

AMENDMENTS TO LB1106

Introduced by Judiciary.

1 1. Strike the original sections and insert the following new
2 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, or 28-1111 ~~section 28-831~~ may be forfeited through a ~~civil~~
9 proceeding as provided in this section.

10 (b) The following property shall be subject to ~~civil~~ forfeiture if
11 used or intended for use as an instrumentality in or used in furtherance
12 of a violation of the Child Pornography Prevention Act or section 28-813,
13 28-831, or 28-1111 ~~section 28-831~~:

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

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

16 (iii) Money or weapons;

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

20 (v) Negotiable instruments and securities;

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

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

24 (viii) Any real property, including any right, title, and interest
25 in the whole of or any part of any lot or tract of land, used in
26 furtherance of a violation of the Child Pornography Prevention Act or
27 section 28-813, 28-831, or 28-1111 ~~section 28-831~~.

1 (c)(i) No property used by any person as a common carrier in the
2 transaction of business as a common carrier is subject to forfeiture
3 under this section unless it appears that the owner or other person in
4 charge of the property is a consenting party or privy to a violation of
5 the Child Pornography Prevention Act or section 28-813, 28-831, or
6 28-1111 section 28-831.

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

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

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

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

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

28 (b) A petition for forfeiture shall be filed by the Attorney General
29 or a county attorney in the name of the State of Nebraska and may be
30 filed in the county in which the seizure is made, the county in which the
31 criminal prosecution is brought, or the county in which the owner of the

1 seized property is found. Forfeiture proceedings may be brought in the
2 district court or the county court. A copy of the petition shall be
3 served upon the following persons by service of process in the same
4 manner as in civil cases:

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

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

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

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

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

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

1 instrument in the nature of a security device that affects the motor
2 vehicle or vessel.

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

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

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

26 (10) If the owner of the property cannot be found and served with a
27 copy of the petition of forfeiture or if no person was in possession of
28 the property subject to forfeiture at the time that it was seized and the
29 owner of the property is unknown, there shall be filed with the clerk of
30 the court in which the proceeding is pending an affidavit to such effect,
31 whereupon the clerk of the court shall publish notice of the hearing

1 addressed to "the Unknown Owner of, " filling in the blank
2 space with a reasonably detailed description of the property subject to
3 forfeiture. Service by publication shall be completed in the same manner
4 as is provided in the code of civil procedure for the service of process
5 in civil actions in the district courts of this state.

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

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

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

30 (c) At the hearing any claimant of any right, title, or interest in
31 the property may prove his or her lien, encumbrance, security interest,

1 other interest in the nature of a security interest, mortgage, or deed of
2 trust to be bona fide and created without actual knowledge or consent
3 that the property was to be used so as to cause the property to be
4 subject to forfeiture.

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

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

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

25 (15) All real estate forfeited under this section shall be sold to
26 the highest bidder at a public auction for cash, the auction to be
27 conducted by the county sheriff or his or her designee at such place, on
28 such notice, and in accordance with the same procedure, as far as
29 practicable, as is required in the case of sales of land under execution
30 at law. The proceeds of the sale shall first be applied to the cost and
31 expense in administering and conducting the sale, then to the

1 satisfaction of all mortgages, deeds of trust, liens, and encumbrances of
2 record on the property. The remaining proceeds shall be remitted in the
3 same manner as provided in subsection (13) of this section.

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

8 Sec. 2. (1)(a) For each proceeding pursuant to this section, the
9 appropriate law enforcement agency or, as provided in subdivision (e) of
10 this subsection, the prosecuting attorney, shall provide a written report
11 of the forfeiture to the Auditor of Public Accounts. The report shall
12 include:

13 (i) The date of the seizure;

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

16 (iii) A description of the property seized, including, if
17 applicable, the make, model, year, and serial number of the property
18 seized;

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

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

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

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

28 (viii) The value of the property forfeited;

29 (ix) If the seizure resulted from a motor vehicle stop, (A) the
30 characteristics of the race or ethnicity of the suspect. The
31 identification of such characteristics shall be based on the observation

1 and perception of the law enforcement officer responsible for reporting
2 the motor vehicle stop. The information shall not be required to be
3 provided by the suspect; and (B) whether a warning or citation was
4 issued, an arrest was made, or a search was conducted; and

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

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

12 (c) Reports shall be made on a quarterly basis in a manner
13 prescribed by the Auditor of Public Accounts. The Auditor of Public
14 Accounts shall report on an annual basis electronically to the
15 Legislature on the nature and extent of forfeitures.

