

LEGISLATURE OF NEBRASKA

ONE HUNDRED FIRST LEGISLATURE

SECOND SESSION

LEGISLATIVE BILL 771

FINAL READING

Introduced by Flood, 19.

Read first time January 07, 2010

Committee: Judiciary

A BILL

1 FOR AN ACT relating to crimes and offenses; to amend sections  
2 28-115, 28-201, 28-931, 28-931.01, 28-932, 28-933, and  
3 28-1212.01, Reissue Revised Statutes of Nebraska, and  
4 sections 28-309, 28-929, 28-930, 28-1206, 28-1212.04,  
5 28-1354, 29-401, 29-901, 29-901.01, 29-1912, and 43-250,  
6 Revised Statutes Supplement, 2009; to change provisions  
7 relating to criminal offenses against a pregnant woman,  
8 criminal attempt, assault, assault on an officer,  
9 offenses by a confined or committed person, deadly  
10 weapons, firearms, arrest procedures, bail, conditions of  
11 release from custody, jailhouse witnesses, and juveniles  
12 in custody; and to repeal the original sections.

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

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

3           28-115 (1) Any person who commits any of the following  
4 criminal offenses against a pregnant woman shall be punished by  
5 the imposition of the next higher penalty classification than the  
6 penalty classification prescribed for the criminal offense, unless  
7 such criminal offense is already punishable as a Class IB felony  
8 or higher classification: Assault in the first degree, section  
9 28-308; assault in the second degree, section 28-309; assault in  
10 the third degree, section 28-310; sexual assault in the first  
11 degree, section 28-319; sexual assault in the second or third  
12 degree, section 28-320; sexual assault of a child in the second  
13 or third degree, section 28-320.01; sexual abuse of an inmate  
14 or parolee in the first degree, section 28-322.01; sexual abuse  
15 of an inmate or parolee in the second degree, section 28-322.03;  
16 sexual abuse of a protected individual in the first or second  
17 degree, section 28-322.04; domestic assault in the first, second,  
18 or third degree, section 28-323; assault on an officer in the first  
19 degree, section 28-929; assault on an officer in the second degree,  
20 section 28-930; assault on an officer in the third degree, section  
21 28-931; assault on an officer using a motor vehicle, section  
22 28-931.01; assault by a confined person, section 28-932; confined  
23 person committing offenses against another person, section 28-933;  
24 proximately causing serious bodily injury while operating a motor  
25 vehicle, section 60-6,198; and sexual assault of a child in the

1 first degree, section 28-319.01.

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

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

7 28-201 (1) A person shall be guilty of an attempt to  
8 commit a crime if he or she:

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

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

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

23 (3) Conduct shall not be considered a substantial step  
24 under this section unless it is strongly corroborative of the  
25 defendant's criminal intent.

1 (4) Criminal attempt is:

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

4 (b) A Class III felony when the crime attempted is a  
5 Class II felony;

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

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

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

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

24 (g) A Class III misdemeanor when the crime attempted is  
25 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

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

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

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

9           Sec. 5. Section 28-930, Revised Statutes Supplement,  
 10 2009, is amended to read:

11           28-930 (1) A person commits the offense of assault on an  
 12 officer in the second degree if:

13           (a) He ~~he~~ or she:

14           ~~(a)~~ (i) Intentionally or knowingly causes bodily injury  
 15 with a dangerous instrument; ~~to~~

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

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

23           ~~(b)~~ (ii) Recklessly causes bodily injury with a dangerous  
 24 instrument; ~~to~~

25           (A) To a peace officer, a probation officer, or an

1 employee of the Department of Correctional Services; or

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

5 (b) The offense is committed while such officer or  
6 employee is engaged in the performance of his or her official  
7 duties.

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

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

12 28-931 (1) A person commits the offense of assault on an  
13 officer in the third degree if:

14 (a) He ~~he~~ or she intentionally, knowingly, or recklessly  
15 causes bodily injury: ~~te~~

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

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

21 (b) The offense is committed while such officer or  
22 employee is engaged in the performance of his or her official  
23 duties.

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

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

3           28-931.01 (1) A person commits the offense of assault on  
4 an officer using a motor vehicle if:

5           (a) By using a motor vehicle to run over or to strike an  
6 officer or employee or by using a motor vehicle to collide with an  
7 officer's or employee's motor vehicle, he or she intentionally and  
8 knowingly causes bodily injury: ~~to~~

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

11           (ii) To an employee of the Department of Health and  
12 Human Services if the person committing the offense is committed  
13 as a dangerous sex offender under the Sex Offender Commitment Act;  
14 ~~and (a) by using a motor vehicle to run over or to strike such~~  
15 ~~officer or employee or (b) by using a motor vehicle to collide with~~  
16 ~~such officer's or employee's motor vehicle,~~

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

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

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

23           28-932 (1) Any person (a)(i) who is legally confined in  
24 a jail or an adult correctional or penal institution, (ii) who  
25 is otherwise in legal custody of the Department of Correctional



1 Services, or (iii) who is committed as a dangerous sex offender  
2 under the Sex Offender Commitment Act and (b) who intentionally,  
3 knowingly, or recklessly causes bodily injury to another person  
4 shall be guilty of a Class IIIA felony, except that if a deadly or  
5 dangerous weapon is used to commit such assault he or she shall be  
6 guilty of a Class III felony.

