

E AND R AMENDMENTS TO LB 771

Introduced by Enrollment and Review Committee: Nordquist, 7,  
Chairperson

1           1. Strike the original sections and all amendments  
2 thereto and insert the following new sections:

3           Section 1. Section 28-115, Reissue Revised Statutes of  
4 Nebraska, is amended to read:

5           28-115 (1) Any person who commits any of the following  
6 criminal offenses against a pregnant woman shall be punished by  
7 the imposition of the next higher penalty classification than the  
8 penalty classification prescribed for the criminal offense, unless  
9 such criminal offense is already punishable as a Class IB felony  
10 or higher classification: Assault in the first degree, section  
11 28-308; assault in the second degree, section 28-309; assault in  
12 the third degree, section 28-310; sexual assault in the first  
13 degree, section 28-319; sexual assault in the second or third  
14 degree, section 28-320; sexual assault of a child in the second  
15 or third degree, section 28-320.01; sexual abuse of an inmate  
16 or parolee in the first degree, section 28-322.01; sexual abuse  
17 of an inmate or parolee in the second degree, section 28-322.03;  
18 sexual abuse of a protected individual in the first or second  
19 degree, section 28-322.04; domestic assault in the first, second,  
20 or third degree, section 28-323; assault on an officer in the  
21 first degree, section 28-929; assault on an officer in the second  
22 degree, section 28-930; assault on an officer in the third degree,  
23 section 28-931; assault on an officer using a motor vehicle,

1 section 28-931.01; assault by a confined person, section 28-932;  
2 confined person committing offenses against another person, 28-933;  
3 proximately causing serious bodily injury while operating a motor  
4 vehicle, section 60-6,198; and sexual assault of a child in the  
5 first degree, section 28-319.01.

6 (2) The prosecution shall allege and prove beyond a  
7 reasonable doubt that the victim was pregnant at the time of the  
8 offense.

9 Sec. 2. Section 28-201, Reissue Revised Statutes of  
10 Nebraska, is amended to read:

11 28-201 (1) A person shall be guilty of an attempt to  
12 commit a crime if he or she:

13 (a) Intentionally engages in conduct which would  
14 constitute the crime if the attendant circumstances were as he or  
15 she believes them to be; or

16 (b) Intentionally engages in conduct which, under the  
17 circumstances as he or she believes them to be, constitutes a  
18 substantial step in a course of conduct intended to culminate in  
19 his or her commission of the crime.

20 (2) When causing a particular result is an element of  
21 the crime, a person shall be guilty of an attempt to commit the  
22 crime if, acting with the state of mind required to establish  
23 liability with respect to the attendant circumstances specified in  
24 the definition of the crime, he or she intentionally engages in  
25 conduct which is a substantial step in a course of conduct intended  
26 or known to cause such a result.

27 (3) Conduct shall not be considered a substantial step

1 under this section unless it is strongly corroborative of the  
2 defendant's criminal intent.

3 (4) Criminal attempt is:

4 (a) A Class II felony when the crime attempted is a Class  
5 I, ~~Class IA,~~ ~~or Class IB~~ IA, IB, IC, or ID felony;

6 (b) A Class III felony when the crime attempted is a  
7 Class II felony;

8 (c) A Class IIIA felony when the crime attempted  
9 is ~~assault in the first degree under section 28-308,~~ sexual  
10 assault in the second degree under section 28-320, ~~manufacturing,~~  
11 ~~distributing,~~ ~~delivering,~~ ~~dispensing,~~ or possessing with intent to  
12 ~~manufacture,~~ ~~distribute,~~ ~~deliver,~~ or dispense controlled substances  
13 listed in Schedule I, II, or III of section 28-405 under section  
14 28-416 except for an exceptionally hazardous drug, a violation of  
15 subdivision (2)(b) of section 28-416, incest under section 28-703,  
16 child abuse under subsection (5) of section 28-707, ~~assault on an~~  
17 ~~officer in the second degree under section 28-930,~~ or assault by  
18 a confined person with a deadly or dangerous weapon under section  
19 28-932;

20 (d) A Class IV felony when the crime attempted is a Class  
21 III felony not listed in subdivision (4)(c) of this section;

22 (e) A Class I misdemeanor when the crime attempted is a  
23 Class IIIA or Class IV felony;

24 (f) A Class II misdemeanor when the crime attempted is a  
25 Class I misdemeanor; and

26 (g) A Class III misdemeanor when the crime attempted is  
27 a Class II misdemeanor.

1           Sec. 3. Section 28-309, Revised Statutes Supplement,  
2 2009, is amended to read:

3           28-309 (1) A person commits the offense of assault in the  
4 second degree if he or she:

5           (a) Intentionally or knowingly causes bodily injury to  
6 another person with a dangerous instrument;

7           (b) Recklessly causes serious bodily injury to another  
8 person with a dangerous instrument; or

9           ~~(c) While during confinement or~~ (c) Unlawfully strikes  
10 or wounds another (i) while legally confined in a jail or an  
11 adult correctional or penal institution, (ii) while otherwise in  
12 legal custody of the Department of Correctional Services, or in  
13 any county jail, unlawfully strikes or wounds another. (iii) while  
14 committed as a dangerous sex offender under the Sex Offender  
15 Commitment Act.

16           (2) Assault in the second degree shall be a Class III  
17 felony.