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

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

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

26 28-101 Sections 28-101 to ~~28-468, 28-470~~ to 28-1357, 28-1418.01, and
27 28-1429.03 and sections 10 to 12 of this act shall be known and may be
28 cited as the Nebraska Criminal Code.

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

31 28-109 For purposes of the Nebraska Criminal Code, unless the

1 context otherwise requires:

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

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

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

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

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

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

16 (~~7~~ 6) Deadly physical force shall mean force, the intended, natural,
17 and probable consequence of which is to produce death, or which does, in
18 fact, produce death;

19 (~~8~~ 7) Deadly weapon shall mean any firearm, knife, bludgeon, or
20 other device, instrument, material, or substance, whether animate or
21 inanimate, which in the manner it is used or intended to be used is
22 capable of producing death or serious bodily injury;

23 (~~9~~ 8) Deface shall mean to alter the appearance of something by
24 removing, distorting, adding to, or covering all or a part of the thing;

25 (~~10~~ 9) Dwelling shall mean a building or other thing which is used,
26 intended to be used, or usually used by a person for habitation;

27 (~~11~~ 10) Government shall mean the United States, any state, county,
28 municipality, or other political unit, any branch, department, agency, or
29 subdivision of any of the foregoing, and any corporation or other entity
30 established by law to carry out any governmental function;

31 (~~12~~ 11) Governmental function shall mean any activity which a public

1 servant is legally authorized to undertake on behalf of government;

2 (13 12) Motor vehicle shall mean every self-propelled land vehicle,
3 not operated upon rails, except self-propelled chairs used by persons who
4 are disabled, electric personal assistive mobility devices as defined in
5 section 60-618.02, and bicycles as defined in section 60-611;

6 (14 13) Omission shall mean a failure to perform an act as to which
7 a duty of performance is imposed by law;

8 (15 14) Peace officer shall mean any officer or employee of the
9 state or a political subdivision authorized by law to make arrests, and
10 shall include members of the National Guard on active service by
11 direction of the Governor during periods of emergency or civil disorder;

12 (16 15) Pecuniary benefit shall mean benefit in the form of money,
13 property, commercial interest, or anything else, the primary significance
14 of which is economic gain;

15 (17 16) Person shall mean any natural person and where relevant a
16 corporation or an unincorporated association;

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

22 (19 18) Public servant shall mean any officer or employee of
23 government, whether elected or appointed, and any person participating as
24 an advisor, consultant, process server, or otherwise in performing a
25 governmental function, but the term does not include witnesses;

26 (20 19) Recklessly shall mean acting with respect to a material
27 element of an offense when any person disregards a substantial and
28 unjustifiable risk that the material element exists or will result from
29 his or her conduct. The risk must be of such a nature and degree that,
30 considering the nature and purpose of the actor's conduct and the
31 circumstances known to the actor, its disregard involves a gross

1 deviation from the standard of conduct that a law-abiding person would
2 observe in the actor's situation;

3 (21 ~~20~~) Serious bodily injury shall mean bodily injury which
4 involves a substantial risk of death, or which involves substantial risk
5 of serious permanent disfigurement, or protracted loss or impairment of
6 the function of any part or organ of the body;

7 (22 ~~21~~) Tamper shall mean to interfere with something improperly or
8 to make unwarranted alterations in its condition;

9 (23 ~~22~~) Thing of value shall mean real property, tangible and
10 intangible personal property, contract rights, choses in action,
11 services, and any rights of use or enjoyment connected therewith; and

12 (24 ~~23~~) Voluntary act shall mean an act performed as a result of
13 effort or determination, and includes the possession of property if the
14 actor was aware of his or her physical possession or control thereof for
15 a sufficient period to have been able to terminate it.

