section 28-416 or section 28-813.01, 28-1102, 28-1103,

1 28-1104, 28-1105, 28-1105.01, 28-1107, 28-1463.03, or 28-1463.05.

2 (2) In addition to specifically pleading all facts required in
3 subsection (2) of section 9 of this act, the in rem petition shall recite
4 facts demonstrating: (a) The owner or possessor of the property is
5 either: (i) Dead, removed from the United States, unknown, or incapable
6 of being determined; or (ii) failed to appear in court as ordered, after
7 prosecution for a violation of subsection (1) of section 28-416 or
8 section 28-813.01, 28-1102, 28-1103, 28-1104, 28-1105, 28-1105.01,
9 28-1107, 28-1463.03, or 28-1463.05 was commenced and has not been
10 apprehended within twelve months after the failure to appear was issued;
11 and (b) an evidentiary connection between the property seized and a
12 violation of subsection (1) of section 28-416 or section 28-813.01,
13 28-1102, 28-1103, 28-1104, 28-1105, 28-1105.01, 28-1107, 28-1463.03, or
14 28-1463.05.

15 (3) For purposes of subdivision (2)(b) of this section, the mere
16 presence or possession of large amounts of money, securities, negotiable
17 instruments, or conveyances, no matter how valuable, are, standing alone,
18 insufficient to demonstrate a substantial connection or nexus between the
19 property seized and a violation of subsection (1) of section 28-416 or
20 section 28-813.01, 28-1102, 28-1103, 28-1104, 28-1105, 28-1105.01,
21 28-1107, 28-1463.03, or 28-1463.05. Instead, the prosecuting authority
22 shall allege articulable facts, exceeding suspicion, suggestion,
23 supposition, or speculation, demonstrating that the property seized was
24 the direct product of, was currently being used, had been used, or was
25 derived from, used, or intended to be used to facilitate a violation of
26 subsection (1) of section 28-416 or section 28-813.01, 28-1102, 28-1103,
27 28-1104, 28-1105, 28-1105.01, 28-1107, 28-1463.03, or 28-1463.05.

28 (4) If the owner or possessor of the property dies or is removed
29 from the United States before charges are filed or a conviction of
30 subsection (1) of section 28-416 or section 28-813.01, 28-1102, 28-1103,
31 28-1104, 28-1105, 28-1105.01, 28-1107, 28-1463.03, or 28-1463.05 can be

1 obtained, the petition for an in rem action must be filed within thirty
2 days after the owner or possessor's death or removal from the United
3 States.

4 (5) If the owner or possessor of the property is unknown or
5 incapable of being determined, the petition for an in rem action must be
6 filed within thirty days after seizure of the money, securities,
7 negotiable instruments, or conveyances.

8 (6) If the owner or possessor of the property has failed to appear
9 in court as ordered after prosecution for a violation of subsection (1)
10 of section 28-416 or section 28-813.01, 28-1102, 28-1103, 28-1104,
11 28-1105, 28-1105.01, 28-1107, 28-1463.03, or 28-1463.05 was commenced and
12 has not been apprehended within twelve months after the failure to appear
13 was issued, the petition for an in rem action must be filed within thirty
14 days following the expiration of this twelve-month period. If the owner
15 or possessor of the property is apprehended before final disposition of
16 the in rem action, the prosecuting authority shall dismiss the in rem
17 action without prejudice and seek forfeiture through the request for
18 forfeiture contained in the criminal information for a violation of
19 subsection (1) of section 28-416 or section 28-813.01, 28-1102, 28-1103,
20 28-1104, 28-1105, 28-1105.01, 28-1107, 28-1463.03, or 28-1463.05.