18           Sec. 4. Section 28-929, Revised Statutes Supplement,  
19 2009, is amended to read:

20           28-929 (1) A person commits the offense of assault on an  
21 officer in the first degree if:

22           (a) He ~~he~~ or she intentionally or knowingly causes  
23 serious bodily injury: ~~to~~

24           (i) To a peace officer, a probation officer, or an  
25 employee of the Department of Correctional Services; or

26           (ii) To an employee of the Department of Health and Human  
27 Services if the person committing the offense is committed as a

1 dangerous sex offender under the Sex Offender Commitment Act; and

2 (b) The offense is committed while such officer or  
3 employee is engaged in the performance of his or her official  
4 duties.

5 (2) Assault on an officer in the first degree shall be a  
6 Class ID felony.

7 Sec. 5. Section 28-930, Revised Statutes Supplement,  
8 2009, is amended to read:

9 28-930 (1) A person commits the offense of assault on an  
10 officer in the second degree if:

11 (a) He ~~he~~ or she:

12 ~~(a)~~ (i) Intentionally or knowingly causes bodily injury  
13 with a dangerous instrument; ~~te~~

14 (A) To a peace officer, a probation officer, or an  
15 employee of the Department of Correctional Services; or

16 (B) To an employee of the Department of Health and Human  
17 Services if the person committing the offense is committed as a  
18 dangerous sex offender under the Sex Offender Commitment Act; or  
19 while such officer or employee is engaged in the performance of his  
20 or her official duties; or

21 ~~(b)~~ (ii) Recklessly causes bodily injury with a dangerous  
22 instrument; ~~te~~

23 (A) To a peace officer, a probation officer, or an  
24 employee of the Department of Correctional Services; or

25 (B) To an employee of the Department of Health and Human  
26 Services if the person committing the offense is committed as a  
27 dangerous sex offender under the Sex Offender Commitment Act; and

1           **(b) The offense is committed** while such officer or  
2 employee is engaged in the performance of his or her official  
3 duties.

4           (2) Assault on an officer in the second degree shall be a  
5 Class II felony.

6           Sec. 6. Section 28-931, Reissue Revised Statutes of  
7 Nebraska, is amended to read:

8           28-931 (1) A person commits the offense of assault on an  
9 officer in the third degree if:

10           **(a) He** ~~he~~ or she intentionally, knowingly, or recklessly  
11 causes bodily injury: ~~te~~

12           **(i) To** a peace officer, a probation officer, or an  
13 employee of the Department of Correctional Services; or

14           **(ii) To an employee of the Department of Health and Human**  
15 **Services if the person committing the offense is committed as a**  
16 **dangerous sex offender under the Sex Offender Commitment Act; and**

17           **(b) The offense is committed** while such officer or  
18 employee is engaged in the performance of his or her official  
19 duties.

20           (2) Assault on an officer in the third degree shall be a  
21 Class IIIA felony.

22           Sec. 7. Section 28-931.01, Reissue Revised Statutes of  
23 Nebraska, is amended to read:

24           28-931.01 (1) A person commits the offense of assault on  
25 an officer using a motor vehicle if:

26           **(a) He** ~~he~~ or she intentionally and knowingly causes  
27 bodily injury: ~~te~~

1           (i) To a peace officer, a probation officer, or an  
2 employee of the Department of Correctional Services; or

3           (ii) To an employee of the Department of Health and Human  
4 Services ~~(a)~~ (A) by using a motor vehicle to run over or to strike  
5 such officer or employee or ~~(b)~~ (B) by using a motor vehicle to  
6 collide with such officer's or employee's motor vehicle, if the  
7 person committing the offense is committed as a dangerous sex  
8 offender under the Sex Offender Commitment Act; and

9           (b) The offense is committed while such officer or  
10 employee is engaged in the performance of his or her duties.

11           (2) Assault on an officer using a motor vehicle shall be  
12 a Class IIIA felony.

13           Sec. 8. Section 28-932, Reissue Revised Statutes of  
14 Nebraska, is amended to read:

15           28-932 (1) Any person (a) (i) who is legally confined in  
16 a jail or an adult correctional or penal institution, (ii) who  
17 is otherwise in legal custody of the Department of Correctional  
18 Services, or (iii) who is committed as a dangerous sex offender  
19 under the Sex Offender Commitment Act and (b) who intentionally,  
20 knowingly, or recklessly causes bodily injury to another person  
21 shall be guilty of a Class IIIA felony, except that if a deadly or  
22 dangerous weapon is used to commit such assault he or she shall be  
23 guilty of a Class III felony.

24           (2) Sentences imposed under subsection (1) of this  
25 section shall be consecutive to any sentence or sentences imposed  
26 for violations committed prior to the violation of subsection (1)  
27 of this section and shall not include any credit for time spent in

1 custody prior to sentencing unless the time in custody is solely  
2 related to the offense for which the sentence is being imposed  
3 under this section.

4 Sec. 9. Section 28-933, Reissue Revised Statutes of  
5 Nebraska, is amended to read:

6 28-933 (1) Any person (a)(i) who is legally confined in  
7 a jail or an adult correctional or penal institution, (ii) who  
8 is otherwise in legal custody of the Department of Correctional  
9 Services, or (iii) who is committed as a dangerous sex offender  
10 under the Sex Offender Commitment Act and (b) who commits ~~(a)~~  
11 (i) assault in the first, second, or third degree as defined in  
12 sections 28-308 to 28-310, ~~(b)~~ (ii) terroristic threats as defined  
13 in section 28-311.01, ~~(e)~~ (iii) kidnapping as defined in section  
14 28-313, or ~~(d)~~ (iv) false imprisonment in the first or second  
15 degree as defined in sections 28-314 and 28-315, against any person  
16 for the purpose of compelling or inducing the performance of any  
17 act by such person or any other person shall be guilty of a Class  
18 II felony.