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

18 28-416 (1) Except as authorized by the Uniform Controlled Substances
19 Act, it shall be unlawful for any person knowingly or intentionally: (a)
20 To manufacture, distribute, deliver, dispense, or possess with intent to
21 manufacture, distribute, deliver, or dispense a controlled substance; or
22 (b) to create, distribute, or possess with intent to distribute a
23 counterfeit controlled substance.

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

1 guilty of a Class IIIA felony.

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

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

28 (b) For purposes of this subsection:

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

1 guilty of a Class ID felony.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

9 (~~20~~ 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. 6. Section 28-431, Reissue Revised Statutes of Nebraska, is
25 amended to read:

26 28-431 (1) The following shall be seized without warrant by an
27 officer of the Division of Drug Control or by any peace officer and the
28 same shall be subject to forfeiture: (a) All controlled substances which
29 have been manufactured, distributed, dispensed, acquired, or possessed in
30 violation of the Uniform Controlled Substances Act; (b) all raw
31 materials, products, and equipment of any kind which are used, or

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

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

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

1 longer needed as evidence shall be destroyed by the law enforcement
2 agency holding the same or turned over to the department for custody or
3 destruction, except that a law enforcement agency may keep a small
4 quantity of the property described in subdivisions (1)(a), (b), (c), and
5 (d) of this section for training purposes or use in investigations. Any
6 large quantity of property described in subdivisions (1)(a), (b), (c),
7 and (d) of this section, whether seized under a search warrant or validly
8 seized without a warrant, may be disposed of on order of a court of
9 record of this state in such manner as the court in its sound discretion
10 shall direct. Such an order may be given only after a proper laboratory
11 examination and report of such property has been completed and after a
12 hearing has been held by the court after notice to the defendant of the
13 proposed disposition of the property. The findings in such court order as
14 to the nature, kind, and quantity of the property so disposed of may be
15 accepted as evidence at subsequent court proceedings in lieu of the
16 property ordered destroyed by the court order.

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

1 four consecutive weeks in a newspaper of general circulation in the
2 county of the seizure. At least five days shall elapse between each
3 publication of notice.

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

10 (6) Any person having an interest in the property proceeded against
11 or any person against whom civil or criminal liability would exist if
12 such property is in violation of the act may, within thirty days after
13 seizure, appear and file an answer or demurrer to the petition. The
14 answer or demurrer shall allege the claimant's interest in or liability
15 involving such property. At least thirty but not more than ninety days
16 after seizure, there shall be a hearing before the court. If the claimant
17 proves by a preponderance of the evidence that he or she (a) has not used
18 or intended to use the property to facilitate an offense in violation of
19 the act, (b) has an interest in such property as owner or lienor or
20 otherwise, acquired by him or her in good faith, and (c) at no time had
21 any actual knowledge that such property was being or would be used in, or
22 to facilitate, the violation of the act, the court shall order that such
23 property or the value of the claimant's interest in such property be
24 returned to the claimant. If there are no claims, if all claims are
25 denied, or if the value of the property exceeds all claims granted and it
26 is shown by clear and convincing evidence ~~beyond a reasonable doubt~~ that
27 such property was used in violation of the act, the court shall order
28 disposition of such property at such time as the property is no longer
29 required as evidence in any criminal proceeding. The court may order that
30 property described in subdivision (1)(f) of this section be sold or put
31 to official use by the confiscating agency for a period of not more than

1 one year and that when such property is no longer necessary for official
2 use or at the end of two years, whichever comes first, such property
3 shall be sold. Proceeds from the sale of the property and any money
4 described in subdivision (1)(g) of this section shall be distributed
5 pursuant to section 28-1439.02. Official use shall mean use directly in
6 connection with enforcement of the act.

