

LEGISLATURE OF NEBRASKA  
 ONE HUNDREDTH LEGISLATURE  
 FIRST SESSION  
**LEGISLATIVE BILL 138**

Introduced By: Flood, 19;  
 Read first time: January 8, 2007  
 Committee: Judiciary

A BILL

1 FOR AN ACT relating to sex offenders; to amend section 28-912,  
 2 Reissue Revised Statutes of Nebraska, and sections 28-929,  
 3 28-930, 28-931, 28-931.01, 28-932, and 29-4013, Revised  
 4 Statutes Cumulative Supplement, 2006; to prohibit escape  
 5 from a treatment facility and assault on an officer by a  
 6 committed sex offender; to change provisions relating to the  
 7 release of information under the Sex Offender Registration  
 8 Act; to provide penalties; and to repeal the original  
 9 sections.

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

1           Section 1. Section 28-912, Reissue Revised Statutes of  
2 Nebraska, is amended to read:

3           28-912. (1) A person commits escape if he or she  
4 unlawfully removes himself or herself from official detention or  
5 fails to return to official detention following temporary leave  
6 granted for a specific purpose or limited period. Official detention  
7 ~~shall mean~~ means (a) arrest, detention in or transportation to any  
8 facility for custody of persons under charge or conviction of crime or  
9 contempt or for persons alleged or found to be delinquent, detention  
10 for extradition or deportation, or any other detention for law  
11 enforcement purposes or (b) detention in or transportation to any  
12 treatment facility, as that term is defined in section 71-1203, at  
13 which the person is receiving or is to receive inpatient treatment  
14 pursuant to the Sex Offender Commitment Act. Official; ~~but~~  
15 ~~official~~ detention does not include supervision of probation or  
16 parole or constraint incidental to release on bail.

17           (2) A public servant concerned in detention commits an  
18 offense if he or she knowingly permits an escape. Any person who  
19 knowingly causes or facilitates an escape commits a Class IV felony.

20           (3) Irregularity in bringing about or maintaining detention,  
21 or lack of jurisdiction of the committing or detaining authority  
22 ~~shall not be~~ is not a defense to prosecution under this section if  
23 the escape is from a prison or other custodial facility or from  
24 detention pursuant to commitment by official proceedings. In the case  
25 of other detentions, irregularity or lack of jurisdiction ~~shall be~~  
26 is a defense only if

27           (a) The escape involved no substantial risk of harm to the

1 person or property of anyone other than the detainee; and

2 (b) The detaining authority did not act in good faith under  
3 color of law.

4 (4) Except as provided in subsection (5) of this section,  
5 escape is a Class IV felony.

6 (5) Escape is a Class III felony where:

7 (a) The detainee was under arrest for or detained on a  
8 felony charge or following conviction for the commission of an  
9 offense; ~~or~~

10 (b) The detainee was officially detained for treatment as a  
11 dangerous sex offender under the Sex Offender Commitment Act;

12 ~~(b)~~ (c) The actor employs force, threat, deadly weapon,  
13 or other dangerous instrumentality to effect the escape; or

14 ~~(c)~~ (d) A public servant concerned in detention of  
15 persons convicted of crime purposely facilitates or permits an escape  
16 from a detention facility or from transportation thereto.

17 Sec. 2. Section 28-929, Revised Statutes Cumulative  
18 Supplement, 2006, is amended to read:

19 28-929. (1) A person commits the offense of assault on an  
20 officer in the first degree if he or she intentionally or knowingly  
21 causes serious bodily injury to a peace officer, a probation officer,  
22 an employee of a public or private treatment facility, as that term  
23 is defined in section 71-1203, or an employee of the Department of  
24 Correctional Services, while such officer or employee is engaged in  
25 the performance of his or her official duties.