19 (2) Sentences imposed under subsection (1) of this  
20 section shall be served consecutive to any sentence or sentences  
21 imposed for violations committed prior to the violation of  
22 subsection (1) of this section and shall not include any credit  
23 for time spent in custody prior to sentencing unless the time in  
24 custody is solely related to the offense for which the sentence is  
25 being imposed under this section.

26 Sec. 10. Section 28-1206, Revised Statutes Supplement,  
27 2009, is amended to read:



1                   28-1206 (1)(a) Any person who possesses a firearm, a  
2 knife, or brass or iron knuckles and who has previously been  
3 convicted of a felony, who is a fugitive from justice, or who  
4 is the subject of a current and validly issued domestic violence  
5 protection order and is knowingly violating such order, or (b) any  
6 person who possesses ~~any~~ a firearm or brass or iron knuckles and  
7 who has been convicted within the past seven years of a misdemeanor  
8 crime of domestic violence, commits the offense of possession of a  
9 deadly weapon by a prohibited person.

10                   (2) The felony conviction may have been had in any  
11 court in the United States, the several states, territories, or  
12 possessions, or the District of Columbia.

13                   (3)(a) Possession of a deadly weapon which is not a  
14 firearm by a prohibited person is a Class III felony.

15                   (b) Possession of a deadly weapon which is a firearm by  
16 a prohibited person is a Class ID felony for a first offense and a  
17 Class IB felony for a second or subsequent offense.

18                   (4)(a)(i) For purposes of this section, misdemeanor crime  
19 of domestic violence means:

20                   (A)(I) A crime that is classified as a misdemeanor under  
21 the laws of the United States or the District of Columbia or the  
22 laws of any state, territory, possession, or tribe;

23                   (II) A crime that has, as an element, the use or  
24 attempted use of physical force or the threatened use of a deadly  
25 weapon; and

26                   (III) A crime that is committed by another against his  
27 or her spouse, his or her former spouse, a person with whom he or

1 she has a child in common whether or not they have been married or  
2 lived together at any time, or a person with whom he or she is or  
3 was involved in a dating relationship as defined in section 28-323;  
4 or

5 (B) (I) Assault in the third degree under section  
6 28-310, stalking under subsection (1) of section 28-311.04, false  
7 imprisonment in the second degree under section 28-315, or first  
8 offense domestic assault in the third degree under subsection (1)  
9 of section 28-323 or any attempt or conspiracy to commit one of  
10 these offenses; and

11 (II) The crime is committed by another against his or her  
12 spouse, his or her former spouse, a person with whom he or she has  
13 a child in common whether or not they have been married or lived  
14 together at any time, or a person with whom he or she is or was  
15 involved in a dating relationship as defined in section 28-323.

16 (ii) A person shall not be considered to have been  
17 convicted of a misdemeanor crime of domestic violence unless:

18 (A) The person was represented by counsel in the case  
19 or knowingly and intelligently waived the right to counsel in the  
20 case; and

21 (B) In the case of a prosecution for a misdemeanor crime  
22 of domestic violence for which a person was entitled to a jury  
23 trial in the jurisdiction in which the case was tried, either:

24 (I) The case was tried to a jury; or

25 (II) The person knowingly and intelligently waived the  
26 right to have the case tried to a jury.

27 (b) For purposes of this section, subject of a current

1 and validly issued domestic violence protection order pertains to  
2 a current court order that was validly issued pursuant to section  
3 28-311.09 or 42-924 or that meets or exceeds the criteria set forth  
4 in section 28-311.10 regarding protection orders issued by a court  
5 in ~~another~~ any other state, or a territory, possession, or tribe.

6 Sec. 11. Section 28-1212.01, Reissue Revised Statutes of  
7 Nebraska, is amended to read:

8 28-1212.01 For purposes of ~~section~~ sections 28-1212.02  
9 and 28-1212.04:

10 (1) Aircraft ~~shall mean~~ means any contrivance intended  
11 for and capable of transporting persons through the airspace;

12 (2) Inhabited ~~shall mean~~ means currently being used for  
13 dwelling purposes; and

14 (3) Occupied ~~shall mean~~ means that a person is physically  
15 present in a building, motor vehicle, or aircraft.

16 Sec. 12. Section 28-1212.04, Revised Statutes Supplement,  
17 2009, is amended to read:

18 28-1212.04 Any person, within the territorial boundaries  
19 of any city, incorporated village, or county containing a city of  
20 the metropolitan class or primary class, who unlawfully, knowingly,  
21 and intentionally or recklessly discharges a firearm, while in  
22 any motor vehicle or in the proximity of any motor vehicle that  
23 such person has just exited, at or in the general direction of  
24 any person, dwelling, building, structure, occupied motor vehicle,  
25 occupied aircraft, inhabited motor home as defined in section  
26 71-4603, or inhabited camper unit as defined in section 60-1801, is  
27 guilty of a Class IC felony.

