

# ONE HUNDRED FIRST LEGISLATURE - SECOND SESSION - 2010

## COMMITTEE STATEMENT

### LB771

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**Hearing Date:** Friday February 05, 2010

**Committee On:** Judiciary

**Introducer:** Flood

**One Liner:** Change certain provisions relating to assault, criminal attempt, weapons, arrests, bail, custody, discovery, and juveniles

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**Roll Call Vote - Final Committee Action:**

Advanced to General File with amendment(s)

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**Vote Results:**

**Aye:** 8 Senators Ashford, Christensen, Coash, Council, Lathrop, Lautenbaugh, McGill, Rogert

**Nay:**

**Absent:**

**Present Not Voting:**

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**Proponents:**

Sen. Mike Flood  
Jerry Hoffman  
Todd Reckling  
Shawn Eatherton

**Representing:**

Introducer  
Nebraska State Education Association  
Department of Health and Human Services  
Nebraska County Attorneys Association

**Opponents:**

Brad Meurrens  
Marla Fischer-Lempke  
Sarah Newell  
  
John Jorgensen  
Mary Angus

**Representing:**

Nebraska Advocacy Services  
The Arc of Nebraska  
Nebraska Criminal Defense Attorneys Association;  
Lancaster County Public Defenders Association  
Self  
Self

**Neutral:**

**Representing:**

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**Summary of purpose and/or changes:**

LB 771 would make the following changes to Nebraska Statutes:

Section 1. Would amend 28-115 (Criminal offense against a pregnant woman; enhanced penalty) by adding assault by a confined person under (28-932) and amended under this act to the list of crimes eligible for an enhanced penalty if committed against a pregnant woman.

Section 2. Would amend 28-201(4)(C) (Criminal Attempt) to provide that a violation of 28-201 is a class II felony when the crime attempted is a class IC or ID felony, in addition to the current IA and IB offenses.

Would strike references to violations no longer eligible for this level of penalty.

Sections 3-9. Would amend section 28-309 and sections 28-929 through 28-933 of the Nebraska Revised Statutes, which

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sections provide for the penalties of: (1) An assault by a confined person and (2) the assault of an officer in the first, second or third degree by adding to this offense, "an assault on an employee of the Department of Health and Human Services who works in a youth rehabilitation and treatment center or a treatment center as defined under 71-914."

Treatment center defined in section 71-914 provides: Treatment facility means a facility which is licensed to provide services for persons who are mentally ill or substance dependent or both.

LB 771 would also amend the list of confined persons under 28-309 (c) from; (1) those confined by the Department of Corrections or (2) a county jail, to include those:

- confined in youth rehabilitation and treatment facility,
- a treatment facility, or
- committed as a mentally ill dangerous person or dangerous sex offender under the Nebraska Mental Health Commitment Act or the Sex Offender Commitment Act.

Sections 10-11. Would make grammatical changes as recommended by the Revisor's Office.

Section 12. Would amend 28-1212.04 (Drive by Shooting) to clarify that a person who unlawfully, knowingly, and intentionally or recklessly discharges a firearm, while in a motor vehicle or in the proximity of a motor vehicle that such person has just exited at or toward a person or dwelling... Would be guilty of this act which is a Class IC felony. (This provision was enacted under LB 63 from 2009.)

Section 13. Amends 28-1354(g) (Public Protection Act) by clarifying the crimes that qualify for use of the Act to reflect the changes in title of 28-1204 "Unlawful possession of a handgun", which used to be "unlawful possession of a revolver".

28-1205 is also amended to reflect that this section provides for "Using a deadly weapon to commit a felony" and "Possession of a deadly weapon during the commission of a felony".

Finally, LB 771 would amend this section to reflect that the title of the act under 28-1206 changed from "possession of a deadly weapon by a felon or a fugitive from justice" to "Possession of a deadly weapon by a prohibited person."

Section 14. Would amend 29-401(a) (Law violators; arrest by sheriff or other peace officer; juvenile under eighteen years; requirements) to provide that the court in which a juvenile appears is not to accept a plea from the juvenile until the court finds that the parents have been notified as provided under 43-250, which replaces the notification under 43-253.

Section 15-16. Would amend 29-901(Bail; personal recognizance; conditions) and 29-901.01 (Conditions of release; how determined) to provide that a judge can take into consideration the safety of victims, witnesses, or other persons in the community when deciding whether or not to grant bail.

Section 17. Would amend 29-1912(5) (b) to provide that the previous use of the term "jail sentence" is being replaced with the new term of "sentence of incarceration."

Section 18. Would amend 43-250(6) to clarify that when a juvenile is taken into custody pursuant to a legal warrant of arrest that the juvenile be delivered to a probation officer who shall determine the need for detention. If detention is not needed the juvenile may be released, but the court issuing the warrant must be notified that the juvenile had been taken into custody and was released.

Section 19. Repealer

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**Explanation of amendments:**  
AM2442 to LB 771

Section 2. Would amend 28-201(4)(C) (Criminal Attempt) to provide that a violation of 28-201 is a class II felony when the crime attempted is a class IC or ID felony, which is in addition to the current IA and IB offenses.

Would strike references to penalties no longer provided in this section of statute.

Would "retain" the crimes of "Sexual Assault in the 2nd degree" under section 28-320 and "Incest" under section 28-703 as Class IIIA Felonies.

Section 3. Would amend section 28-309 (Assault in the 2nd degree) by providing that unlawfully striking or wounding another while committed as a dangerous sex offender under the Sex Offender Commitment Act is a violation of this section.

Sections 4-6. Would amend section 28-929 thru 28-931(Assault on an officer in the 1st, 2nd and 3rd degree) by providing that it would be a violation of these sections if an employee of the Department of Health and Human Services were assaulted by a person committed as a dangerous sex offender under the Sex Offender Commitment Act.

Section 7. Would amend section 28-931.01 (Assault of an officer using a motor vehicle) by providing that it would be a violation of these sections if an employee of the Department of Health and Human Services were assaulted by a person committed as a dangerous sex offender under the Sex Offender Commitment Act.

Section 8. Would amend section 28-932 (Assault by a confined person), by providing that intentionally, knowingly or recklessly causing serious bodily injury while committed as a dangerous sex offender under the Sex Offender Commitment Act is a violation under this act. Violation under the act is a Class IIIA Felony, or a Class III Felony if the act was committed with a deadly or dangerous weapon.

Section 9. Would amend section 28-933 (Offenses by a confined person against another person) to provide that offenses under this section of statute apply when committed by a person committed as a dangerous sex offender under the Sex Offender Commitment Act.

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Brad Ashford, Chairperson