21 Sec. 11. (1) An in rem action for forfeiture of property may only
22 be sought by the prosecuting authority when the owner or possessor: (a)
23 Dies or is removed from the United States before charges are filed or a
24 conviction of subsection (1) of section 28-416 or section 28-813.01,
25 28-1102, 28-1103, 28-1104, 28-1105, 28-1105.01, 28-1107, 28-1463.03, or
26 28-1463.05 can be obtained; (b) is unknown or incapable of being
27 determined; or (c) fails to appear in court as ordered, after prosecution
28 for a violation of subsection (1) of section 28-416 or section 28-813.01,
29 28-1102, 28-1103, 28-1104, 28-1105, 28-1105.01, 28-1107, 28-1463.03, or
30 28-1463.05 is commenced and is not apprehended within twelve months after
31 the failure to appear was issued. All in rem proceedings shall be brought

1 in the name of the state by the county attorney of the county in which
2 such property was seized or by the Attorney General. The petition shall:
3 (a) Recite facts demonstrating the owner or possessor of the property is
4 either: (i) Dead, removed from the United States, unknown, or incapable
5 of being determined; or (ii) failed to appear in court as ordered, after
6 prosecution for a violation of subsection (1) of section 28-416 or
7 section 28-813.01, 28-1102, 28-1103, 28-1104, 28-1105, 28-1105.01,
8 28-1107, 28-1463.03, or 28-1463.05 was commenced and has not been
9 apprehended within twelve months after the failure to appear was issued;
10 (b) describe the property seized with particularity; (c) if known, state
11 the name of the owner or person or persons in possession of the property
12 when it was seized; (d) if known, state the name of any person or entity
13 with a legal interest in the property or legal claim to or against the
14 property; (e) state specific facts establishing the circumstances upon
15 which the property was seized; (f) state specific facts that the property
16 seized was derived from, currently being used, had been used, or was
17 intended for use in order to facilitate a violation of subsection (1) of
18 section 28-416 or section 28-813.01, 28-1102, 28-1103, 28-1104, 28-1105,
19 28-1105.01, 28-1107, 28-1463.03, or 28-1463.05; and (g) conclude with a
20 prayer for disposition of such property.

21 (2) For purposes of subdivision (1)(f) of this section, the mere
22 presence or possession of large amounts of money, securities, negotiable
23 instruments, conveyances, or other property described in subsection (1)
24 of section 8 of this act, no matter how valuable, are, standing alone,
25 insufficient to prove that the property seized was derived from, used, or
26 intended to be used to facilitate a violation of subsection (1) of
27 section 28-416 or section 28-813.01, 28-1102, 28-1103, 28-1104, 28-1105,
28 28-1105.01, 28-1107, 28-1463.03, or 28-1463.05. Instead, the prosecuting
29 authority shall allege articulable facts, exceeding suspicion,
30 suggestion, supposition, or speculation, demonstrating that the property
31 seized was derived from, used, or intended to be used to facilitate a

1 violation of subsection (1) of section 28-416 or section 28-813.01,
2 28-1102, 28-1103, 28-1104, 28-1105, 28-1105.01, 28-1107, 28-1463.03, or
3 28-1463.05.

4 (3) The county attorney or Attorney General shall have a copy of the
5 petition served upon any other identifiable owner, identifiable person or
6 persons in possession of the property when it was seized, or identifiable
7 person or entity having a legally recognized interest in the property, in
8 person or by registered or certified mail, at his or her last-known
9 address. If the identity of the owner or person or persons in possession
10 of the property when it was seized is unknown or incapable of being
11 determined or there is a reasonable probability that there are unknown
12 persons or entities with legally recognized interests in the property,
13 the prosecuting authority shall provide notice of the seizure and
14 petition for disposition by publication once a week for four consecutive
15 weeks in a newspaper of general circulation in the county of seizure. At
16 least five days shall elapse between each publication of notice.

17 (4) At any time after the filing of the petition and prior to final
18 court disposition, any person with a legal interest in the property may
19 petition the district court of the county in which seizure was made to
20 release such property, and the court shall order the release of the
21 property upon a showing by the claimant by a preponderance of the
22 evidence that he or she had no knowledge that such property was derived
23 from, used, or was intended to be used to facilitate a violation of
24 subsection (1) of section 28-416 or section 28-813.01, 28-1102, 28-1103,
25 28-1104, 28-1105, 28-1105.01, 28-1107, 28-1463.03, or 28-1463.05. The
26 court, on its own motion or upon application of the intervening claimant,
27 may permit such person to proceed in forma pauperis under sections
28 25-2301 to 25-2310. The court, on its own motion or upon application of
29 the intervening claimant, may appoint counsel to represent such person if
30 such person is indigent. If he or she asserts indigency, the court shall
31 make a reasonable inquiry to determine such person's financial condition

1 and may require him or her to execute an affidavit of indigency for
2 filing with the clerk of the court

3 (5) Any claimant having a legally recognized interest in the
4 property proceeded against or any person against whom civil or criminal
5 liability would exist if such property is in violation of the act may,
6 within sixty days after the filing of the petition, appear and file an
7 answer or motion to dismiss the petition. The answer or motion to dismiss
8 shall, at a minimum, allege the claimant's legally recognized property
9 interest in or liability involving such property.