1           Sec. 13. Section 28-1354, Revised Statutes Supplement,  
2 2009, is amended to read:

3           28-1354 For purposes of the Public Protection Act:

4           (1) Enterprise means any individual, sole proprietorship,  
5 partnership, corporation, trust, association, or any legal entity,  
6 union, or group of individuals associated in fact although not  
7 a legal entity, and shall include illicit as well as licit  
8 enterprises as well as other entities;

9           (2) Pattern of racketeering activity means a cumulative  
10 loss for one or more victims or gains for the enterprise of not  
11 less than one thousand five hundred dollars resulting from at least  
12 two acts of racketeering activity, one of which occurred after  
13 August 30, 2009, and the last of which occurred within ten years,  
14 excluding any period of imprisonment, after the commission of a  
15 prior act of racketeering activity;

16           (3) Person means any individual or entity, as defined in  
17 section 21-2014, holding or capable of holding a legal, equitable,  
18 or beneficial interest in property;

19           (4) Prosecutor includes the Attorney General of the  
20 State of Nebraska, the deputy attorney general, assistant attorneys  
21 general, a county attorney, a deputy county attorney, or any person  
22 so designated by the Attorney General, a county attorney, or a  
23 court of the state to carry out the powers conferred by the act;

24           (5) Racketeering activity includes the commission of,  
25 criminal attempt to commit, conspiracy to commit, aiding and  
26 abetting in the commission of, aiding in the consummation of,  
27 acting as an accessory to the commission of, or the solicitation,

1 coercion, or intimidation of another to commit or aid in the  
2 commission of any of the following:

3 (a) Offenses against the person which include: Murder in  
4 the first degree under section 28-303; murder in the second degree  
5 under section 28-304; manslaughter under section 28-305; assault in  
6 the first degree under section 28-308; assault in the second degree  
7 under section 28-309; assault in the third degree under section  
8 28-310; terroristic threats under section 28-311.01; kidnapping  
9 under section 28-313; false imprisonment in the first degree under  
10 section 28-314; false imprisonment in the second degree under  
11 section 28-315; sexual assault in the first degree under section  
12 28-319; and robbery under section 28-324;

13 (b) Offenses relating to controlled substances which  
14 include: To unlawfully manufacture, distribute, deliver, dispense,  
15 or possess with intent to manufacture, distribute, deliver, or  
16 dispense a controlled substance under subsection (1) of section  
17 28-416; possession of marijuana weighing more than one pound  
18 under subsection (12) of section 28-416; possession of money  
19 used or intended to be used to facilitate a violation of  
20 subsection (1) of section 28-416 prohibited under subsection  
21 (17) of section 28-416; any violation of section 28-418; to  
22 unlawfully manufacture, distribute, deliver, or possess with intent  
23 to distribute or deliver an imitation controlled substance under  
24 section 28-445; possession of anhydrous ammonia with the intent to  
25 manufacture methamphetamine under section 28-451; and possession of  
26 ephedrine, pseudoephedrine, or phenylpropanolamine with the intent  
27 to manufacture methamphetamine under section 28-452;

1           (c) Offenses against property which include: Arson in  
2 the first degree under section 28-502; arson in the second degree  
3 under section 28-503; arson in the third degree under section  
4 28-504; burglary under section 28-507; theft by unlawful taking  
5 or disposition under section 28-511; theft by shoplifting under  
6 section 28-511.01; theft by deception under section 28-512; theft  
7 by extortion under section 28-513; theft of services under section  
8 28-515; theft by receiving stolen property under section 28-517;  
9 criminal mischief under section 28-519; and unlawfully depriving  
10 or obtaining property or services using a computer under section  
11 28-1344;

12           (d) Offenses involving fraud which include: Burning  
13 to defraud an insurer under section 28-505; forgery in the  
14 first degree under section 28-602; forgery in the second degree  
15 under section 28-603; criminal possession of a forged instrument  
16 under section 28-604; criminal possession of forgery devices  
17 under section 28-605; criminal impersonation under section 28-638;  
18 identity theft under section 28-639; identity fraud under section  
19 28-640; false statement or book entry under section 28-612;  
20 tampering with a publicly exhibited contest under section 28-614;  
21 issuing a false financial statement for purposes of obtaining a  
22 financial transaction device under section 28-619; unauthorized use  
23 of a financial transaction device under section 28-620; criminal  
24 possession of a financial transaction device under section 28-621;  
25 unlawful circulation of a financial transaction device in the first  
26 degree under section 28-622; unlawful circulation of a financial  
27 transaction device in the second degree under section 28-623;

1 criminal possession of a blank financial transaction device under  
2 section 28-624; criminal sale of a blank financial transaction  
3 device under section 28-625; criminal possession of a forgery  
4 device under section 28-626; unlawful manufacture of a financial  
5 transaction device under section 28-627; laundering of sales forms  
6 under section 28-628; unlawful acquisition of sales form processing  
7 services under section 28-629; unlawful factoring of a financial  
8 transaction device under section 28-630; and fraudulent insurance  
9 acts under section 28-631;

10 (e) Offenses involving governmental operations which  
11 include: Abuse of public records under section 28-911; perjury or  
12 subornation of perjury under section 28-915; bribery under section  
13 28-917; bribery of a witness under section 28-918; tampering with  
14 a witness or informant or jury tampering under section 28-919;  
15 bribery of a juror under section 28-920; assault on an officer in  
16 the first degree under section 28-929; assault on an officer in the  
17 second degree under section 28-930; assault on an officer in the  
18 third degree under section 28-931; and assault on an officer using  
19 a motor vehicle under section 28-931.01;