26 (2) Assault on an officer in the first degree ~~shall be~~ is  
27 a Class II felony

1           Sec. 3. Section 28-930, Revised Statutes Cumulative  
2 Supplement, 2006, is amended to read:

3           28-930. (1) A person commits the offense of assault on an  
4 officer in the second degree if he or she:

5           (a) Intentionally or knowingly causes bodily injury with a  
6 dangerous instrument to a peace officer, a probation officer, an  
7 employee of a public or private treatment facility, as that term is  
8 defined in section 71-1203, or an employee of the Department of  
9 Correctional Services, while such officer or employee is engaged in  
10 the performance of his or her official duties; or

11           (b) Recklessly causes bodily injury with a dangerous  
12 instrument to a peace officer, a probation officer, or an employee of  
13 the Department of Correctional Services while such officer or employee  
14 is engaged in the performance of his or her official duties.

15           (2) Assault on an officer in the second degree ~~shall be~~  
16 is a Class III felony

17           Sec. 4. Section 28-931, Revised Statutes Cumulative  
18 Supplement, 2006, is amended to read:

19           28-931. (1) A person commits the offense of assault on an  
20 officer in the third degree if he or she intentionally, knowingly, or  
21 recklessly causes bodily injury to a peace officer, a probation  
22 officer, an employee of a public or private treatment facility, as  
23 that term is defined in section 71-1203, or an employee of the  
24 Department of Correctional Services, while such officer or employee  
25 is engaged in the performance of his or her official duties.

26           (2) Assault on an officer in the third degree ~~shall be~~ is  
27 a Class IIIA felony

1           Sec. 5. Section 28-931.01, Revised Statutes Cumulative  
2 Supplement, 2006, is amended to read:

3           28-931.01. (1) A person commits the offense of assault on an  
4 officer using a motor vehicle if he or she intentionally and knowingly  
5 causes bodily injury to a peace officer, a probation officer, an  
6 employee of a public or private treatment facility, as that term is  
7 defined in section 71-1203, or an employee of the Department of  
8 Correctional Services (a) by using a motor vehicle to run over or to  
9 strike such officer or employee or (b) by using a motor vehicle to  
10 collide with such officer's or employee's motor vehicle, while such  
11 officer or employee is engaged in the performance of his or her  
12 duties.

13           (2) Assault on an officer using a motor vehicle ~~shall be~~  
14 is a Class IIIA felony

15           Sec. 6. Section 28-932, Revised Statutes Cumulative  
16 Supplement, 2006, is amended to read:

17           28-932. (1) Any person who is legally confined in a jail,  
18 ~~or~~ correctional, or penal institution or a treatment facility, as  
19 that term is defined in section 71-1203, pursuant to the Sex Offender  
20 Commitment Act, and intentionally, knowingly, or recklessly causes  
21 bodily injury to another person ~~shall be~~ is guilty of a Class  
22 IIIA felony, except that if a deadly or dangerous weapon is used to  
23 commit such assault he or she ~~shall be~~ is guilty of a Class III  
24 felony.

25           (2) Sentences imposed under subsection (1) of this section  
26 ~~shall be~~ are consecutive to any sentence or sentences imposed for  
27 violations committed prior to the violation of subsection (1) of this

1 section and ~~shall~~ do not include any credit for time spent in  
2 custody prior to sentencing unless the time in custody is solely  
3 related to the offense for which the sentence is being imposed under  
4 this section.

5 Sec. 7. Section 29-4013, Revised Statutes Cumulative  
6 Supplement, 2006, is amended to read:

7 29-4013. (1) The Nebraska State Patrol shall adopt and  
8 promulgate rules and regulations to carry out the registration  
9 provisions of the Sex Offender Registration Act.

10 (2)(a) The Nebraska State Patrol shall adopt and promulgate  
11 rules and regulations for the release of information pursuant to  
12 section 29-4009.