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

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

20 (i) The date of the seizure;

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

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

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

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

29 (vi) The disposition of the property seized through the forfeiture
30 process, such as the property was returned to the suspect, returned to a
31 third-party owner, sold, destroyed, or retained by law enforcement;

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

4 (viii) The value of the property forfeited;

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

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

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

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

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

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

30 28-813.01 (1) It shall be unlawful for a person to knowingly possess
31 any visual depiction of sexually explicit conduct, as defined in section

1 28-1463.02, which has a child, as defined in such section, as one of its
2 participants or portrayed observers.

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

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

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

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

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

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

29 (4) In addition to the penalties provided in this section, a
30 sentencing court may order that any money, securities, negotiable
31 instruments, firearms, conveyances, electronic communication devices as

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

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

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

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

26 28-1463.01 Sections 28-1463.01 to 28-1463.05 and section 10 of this
27 act shall be known and may be cited as the Child Pornography Prevention
28 Act.

29 Sec. 10. In addition to the penalties provided in sections
30 28-1463.04 and 28-1463.05, a sentencing court may order that any money,
31 securities, negotiable instruments, firearms, conveyances, electronic

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

8 Sec. 11. (1) In addition to existing penalties 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, a court
11 may order forfeiture of any money, securities, negotiable instruments,
12 firearms, conveyances, electronic communication devices as defined in
13 section 28-833, any equipment, components, peripherals, software,
14 hardware, or accessories related to electronic communication devices, or
15 any gambling devices as defined in section 28-1101, if:

16 (a) The owner or possessor of the property has been convicted of a
17 violation of subsection (1) of section 28-416 or section 28-813.01,
18 28-1102, 28-1103, 28-1104, 28-1105, 28-1105.01, 28-1107, 28-1463.03, or
19 28-1463.05;

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

23 (c) The property is found by clear and convincing evidence to have
24 been derived from, used, or intended to be used to facilitate a violation
25 of subsection (1) of section 28-416 or section 28-813.01, 28-1102,
26 28-1103, 28-1104, 28-1105, 28-1105.01, 28-1107, 28-1463.03, or
27 28-1463.05.

28 (2) Following the filing of an information charging a violation of
29 subsection (1) of section 28-416 or section 28-813.01, 28-1102, 28-1103,
30 28-1104, 28-1105, 28-1105.01, 28-1107, 28-1463.03, or 28-1463.05 that
31 specifically seeks forfeiture of any property listed in subsection (1) of

1 this section, the defendant may request a pretrial hearing to determine
2 the existence of probable cause to believe that the property specifically
3 sought to be forfeited was derived from, used, or intended to be used to
4 facilitate a violation of subsection (1) of section 28-416 or section
5 28-813.01, 28-1102, 28-1103, 28-1104, 28-1105, 28-1105.01, 28-1107,
6 28-1463.03, or 28-1463.05. The request for a hearing pursuant to this
7 section must be filed with the district court in which the criminal
8 proceeding is pending within thirty days after the filing of the
9 information.

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

1 intended to be used to facilitate, a violation of subsection (1) of
2 section 28-416 or section 28-813.01, 28-1102, 28-1103, 28-1104, 28-1105,
3 28-1105.01, 28-1107, 28-1463.03, or 28-1463.05 or (ii) that the property
4 seized was not derived from, used, or intended to be used to facilitate a
5 violation of subsection (1) of section 28-416 or section 28-813.01,
6 28-1102, 28-1103, 28-1104, 28-1105, 28-1105.01, 28-1107, 28-1463.03, or
7 28-1463.05. The court, on its own motion or upon application of the
8 intervening claimant, may permit such person to proceed in forma pauperis
9 under sections 25-2301 to 25-2310. The court, on its own motion or upon
10 application of the intervening claimant, may appoint counsel to represent
11 such person if such person is indigent. If he or she asserts indigency,
12 the court shall make a reasonable inquiry to determine such person's
13 financial condition and may require him or her to execute an affidavit of
14 indigency for filing with the clerk of the court.

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

1 state to be derived from, used, or intended to be used to facilitate a
2 violation of subsection (1) of section 28-416 or section 28-813.01,
3 28-1102, 28-1103, 28-1104, 28-1105, 28-1105.01, 28-1107, 28-1463.03, or
4 28-1463.05 or the fair market value of the legally recognized interest in
5 such property, be returned to its rightful and legal owner or interest
6 holder.