7 (2) Sentences imposed under subsection (1) of this  
8 section shall be consecutive to any sentence or sentences imposed  
9 for violations committed prior to the violation of subsection (1)  
10 of this section and shall not include any credit for time spent in  
11 custody prior to sentencing unless the time in custody is solely  
12 related to the offense for which the sentence is being imposed  
13 under this section.

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

16 28-933 (1) Any person (a)(i) who is legally confined in  
17 a jail or an adult correctional or penal institution, (ii) who  
18 is otherwise in legal custody of the Department of Correctional  
19 Services, or (iii) who is committed as a dangerous sex offender  
20 under the Sex Offender Commitment Act and (b) who commits ~~(a)~~  
21 (i) assault in the first, second, or third degree as defined in  
22 sections 28-308 to 28-310, ~~(b)~~ (ii) terroristic threats as defined  
23 in section 28-311.01, ~~(c)~~ (iii) kidnapping as defined in section  
24 28-313, or ~~(d)~~ (iv) false imprisonment in the first or second  
25 degree as defined in sections 28-314 and 28-315, against any person

1 for the purpose of compelling or inducing the performance of any  
2 act by such person or any other person shall be guilty of a Class  
3 II felony.

4 (2) Sentences imposed under subsection (1) of this  
5 section shall be served consecutive to any sentence or sentences  
6 imposed for violations committed prior to the violation of  
7 subsection (1) of this section and shall not include any credit  
8 for time spent in custody prior to sentencing unless the time in  
9 custody is solely related to the offense for which the sentence is  
10 being imposed under this section.

11 Sec. 10. Section 28-1206, Revised Statutes Supplement,  
12 2009, is amended to read:

13 28-1206 (1)(a) Any person who possesses a firearm, a  
14 knife, or brass or iron knuckles and who has previously been  
15 convicted of a felony, who is a fugitive from justice, or who  
16 is the subject of a current and validly issued domestic violence  
17 protection order and is knowingly violating such order, or (b) any  
18 person who possesses ~~any~~ a firearm or brass or iron knuckles and  
19 who has been convicted within the past seven years of a misdemeanor  
20 crime of domestic violence, commits the offense of possession of a  
21 deadly weapon by a prohibited person.

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

25 (3)(a) Possession of a deadly weapon which is not a

1 firearm by a prohibited person is a Class III felony.

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

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

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

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

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

19 (B) (I) Assault in the third degree under section  
20 28-310, stalking under subsection (1) of section 28-311.04, false  
21 imprisonment in the second degree under section 28-315, or first  
22 offense domestic assault in the third degree under subsection (1)  
23 of section 28-323 or any attempt or conspiracy to commit one of  
24 these offenses; and

25 (II) The crime is committed by another against his or her

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

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

7 (A) The person was represented by counsel in the case  
8 or knowingly and intelligently waived the right to counsel in the  
9 case; and

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

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

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

16 (b) For purposes of this section, subject of a current  
17 and validly issued domestic violence protection order pertains to  
18 a current court order that was validly issued pursuant to section  
19 28-311.09 or 42-924 or that meets or exceeds the criteria set forth  
20 in section 28-311.10 regarding protection orders issued by a court  
21 in ~~another~~ any other state, or a territory, possession, or tribe.

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

24 28-1212.01 For purposes of ~~section~~ sections 28-1212.02  
25 and 28-1212.04:

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

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

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

7           Sec. 12. Section 28-1212.04, Revised Statutes Supplement,  
8 2009, is amended to read:

9           28-1212.04 Any person, within the territorial boundaries  
10 of any city, incorporated village, or county containing a city of  
11 the metropolitan class or primary class, who unlawfully, knowingly,  
12 and intentionally or recklessly discharges a firearm, while in  
13 any motor vehicle or in the proximity of any motor vehicle that  
14 such person has just exited, at or in the general direction of  
15 any person, dwelling, building, structure, occupied motor vehicle,  
16 occupied aircraft, inhabited motor home as defined in section  
17 71-4603, or inhabited camper unit as defined in section 60-1801, is  
18 guilty of a Class IC felony.

