

LEGISLATURE OF NEBRASKA  
ONE HUNDRED SEVENTH LEGISLATURE  
FIRST SESSION

**LEGISLATIVE BILL 278**

Introduced by Wayne, 13.

Read first time January 12, 2021

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, 2020;
- 3 to change a penalty for possession as prescribed; and to repeal the
- 4 original section.
- 5 Be it enacted by the people of the State of Nebraska,

1 Section 1. Section 28-416, Revised Statutes Cumulative Supplement,  
2 2020, 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) ~~(3)~~ A person knowingly or intentionally possessing a  
19 controlled substance, except marijuana or any substance containing a  
20 quantifiable amount of the substances, chemicals, or compounds described,  
21 defined, or delineated in subdivision (c)(25) of Schedule I of section  
22 28-405, unless such substance was obtained directly or pursuant to a  
23 medical order issued by a practitioner authorized to prescribe while  
24 acting in the course of his or her professional practice, or except as  
25 otherwise authorized by the act, is subject to the following penalties:  
26 ~~shall be guilty of a Class IV felony.~~

27 (i) If the controlled substance is possessed in an amount  
28 constituting only residue, such person is guilty of a Class I  
29 misdemeanor; or

30 (ii) If the controlled substance is possessed in an amount  
31 constituting more than residue, such person is guilty of a Class IV

1 felony.

2 (b) For purposes of this subsection, residue means:

3 (i) For a controlled substance customarily sold by weight, amounts  
4 of one-tenth of a gram or less;

5 (ii) For a controlled substance not customarily sold by weight,  
6 amounts of less than one dosage unit; or

7 (iii) The ashes, resin, or other actual physical remains of a  
8 controlled substance that has already been consumed and is not a usable  
9 amount.

10 (c) A person shall not be in violation of this subsection if section  
11 28-472 applies.

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

30 (b) For purposes of this subsection:

31 (i) Playground means any outdoor facility, including any parking lot

1 appurtenant to the facility, intended for recreation, open to the public,  
2 and with any portion containing three or more apparatus intended for the  
3 recreation of children, including sliding boards, swingsets, and  
4 teeterboards;

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

31 (b) At least twenty-eight grams but less than one hundred forty

1 grams shall be guilty of a Class IC felony; or

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

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

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

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

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

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

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

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

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

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

31 (c) For the third and all subsequent offenses, be guilty of a Class

1 IIIA misdemeanor, receive a citation, be fined five hundred dollars, and  
2 be imprisoned not to exceed seven days.

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

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

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

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

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

1 subsection (1) of this section.

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

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

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

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

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

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

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

29 (ii) For a second offense, the court may, as part of the judgment of  
30 conviction or adjudication, (A) prohibit such person from obtaining any  
31 permit or any license pursuant to the act for which such person would



1 otherwise be eligible until ninety days after the date of such order and  
2 (B) require such person to complete no fewer than twenty hours and no  
3 more than forty hours of community service and to attend a drug education  
4 class; and

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

12 A copy of an abstract of the court's conviction or adjudication  
13 shall be transmitted to the Director of Motor Vehicles pursuant to  
14 sections 60-497.01 to 60-497.04 if a license or permit is impounded or a  
15 juvenile is prohibited from obtaining a license or permit under this  
16 subsection.

17 Sec. 2. Original section 28-416, Revised Statutes Cumulative  
18 Supplement, 2020, is repealed.