20 (f) Offenses involving gambling which include: Promoting  
21 gambling in the first degree under section 28-1102; possession of  
22 gambling records under section 28-1105; gambling debt collection  
23 under section 28-1105.01; and possession of a gambling device under  
24 section 28-1107;

25 (g) Offenses relating to firearms, weapons, and  
26 explosives which include: Carrying a concealed weapon under  
27 section 28-1202; transportation or possession of machine guns,

1 short rifles, or short shotguns under section 28-1203; unlawful  
2 possession of a ~~revolver~~ handgun under section 28-1204; unlawful  
3 transfer of a firearm to a juvenile under section 28-1204.01; using  
4 a deadly weapon to commit a felony or possession of a deadly  
5 weapon during the commission of a felony under section 28-1205;  
6 possession of a deadly weapon by a ~~felon~~ ~~or~~ a ~~fugitive from~~  
7 ~~justice~~ prohibited person under section 28-1206; possession of a  
8 defaced firearm under section 28-1207; defacing a firearm under  
9 section 28-1208; unlawful discharge of a firearm under section  
10 28-1212.02; possession, receipt, retention, or disposition of a  
11 stolen firearm under section 28-1212.03; unlawful possession of  
12 explosive materials in the first degree under section 28-1215;  
13 unlawful possession of explosive materials in the second degree  
14 under section 28-1216; unlawful sale of explosives under section  
15 28-1217; use of explosives without a permit under section 28-1218;  
16 obtaining an explosives permit through false representations under  
17 section 28-1219; possession of a destructive device under section  
18 28-1220; threatening the use of explosives or placing a false bomb  
19 under section 28-1221; using explosives to commit a felony under  
20 section 28-1222; using explosives to damage or destroy property  
21 under section 28-1223; and using explosives to kill or injure any  
22 person under section 28-1224;

23 (h) Any violation of the Securities Act of Nebraska  
24 pursuant to section 8-1117;

25 (i) Any violation of the Nebraska Revenue Act of 1967  
26 pursuant to section 77-2713;

27 (j) Offenses relating to public health and morals which



1 include: Prostitution under section 28-801; pandering under section  
2 28-802; keeping a place of prostitution under section 28-804; human  
3 trafficking or forced labor or services under section 28-831; a  
4 violation of section 28-1005; and any act relating to the visual  
5 depiction of sexually explicit conduct prohibited in the Child  
6 Pornography Prevention Act; and

7 (k) A violation of the Computer Crimes Act;

8 (6) State means the State of Nebraska or any political  
9 subdivision or any department, agency, or instrumentality thereof;  
10 and

11 (7) Unlawful debt means a debt of at least one thousand  
12 five hundred dollars:

13 (a) Incurred or contracted in gambling activity which was  
14 in violation of federal law or the law of the state or which is  
15 unenforceable under state or federal law in whole or in part as to  
16 principal or interest because of the laws relating to usury; or

17 (b) Which was incurred in connection with the business  
18 of gambling in violation of federal law or the law of the state  
19 or the business of lending money or a thing of value at a rate  
20 usurious under state law if the usurious rate is at least twice the  
21 enforceable rate.

22 Sec. 14. Section 29-401, Revised Statutes Supplement,  
23 2009, is amended to read:

24 29-401 Every sheriff, deputy sheriff, marshal, deputy  
25 marshal, security guard, police officer, or peace officer as  
26 defined in subdivision (15) of section 49-801 shall arrest and  
27 detain any person found violating any law of this state or any

1 legal ordinance of any city or incorporated village until a legal  
2 warrant can be obtained, except that (1) any such law enforcement  
3 officer taking a juvenile under the age of eighteen years into his  
4 or her custody for any violation herein defined shall proceed as  
5 set forth in sections 43-248, 43-248.01, 43-250, 43-251, 43-251.01,  
6 and 43-253 and (2) the court in which the juvenile is to appear  
7 shall not accept a plea from the juvenile until finding that the  
8 parents of the juvenile have been notified or that reasonable  
9 efforts to notify such parents have been made as provided in  
10 section ~~43-253~~, 43-250.

11           Sec. 15. Section 29-901, Revised Statutes Supplement,  
12 2009, is amended to read:

13           29-901 Any bailable defendant shall be ordered released  
14 from custody pending judgment on his or her personal recognizance  
15 unless the judge determines in the exercise of his or her  
16 discretion that such a release will not reasonably assure the  
17 appearance of the defendant as required or that such a release  
18 could jeopardize the safety and maintenance of evidence or the  
19 safety of victims, witnesses, or other persons in the community.  
20 When such determination is made, the judge shall either in lieu of  
21 or in addition to such a release impose the first of the following  
22 conditions of release which will reasonably assure the appearance  
23 of the person for trial or, if no single condition gives that  
24 assurance, any combination of the following conditions:

25           (1) Place the defendant in the custody of a designated  
26 person or organization agreeing to supervise the defendant;

27           (2) Place restrictions on the travel, association, or

1 place of abode of the defendant during the period of such release;

2 (3) Require, at the option of anyailable defendant,  
3 either of the following:

