AN ACT relating to the Uniform Controlled Substances Act; to amend section 28-416, Revised Statutes Supplement, 1998; to change penalty provisions relating to amphetamine and methamphetamine; and to repeal the original section.

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

Section 1. Section 28-416, Revised Statutes Supplement, 1998, is amended to read: 

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

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

(3) A person knowingly or intentionally possessing a controlled substance, except marijuana, unless such substance was obtained directly or pursuant to a valid prescription or order from a practitioner while acting in the course of his or her professional practice, or except as otherwise authorized by the act, shall be guilty of a Class IV felony. 

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

(b) For purposes of this subsection: 

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

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

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

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

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

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

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

(7) Any person who violates subsection (1) of this section with 
respect to cocaine or any mixture or substance containing a detectable amount 
of cocaine in a quantity of: 
(a) One hundred forty grams or more shall be guilty of a Class IB 
felony;
(b) At least twenty-eight grams but less than one hundred forty 
grams shall be guilty of a Class IC felony; or 
(c) At least ten grams but less than twenty-eight grams shall be 
guilty of a Class ID felony.

(8) Any person who violates subsection (1) of this section with 
respect to heroin or any mixture or substance containing a detectable amount 
of heroin in a quantity of: 
(a) Five hundred grams or more shall be guilty of a Class IB felony;
(b) One hundred grams or more but less than five hundred grams shall 
be guilty of a Class IC felony; or 
(c) Twenty-eight grams or more but less than one hundred grams shall 
be guilty of a Class ID felony.

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

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

(14) Any person convicted of violating this section, if placed on probation, shall, as a condition of probation, satisfactorily attend and complete appropriate treatment and counseling on drug abuse conducted by one of the community mental health facilities as provided by Chapter 71, article 50, or other licensed drug treatment facility.

(15) Any person convicted of violating subsection (1), (2), or (3) of this section shall only become eligible for parole upon the satisfactory attendance and completion of appropriate treatment and counseling on drug abuse, except that any person convicted of violating subsection (4), (5), (7), (8), (9), or (10) of this section shall not be eligible for parole prior to serving the mandatory minimum sentence.

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

Sec. 2. Original section 28-416, Revised Statutes Supplement, 1998, is repealed.