13 (b) The rules and regulations adopted by the Nebraska State  
14 Patrol shall identify and incorporate factors relevant to the sex  
15 offender's risk of recidivism. Factors relevant to the risk of  
16 recidivism include, but are not limited to:

17 (i) Conditions of release that minimize the risk of  
18 recidivism, including probation, parole, counseling, therapy, or  
19 treatment;

20 (ii) Physical conditions that minimize the risk of  
21 recidivism, including advanced age or debilitating illness; and

22 (iii) Any criminal history of the sex offender indicative of  
23 a high risk of recidivism, including:

24 (A) Whether the conduct of the sex offender was found to be  
25 characterized by repetitive and compulsive behavior;

26 (B) Whether the sex offender committed the sexual offense  
27 against a child;

1 (C) Whether the sexual offense involved the use of a weapon,  
2 violence, or infliction of serious bodily injury;

3 (D) The number, date, and nature of prior offenses;

4 (E) Whether psychological or psychiatric profiles indicate a  
5 risk of recidivism;

6 (F) The sex offender's response to treatment;

7 (G) Any recent threats by the sex offender against a person  
8 or expressions of intent to commit additional crimes; and

9 (H) Behavior of the sex offender while confined.

10 (c) The procedures for release of information established by  
11 the Nebraska State Patrol shall provide for three levels of  
12 notification by the law enforcement agency in whose jurisdiction the  
13 sex offender is to be released depending on the risk of recidivism by  
14 the sex offender as follows:

15 (i) If the risk of recidivism is low, other law enforcement  
16 agencies shall be notified;

17 (ii) If the risk of recidivism is moderate, in addition to  
18 the notice required by subdivision (i) of this subdivision, schools,  
19 day care centers, health care facilities providing services to  
20 children or vulnerable adults, neighbors of the sex offender who live  
21 within one-tenth mile from the residence of the sex offender, and  
22 religious and youth organizations shall be notified; and

23 (iii) If the risk of recidivism is high, in addition to the  
24 notice required by subdivisions (i) and (ii) of this subdivision, the  
25 public shall be notified through means designed to reach members of  
26 the public, which are limited to direct contact, news releases, a  
27 method utilizing a telephone system, or the Internet. The Nebraska

1 State Patrol shall provide notice of sex offenders with a high risk of  
2 recidivism to at least one legal newspaper published in and of general  
3 circulation in the county where the offender is registered or, if none  
4 is published in the county, in a legal newspaper of general  
5 circulation in such county. If any means of notification proposes a  
6 fee for usage, then nonprofit organizations holding a certificate of  
7 exemption under section 501(c) of the Internal Revenue Code shall not  
8 be charged.

9 (d) The Nebraska State Patrol shall establish procedures for  
10 the evaluation of the risk of recidivism and implementation of  
11 community notification that promote the uniform application of the  
12 notification rules and regulations required by this section.

13 (e) The Nebraska State Patrol or a designee shall assign a  
14 notification level, based upon the risk of recidivism, to all persons  
15 required to register under the act.

16 (f) Personnel and mental health professionals for the sex  
17 offender registration and community notification division of the  
18 Nebraska State Patrol shall have access to all documents that are  
19 generated by any governmental agency that may have bearing on sex  
20 offender risk assessment and community notification pursuant to this  
21 section. This may include, but is not limited to, law enforcement  
22 reports, presentence reports, criminal histories, or birth  
23 certificates. The division shall not be charged for access to  
24 documents under this subdivision. Access to such documents will ensure  
25 that a fair risk assessment is completed using the totality of all  
26 information available. For purposes of this subdivision, mental health  
27 professional means (i) a practicing physician licensed to practice



1 medicine in this state under the provisions of section 71-102, (ii) a  
2 practicing psychologist licensed to engage in the practice of  
3 psychology in this state as provided in section 71-1,206.14, or (iii)  
4 a practicing mental health professional licensed or certified in this  
5 state as provided in section 71-1,333.

6 (3) Nothing in subsection (2) of this section shall be  
7 construed to prevent law enforcement officers from providing community  
8 notification concerning any person who poses a danger under  
9 circumstances that are not provided for in the act.

10 Sec. 8. Original section 28-912, Reissue Revised Statutes of  
11 Nebraska, and sections 28-929, 28-930, 28-931, 28-931.01, 28-932, and  
12 29-4013, Revised Statutes Cumulative Supplement, 2006, are repealed.