4 (a) The execution of an appearance bond in a specified  
5 amount and the deposit with the clerk of the court in cash of a  
6 sum not to exceed ten percent of the amount of the bond, ninety  
7 percent of such deposit to be returned to the defendant upon the  
8 performance of the appearance or appearances and ten percent to be  
9 retained by the clerk as appearance bond costs, except that when  
10 no charge is subsequently filed against the defendant or if the  
11 charge or charges which are filed are dropped before the appearance  
12 of the defendant which the bond was to assure, the entire deposit  
13 shall be returned to the defendant. If the bond is subsequently  
14 reduced by the court after the original bond has been posted, no  
15 additional appearance bond costs shall be retained by the clerk.  
16 The difference in the appearance bond costs between the original  
17 bond and the reduced bond shall be returned to the defendant.  
18 In no event shall the deposit be less than twenty-five dollars.  
19 Whenever jurisdiction is transferred from a court requiring an  
20 appearance bond under this subdivision to another state court, the  
21 transferring court shall transfer the ninety percent of the deposit  
22 remaining after the appearance bond costs have been retained. No  
23 further costs shall be levied or collected by the court acquiring  
24 jurisdiction; or

25 (b) The execution of a bail bond with such surety or  
26 sureties as shall seem proper to the judge or, in lieu of such  
27 surety or sureties, at the option of such person, a cash deposit

1 of such sum so fixed, conditioned for his or her appearance before  
2 the proper court, to answer the offense with which he or she may be  
3 charged and to appear at such times thereafter as may be ordered  
4 by the proper court. The cash deposit shall be returned to the  
5 defendant upon the performance of all appearances.

6           If the amount of bail is deemed insufficient by the  
7 court before which the offense is pending, the court may order  
8 an increase of such bail and the defendant shall provide the  
9 additional undertaking, written or cash, to secure his or her  
10 release. All recognizances in criminal cases shall be in writing  
11 and be continuous from term to term until final judgment of the  
12 court in such cases and shall also extend, when the court has  
13 suspended execution of sentence for a limited time, as provided  
14 in section 29-2202, or, when the court has suspended execution of  
15 sentence to enable the defendant to apply for a writ of error  
16 to the Supreme Court or Court of Appeals, as provided in section  
17 29-2301, until the period of suspension has expired. When two or  
18 more indictments or informations are returned against the same  
19 person at the same term of court, the recognizance given may be  
20 made to include all offenses charged therein. Each surety on such  
21 recognizance shall be required to justify under oath in a sum  
22 twice the amount of such recognizance and give the description  
23 of real estate owned by him or her of a value above encumbrance  
24 equal to the amount of such justification and shall name all other  
25 cases pending in which he or she is a surety. No one shall be  
26 accepted as surety on recognizance aggregating a sum in excess of  
27 his or her equity in the real estate, but such recognizance shall

1 not constitute a lien on the real estate described therein until  
2 judgment is entered thereon against such surety; or

3 (4) Impose any other condition deemed reasonably  
4 necessary to assure appearances as required, including a condition  
5 requiring that the defendant return to custody after specified  
6 hours.

7 Sec. 16. Section 29-901.01, Revised Statutes Supplement,  
8 2009, is amended to read:

9 29-901.01 In determining which condition or conditions  
10 of release shall reasonably assure appearance and deter possible  
11 threats to the safety and maintenance of evidence, or the safety  
12 of victims, witnesses, or other persons in the community, the  
13 judge shall, on the basis of available information, take into  
14 account the nature and circumstances of the offense charged,  
15 including any information to indicate that the defendant might  
16 engage in additional criminal activity or pose a threat to  
17 himself or herself, yet to be collected evidence, alleged victims,  
18 potential witnesses, or members of the general public, the  
19 defendant's family ties, employment, financial resources, character  
20 and mental condition, the length of the defendant's residence  
21 in the community, the defendant's record of convictions, and the  
22 defendant's record of appearances at court proceedings or of flight  
23 to avoid prosecution or of failure to appear at court proceedings.

24 Sec. 17. Section 29-1912, Revised Statutes Supplement,  
25 2009, is amended to read:

26 29-1912 (1) When a defendant is charged with a felony or  
27 when a defendant is charged with a misdemeanor or a violation of

1 a city or village ordinance for which imprisonment is a possible  
2 penalty, he or she may request the court where the case is to be  
3 tried, at any time after the filing of the indictment, information,  
4 or complaint, to order the prosecuting attorney to permit the  
5 defendant to inspect and copy or photograph:

6 (a) The defendant's statement, if any. For purposes of  
7 this subdivision, statement means a written statement made by the  
8 defendant and signed or otherwise adopted or approved by him or  
9 her, or a stenographic, mechanical, electrical, or other recording,  
10 or a transcription thereof, which is a substantially verbatim  
11 recital of an oral statement made by the defendant to an agent  
12 of the prosecution, state, or political subdivision thereof, and  
13 recorded contemporaneously with the making of such oral statement;

14 (b) The defendant's prior criminal record, if any;

15 (c) The defendant's recorded testimony before a grand  
16 jury;

17 (d) The names and addresses of witnesses on whose  
18 evidence the charge is based;

19 (e) The results and reports of physical or mental  
20 examinations, and of scientific tests, or experiments made in  
21 connection with the particular case, or copies thereof;

22 (f) Documents, papers, books, accounts, letters,  
23 photographs, objects, or other tangible things of whatsoever kind  
24 or nature which could be used as evidence by the prosecuting  
25 authority;

26 (g) The known criminal history of a jailhouse witness;

27 (h) Any deal, promise, inducement, or benefit that

1 the prosecuting attorney or any person acting on behalf of the  
2 prosecuting attorney has knowingly made or may make in the future  
3 to the jailhouse witness;

4 (i) The specific statements allegedly made by the  
5 defendant against whom the jailhouse witness will testify and the  
6 time, place, and manner of the defendant's disclosures;

7 (j) The case name and jurisdiction of any criminal cases  
8 known to the prosecuting attorney in which a jailhouse witness  
9 testified about statements made by another criminal defendant that  
10 were disclosed to the jailhouse witness while he or she was a  
11 jailhouse witness and whether the jailhouse witness received any  
12 deal, promise, inducement, or benefit in exchange for or subsequent  
13 to such testimony; and

14 (k) Any occasion known to the prosecuting attorney in  
15 which the jailhouse witness recanted testimony about statements  
16 made by another criminal defendant that were disclosed to the  
17 jailhouse witness while he or she was a jailhouse witness and, if  
18 any are known, a transcript or copy of such recantation.

