

LEGISLATURE OF NEBRASKA
ONE HUNDRED SIXTH LEGISLATURE
SECOND SESSION

LEGISLATIVE BILL 792

Introduced by Slama, 1.

Read first time January 08, 2020

Committee: Judiciary

1 A BILL FOR AN ACT relating to the Uniform Controlled Substances Act; to
2 amend section 28-416, Revised Statutes Cumulative Supplement, 2018;
3 to allow for the combination or aggregation of cocaine, base
4 cocaine, heroin, or amphetamine or methamphetamine amounts for two
5 or more controlled substances violations as prescribed; and to
6 repeal the original section.

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

1 Section 1. Section 28-416, Revised Statutes Cumulative Supplement,
2 2018, is amended to read:

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

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

18 (3) A person knowingly or intentionally possessing a controlled
19 substance, except marijuana or any substance containing a quantifiable
20 amount of the substances, chemicals, or compounds described, defined, or
21 delineated in subdivision (c)(25) of Schedule I of section 28-405, unless
22 such substance was obtained directly or pursuant to a medical order
23 issued by a practitioner authorized to prescribe while acting in the
24 course of his or her professional practice, or except as otherwise
25 authorized by the act, shall be guilty of a Class IV felony. A person
26 shall not be in violation of this subsection if section 28-472 applies.

27 (4)(a) Except as authorized by the Uniform Controlled Substances
28 Act, any person eighteen years of age or older who knowingly or
29 intentionally manufactures, distributes, delivers, dispenses, or
30 possesses with intent to manufacture, distribute, deliver, or dispense a
31 controlled substance or a counterfeit controlled substance (i) to a

1 person under the age of eighteen years, (ii) in, on, or within one
2 thousand feet of the real property comprising a public or private
3 elementary, vocational, or secondary school, a community college, a
4 public or private college, junior college, or university, or a
5 playground, or (iii) within one hundred feet of a public or private youth
6 center, public swimming pool, or video arcade facility shall be punished
7 by the next higher penalty classification than the penalty prescribed in
8 subsection (2), (7), (8), (9), or (10) of this section, depending upon
9 the controlled substance involved, for the first violation and for a
10 second or subsequent violation shall be punished by the next higher
11 penalty classification than that prescribed for a first violation of this
12 subsection, but in no event shall such person be punished by a penalty
13 greater than a Class IB felony.

14 (b) For purposes of this subsection:

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

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

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

28 (5)(a) Except as authorized by the Uniform Controlled Substances
29 Act, it shall be unlawful for any person eighteen years of age or older
30 to knowingly and intentionally employ, hire, use, cause, persuade, coax,
31 induce, entice, seduce, or coerce any person under the age of eighteen

1 years to manufacture, transport, distribute, carry, deliver, dispense,
2 prepare for delivery, offer for delivery, or possess with intent to do
3 the same a controlled substance or a counterfeit controlled substance.

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

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

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

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

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

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

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

1 (b) The quantity of cocaine or any mixture or substance containing a
2 detectable amount of cocaine may be combined or aggregated for two or
3 more violations of subsection (1) of this section when such violations
4 are attributable to a single scheme, plan, or conspiracy and such
5 violations occur in approximately the same location or over a period of
6 time not to exceed ninety days.

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

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

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

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

16 (b) The quantity of base cocaine (crack) or any mixture or substance
17 containing a detectable amount of base cocaine may be combined or
18 aggregated for two or more violations of subsection (1) of this section
19 when such violations are attributable to a single scheme, plan, or
20 conspiracy and such violations occur in approximately the same location
21 or over a period of time not to exceed ninety days.

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

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

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

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

31 (b) The quantity of heroin or any mixture or substance containing a

1 detectable amount of heroin may be combined or aggregated for two or more
2 violations of subsection (1) of this section when such violations are
3 attributable to a single scheme, plan, or conspiracy and such violations
4 occur in approximately the same location or over a period of time not to
5 exceed ninety days.

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

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

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

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

16 (b) The quantity of amphetamine, its salts, optical isomers, and
17 salts of its isomers or methamphetamine, its salts, optical isomers, and
18 salts of its isomers may be combined or aggregated for two or more
19 violations of subsection (1) of this section when such violations are
20 attributable to a single scheme, plan, or conspiracy and such violations
21 occur in approximately the same location or over a period of time not to
22 exceed ninety days.

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

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

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

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

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

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

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

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

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

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

29 (18) In addition to the existing penalties available for a violation
30 of subsection (1) of this section, including any criminal attempt or
31 conspiracy to violate subsection (1) of this section, a sentencing court

1 may order that any money, securities, negotiable instruments, firearms,
2 conveyances, or electronic communication devices as defined in section
3 28-833 or any equipment, components, peripherals, software, hardware, or
4 accessories related to electronic communication devices be forfeited as a
5 part of the sentence imposed if it finds by clear and convincing evidence
6 adduced at a separate hearing in the same prosecution, following
7 conviction for a violation of subsection (1) of this section, and
8 conducted pursuant to section 28-1601, that any or all such property was
9 derived from, used, or intended to be used to facilitate a violation of
10 subsection (1) of this section.

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

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

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

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

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

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

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

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

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

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

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

26 Sec. 2. Original section 28-416, Revised Statutes Cumulative
27 Supplement, 2018, is repealed.