10 (6) Within ninety days after such answer or motion to dismiss has
11 been filed there shall be an evidentiary hearing before the court. At
12 such hearing, if (a)(i) the claimant proves by a preponderance of the
13 evidence that (A) he or she has a legally recognized interest in such
14 property or (B) that such property was acquired by him or her in good
15 faith and (ii) at no time did the claimant have any knowledge that such
16 property was derived from, had been used, was being used, or would be
17 used in, or to facilitate, a violation of subsection (1) of section
18 28-416 or section 28-813.01, 28-1102, 28-1103, 28-1104, 28-1105,
19 28-1105.01, 28-1107, 28-1463.03, or 28-1463.05 or (b) the prosecuting
20 authority fails to prove by clear and convincing evidence that the
21 property was derived from, used, or intended to be used to facilitate a
22 violation of subsection (1) of section 28-416 or section 28-813.01,
23 28-1102, 28-1103, 28-1104, 28-1105, 28-1105.01, 28-1107, 28-1463.03, or
24 28-1463.05 the court shall order that such property, or the value of the
25 legally recognized interest in such property, be returned to its rightful
26 and legal owner or interest holder. If there is no answer or motion to
27 dismiss filed within the time allocated, there are no legally recognized
28 claims of ownership or property interest established in such answer or
29 motion to dismiss, if all claims of ownership or property interest are
30 denied by the court because of insufficient proof, or if the value of the
31 property exceeds all claims of ownership or property interest granted and

1 it is shown by clear and convincing evidence by the county attorney or
2 the Attorney General that such property was derived from, used, or
3 intended to be used to facilitate a violation of subsection (1) of
4 section 28-416 or section 28-813.01, 28-1102, 28-1103, 28-1104, 28-1105,
5 28-1105.01, 28-1107, 28-1463.03, or 28-1463.05 the court shall order
6 disposition of such property at such time as the property is no longer
7 required as evidence in any criminal proceeding.

8 (7) As part of any disposition of property under subsection (6) of
9 this section, the court may order that:

10 (a) Any money, securities, or negotiable instruments be distributed
11 as provided in Article VII, section 5, of the Constitution of Nebraska;

12 (b) Any conveyances be sold or put to official use by the seizing
13 agency for a period of not more than one year, and that when such
14 property is no longer necessary for official use or at the end of two
15 years, whichever comes first, such property shall be sold. Proceeds from
16 the sale of any conveyance shall be distributed as provided in Article
17 VII, section 5, of the Constitution of Nebraska. As used in this
18 subdivision, official use means use in the enforcement of the Uniform
19 Controlled Substances Act or section 28-813.01, 28-1102, 28-1103,
20 28-1104, 28-1105, 28-1105.01, 28-1107, 28-1463.03, or 28-1463.05; and

21 (c) Any electronic communication devices as defined in section
22 28-833, or any equipment, components, peripherals, software, hardware, or
23 accessories related to electronic communication devices, or any gambling
24 devices as defined in section 28-1101, be destroyed by a law enforcement
25 agency.

26 (8) Any court costs and fees and storage and other proper expenses
27 shall be charged against any person intervening as claimant or owner or
28 possessor of the property unless such person establishes his or her
29 claim. If a sale is ordered, the official holding the sale shall make a
30 return to the court showing to whom the property was sold and for what
31 price. This return, together with the court order, shall authorize the

1 county clerk to issue a title to the purchaser of the property if such
2 title is required under the laws of this state.

3 Sec. 12. If any section in this act or any part of any section is
4 declared invalid or unconstitutional, the declaration shall not affect
5 the validity or constitutionality of the remaining portions.

6 Sec. 13. Original sections 28-1111 and 28-1463.01, Reissue Revised
7 Statutes of Nebraska, and sections 28-101, 28-109, 28-416, and 28-813.01,
8 Revised Statutes Supplement, 2015, are repealed.