19 (2) The court may issue such an order pursuant to  
20 the provisions of this section. In the exercise of its judicial  
21 discretion, the court shall consider among other things whether:

22 (a) The request is material to the preparation of the  
23 defense;

24 (b) The request is not made primarily for the purpose of  
25 harassing the prosecution or its witnesses;

26 (c) The request, if granted, would not unreasonably delay  
27 the trial of the offense and an earlier request by the defendant

1 could not have reasonably been made;

2 (d) There is no substantial likelihood that the request,  
3 if granted, would preclude a just determination of the issues at  
4 the trial of the offense; or

5 (e) The request, if granted, would not result in the  
6 possibility of bodily harm to, or coercion of, witnesses.

7 (3) Whenever the court refuses to grant an order pursuant  
8 to the provisions of this section, it shall render its findings in  
9 writing together with the facts upon which the findings are based.

10 (4) Whenever the prosecuting attorney believes that the  
11 granting of an order under the provisions of this section will  
12 result in the possibility of bodily harm to witnesses or that  
13 witnesses will be coerced, the court may permit him or her to make  
14 such a showing in the form of a written statement to be inspected  
15 by the court alone. The statement shall be sealed and preserved  
16 in the records of the court to be made available to the appellate  
17 court in the event of an appeal by the defendant.

18 (5) For purposes of subdivisions (1)(g) through (k) of  
19 this section, jailhouse witness means a person in the physical  
20 custody of any jail or correctional institution as (a) an accused  
21 defendant, (b) a convicted defendant awaiting sentencing, or (c) a  
22 convicted defendant serving a jail sentence of incarceration, at  
23 the time the statements the jailhouse witness will testify about  
24 were disclosed.

25 Sec. 18. Section 43-250, Revised Statutes Supplement,  
26 2009, is amended to read:

27 43-250 A peace officer who takes a juvenile into



1 temporary custody under section 29-401 or 43-248 or pursuant  
2 to a legal warrant of arrest shall immediately take reasonable  
3 measures to notify the juvenile's parent, guardian, custodian, or  
4 relative and shall proceed as follows:

5 (1) The peace officer shall release such juvenile;

6 (2) The peace officer shall prepare in triplicate a  
7 written notice requiring the juvenile to appear before the juvenile  
8 court of the county in which such juvenile was taken into custody  
9 at a time and place specified in the notice or at the call of the  
10 court. The notice shall also contain a concise statement of the  
11 reasons such juvenile was taken into custody. The peace officer  
12 shall deliver one copy of the notice to such juvenile and require  
13 such juvenile or his or her parent, guardian, other custodian,  
14 or relative, or both, to sign a written promise that such signer  
15 will appear at the time and place designated in the notice. Upon  
16 the execution of the promise to appear, the peace officer shall  
17 immediately release such juvenile. The peace officer shall, as  
18 soon as practicable, file one copy of the notice with the county  
19 attorney and, when required by the juvenile court, also file a copy  
20 of the notice with the juvenile court or the officer appointed by  
21 the court for such purpose;

22 (3) While retaining temporary custody, the peace officer  
23 shall communicate all relevant available information regarding such  
24 juvenile to the probation officer and shall deliver the juvenile,  
25 if necessary, to the probation officer. The probation officer shall  
26 determine the need for detention of the juvenile as provided in  
27 section 43-260.01. Upon determining that the juvenile should be

1 placed in a secure or nonsecure placement and securing placement  
2 in such secure or nonsecure setting by the probation officer, the  
3 peace officer shall implement the probation officer's decision to  
4 release or to detain and place the juvenile. When secure detention  
5 of a juvenile is necessary, such detention shall occur within a  
6 juvenile detention facility except:

7 (a) When a juvenile described in subdivision (1) or  
8 (2) of section 43-247, except for a status offender, is taken  
9 into temporary custody within a metropolitan statistical area and  
10 where no juvenile detention facility is reasonably available, the  
11 juvenile may be delivered, for temporary custody not to exceed  
12 six hours, to a secure area of a jail or other facility intended  
13 or used for the detention of adults solely for the purposes of  
14 identifying the juvenile and ascertaining his or her health and  
15 well-being and for safekeeping while awaiting transport to an  
16 appropriate juvenile placement or release to a responsible party;

17 (b) When a juvenile described in subdivision (1) or (2)  
18 of section 43-247, except for a status offender, is taken into  
19 temporary custody outside of a metropolitan statistical area and  
20 where no juvenile detention facility is reasonably available, the  
21 juvenile may be delivered, for temporary custody not to exceed  
22 twenty-four hours excluding nonjudicial days and while awaiting an  
23 initial court appearance, to a secure area of a jail or other  
24 facility intended or used for the detention of adults solely for  
25 the purposes of identifying the juvenile and ascertaining his  
26 or her health and well-being and for safekeeping while awaiting  
27 transport to an appropriate juvenile placement or release to a