7 (5) The court shall order that any amount or portion of property
8 proven by the state by clear and convincing evidence to be derived from,
9 used, or intended to be used to facilitate 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 be forfeited to
12 the state and disposition of such property be conducted in accordance
13 with this subsection and section 28-1439.02, at such time as the property
14 is no longer required as evidence in any criminal proceeding. As part of
15 any disposition of property, the court may order that: (a) Any money,
16 securities, or negotiable instruments be distributed as provided in
17 Article VII, section 5, of the Constitution of Nebraska; (b) any
18 conveyances be sold or put to official use by the seizing agency for a
19 period of not more than one year, and that when such property is no
20 longer necessary for official use or at the end of two years, whichever
21 comes first, such property shall be sold. Proceeds from the sale of any
22 conveyance shall be distributed as provided in Article VII, section 5, of
23 the Constitution of Nebraska; (c) any electronic communication devices as
24 defined in section 28-833 or any equipment, components, peripherals,
25 software, hardware, or accessories related to electronic communication
26 devices, or any gambling devices as defined in section 28-1101, be
27 destroyed by a law enforcement agency; and (d) the disposition of
28 firearms shall be effectuated pursuant to section 29-820.

29 As used in this subsection, official use means use directly in
30 connection with enforcement of the Uniform Controlled Substances Act or
31 section 28-813.01, 28-1102, 28-1103, 28-1104, 28-1105, 28-1105.01,

1 28-1107, 28-1463.03, or 28-1463.05.

2 (6) Any money, securities, negotiable instruments, firearms,
3 conveyances, electronic communication devices as defined in section
4 28-833, or any equipment, components, peripherals, software, hardware, or
5 accessories related to electronic communication devices, or any gambling
6 devices as defined in section 28-1101 may be forfeited pursuant to a plea
7 agreement between the state and the defendant, subject to notice to or
8 approval of the court.

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

12 (8) Subdivision (1)(b) of this section does not apply if the owner
13 or possessor of the property dies or is removed from the United States
14 before charges could be filed so long as the statute of limitations for a
15 violation of subsection (1) of section 28-416 or section 28-813.01,
16 28-1102, 28-1103, 28-1104, 28-1105, 28-1105.01, 28-1107, 28-1463.03, or
17 28-1463.05 has not expired.

18 (9) Subdivision (1)(a) of this section does not apply if the owner
19 or possessor of the property is unknown or incapable of being determined
20 for some legitimate reason or fails to appear in court as ordered after
21 prosecution for a violation of subsection (1) of section 28-416 or
22 section 28-813.01, 28-1102, 28-1103, 28-1104, 28-1105, 28-1105.01,
23 28-1107, 28-1463.03, or 28-1463.05 is commenced and is not apprehended
24 within twelve months after the failure to appear order was issued by the
25 court.

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

1 property, as a part of any sentence imposed for either the failure to
2 appear or conviction of subsection (1) of section 28-416 or section
3 28-813.01, 28-1102, 28-1103, 28-1104, 28-1105, 28-1105.01, 28-1107,
4 28-1463.03, or 28-1463.05 to pay a storage fee of one hundred dollars per
5 month for each month the property was held following the issuance of the
6 failure to appear.

7 Sec. 12. (1) The prosecuting authority must specifically plead its
8 intent to seek forfeiture of any property upon a conviction for a
9 violation of subsection (1) of section 28-416 or section 28-813.01,
10 28-1102, 28-1103, 28-1104, 28-1105, 28-1105.01, 28-1107, 28-1463.03, or
11 28-1463.05 in the same criminal information charging the underlying
12 violation of such section.

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

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

24 Sec. 14. Original sections 28-431, 28-1111, and 28-1463.01, Reissue
25 Revised Statutes of Nebraska, and sections 25-21,302, 28-101, 28-109,
26 28-416, and 28-813.01, Revised Statutes Supplement, 2015, are repealed.