1 responsible party;

2 (c) Whenever a juvenile is held in a secure area of  
3 any jail or other facility intended or used for the detention  
4 of adults, there shall be no verbal, visual, or physical contact  
5 between the juvenile and any incarcerated adult and there shall be  
6 adequate staff to supervise and monitor the juvenile's activities  
7 at all times. This subdivision shall not apply to a juvenile  
8 charged with a felony as an adult in county or district court if he  
9 or she is sixteen years of age or older;

10 (d) If a juvenile is under sixteen years of age or is a  
11 juvenile as described in subdivision (3) of section 43-247, he or  
12 she shall not be placed within a secure area of a jail or other  
13 facility intended or used for the detention of adults;

14 (e) If, within the time limits specified in subdivision  
15 (3) (a) or (3) (b) of this section, a felony charge is filed against  
16 the juvenile as an adult in county or district court, he or she may  
17 be securely held in a jail or other facility intended or used for  
18 the detention of adults beyond the specified time limits;

19 (f) A status offender or nonoffender taken into temporary  
20 custody shall not be held in a secure area of a jail or other  
21 facility intended or used for the detention of adults. A status  
22 offender accused of violating a valid court order may be securely  
23 detained in a juvenile detention facility longer than twenty-four  
24 hours if he or she is afforded a detention hearing before a  
25 court within twenty-four hours, excluding nonjudicial days, and if,  
26 prior to a dispositional commitment to secure placement, a public  
27 agency, other than a court or law enforcement agency, is afforded

1 an opportunity to review the juvenile's behavior and possible  
2 alternatives to secure placement and has submitted a written report  
3 to the court; and

4 (g) A juvenile described in subdivision (1) or (2) of  
5 section 43-247, except for a status offender, may be held in a  
6 secure area of a jail or other facility intended or used for the  
7 detention of adults for up to six hours before and six hours after  
8 any court appearance;

9 (4) When a juvenile is taken into temporary custody  
10 pursuant to subdivision (3) of section 43-248, the peace officer  
11 shall deliver the custody of such juvenile to the Department of  
12 Health and Human Services which shall make a temporary placement of  
13 the juvenile in the least restrictive environment consistent with  
14 the best interests of the juvenile as determined by the department.  
15 The department shall supervise such placement and, if necessary,  
16 consent to any necessary emergency medical, psychological, or  
17 psychiatric treatment for such juvenile. The department shall have  
18 no other authority with regard to such temporary custody until or  
19 unless there is an order by the court placing the juvenile in the  
20 custody of the department. If the peace officer delivers temporary  
21 custody of the juvenile pursuant to this subdivision, the peace  
22 officer shall make a full written report to the county attorney  
23 within twenty-four hours of taking such juvenile into temporary  
24 custody. If a court order of temporary custody is not issued  
25 within forty-eight hours of taking the juvenile into custody,  
26 the temporary custody by the department shall terminate and the  
27 juvenile shall be returned to the custody of his or her parent,

1 guardian, custodian, or relative;

2 (5) If the peace officer takes the juvenile into  
3 temporary custody pursuant to subdivision (4) of section 43-248,  
4 the peace officer may place the juvenile at a mental health  
5 facility for evaluation and emergency treatment or may deliver  
6 the juvenile to the Department of Health and Human Services as  
7 provided in subdivision (4) of this section. At the time of the  
8 admission or turning the juvenile over to the department, the  
9 peace officer responsible for taking the juvenile into custody  
10 shall execute a written certificate as prescribed by the Department  
11 of Health and Human Services which will indicate that the peace  
12 officer believes the juvenile to be mentally ill and dangerous,  
13 a summary of the subject's behavior supporting such allegations,  
14 and that the harm described in section 71-908 is likely to occur  
15 before proceedings before a juvenile court may be invoked to  
16 obtain custody of the juvenile. A copy of the certificate shall be  
17 forwarded to the county attorney. The peace officer shall notify  
18 the juvenile's parents, guardian, custodian, or relative of the  
19 juvenile's placement; or

20 (6) Beginning July 1, 2010, a juvenile taken into custody  
21 pursuant to a legal warrant of arrest shall be delivered to ~~the~~  
22 a probation officer who shall determine the need for detention  
23 of the juvenile as provided in section 43-260.01. If detention is  
24 not required, the juvenile may be released without bond if such  
25 release is in the best interests of the juvenile, the safety of the  
26 community is not at risk, and the court that issued the warrant is  
27 notified that the juvenile ~~has~~ had been taken into custody and was

1 released.

2           In determining the appropriate temporary placement of a  
3 juvenile under this section, the peace officer shall select the  
4 placement which is least restrictive of the juvenile's freedom so  
5 long as such placement is compatible with the best interests of the  
6 juvenile and the safety of the community.

7           Sec. 19. Original sections 28-115, 28-201, 28-931,  
8 28-931.01, 28-932, 28-933, and 28-1212.01, Reissue Revised Statutes  
9 of Nebraska, and sections 28-309, 28-929, 28-930, 28-1206,  
10 28-1212.04, 28-1354, 29-401, 29-901, 29-901.01, 29-1912, and  
11 43-250, Revised Statutes Supplement, 2009, are repealed.

12           2. On page 1, line 9, after "confined" insert "or  
13 committed"; and in line 11 strike "discovery" and insert "jailhouse  
14 witnesses".