19           Sec. 13. Section 28-1354, Revised Statutes Supplement,  
20 2009, is amended to read:

21           28-1354 For purposes of the Public Protection Act:

22           (1) Enterprise means any individual, sole proprietorship,  
23 partnership, corporation, trust, association, or any legal entity,  
24 union, or group of individuals associated in fact although not  
25 a legal entity, and shall include illicit as well as licit

1 enterprises as well as other entities;

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

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

12 (4) Prosecutor includes the Attorney General of the  
13 State of Nebraska, the deputy attorney general, assistant attorneys  
14 general, a county attorney, a deputy county attorney, or any person  
15 so designated by the Attorney General, a county attorney, or a  
16 court of the state to carry out the powers conferred by the act;

17 (5) Racketeering activity includes the commission of,  
18 criminal attempt to commit, conspiracy to commit, aiding and  
19 abetting in the commission of, aiding in the consummation of,  
20 acting as an accessory to the commission of, or the solicitation,  
21 coercion, or intimidation of another to commit or aid in the  
22 commission of any of the following:

23 (a) Offenses against the person which include: Murder in  
24 the first degree under section 28-303; murder in the second degree  
25 under section 28-304; manslaughter under section 28-305; assault in

1 the first degree under section 28-308; assault in the second degree  
2 under section 28-309; assault in the third degree under section  
3 28-310; terroristic threats under section 28-311.01; kidnapping  
4 under section 28-313; false imprisonment in the first degree under  
5 section 28-314; false imprisonment in the second degree under  
6 section 28-315; sexual assault in the first degree under section  
7 28-319; and robbery under section 28-324;

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

23 (c) Offenses against property which include: Arson in  
24 the first degree under section 28-502; arson in the second degree  
25 under section 28-503; arson in the third degree under section

1 28-504; burglary under section 28-507; theft by unlawful taking  
2 or disposition under section 28-511; theft by shoplifting under  
3 section 28-511.01; theft by deception under section 28-512; theft  
4 by extortion under section 28-513; theft of services under section  
5 28-515; theft by receiving stolen property under section 28-517;  
6 criminal mischief under section 28-519; and unlawfully depriving  
7 or obtaining property or services using a computer under section  
8 28-1344;

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



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

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

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

24 (g) Offenses relating to firearms, weapons, and  
25 explosives which include: Carrying a concealed weapon under

1 section 28-1202; transportation or possession of machine guns,  
2 short rifles, or short shotguns under section 28-1203; unlawful  
3 possession of a ~~revolver~~ handgun under section 28-1204; unlawful  
4 transfer of a firearm to a juvenile under section 28-1204.01; using  
5 a deadly weapon to commit a felony or possession of a deadly  
6 weapon during the commission of a felony under section 28-1205;  
7 possession of a deadly weapon by a ~~felon or a fugitive from~~  
8 ~~justice~~ prohibited person under section 28-1206; possession of a  
9 defaced firearm under section 28-1207; defacing a firearm under  
10 section 28-1208; unlawful discharge of a firearm under section  
11 28-1212.02; possession, receipt, retention, or disposition of a  
12 stolen firearm under section 28-1212.03; unlawful possession of  
13 explosive materials in the first degree under section 28-1215;  
14 unlawful possession of explosive materials in the second degree  
15 under section 28-1216; unlawful sale of explosives under section  
16 28-1217; use of explosives without a permit under section 28-1218;  
17 obtaining an explosives permit through false representations under  
18 section 28-1219; possession of a destructive device under section  
19 28-1220; threatening the use of explosives or placing a false bomb  
20 under section 28-1221; using explosives to commit a felony under  
21 section 28-1222; using explosives to damage or destroy property  
22 under section 28-1223; and using explosives to kill or injure any  
23 person under section 28-1224;

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

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

3           (j) Offenses relating to public health and morals which  
4 include: Prostitution under section 28-801; pandering under section  
5 28-802; keeping a place of prostitution under section 28-804; human  
6 trafficking or forced labor or services under section 28-831; a  
7 violation of section 28-1005; and any act relating to the visual  
8 depiction of sexually explicit conduct prohibited in the Child  
9 Pornography Prevention Act; and

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

11           (6) State means the State of Nebraska or any political  
12 subdivision or any department, agency, or instrumentality thereof;  
13 and

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

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

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

25           Sec. 14. Section 29-401, Revised Statutes Supplement,

1 2009, is amended to read:

2           29-401 Every sheriff, deputy sheriff, marshal, deputy  
3 marshal, security guard, police officer, or peace officer as  
4 defined in subdivision (15) of section 49-801 shall arrest and  
5 detain any person found violating any law of this state or any  
6 legal ordinance of any city or incorporated village until a legal  
7 warrant can be obtained, except that (1) any such law enforcement  
8 officer taking a juvenile under the age of eighteen years into his  
9 or her custody for any violation herein defined shall proceed as  
10 set forth in sections 43-248, 43-248.01, 43-250, 43-251, 43-251.01,  
11 and 43-253 and (2) the court in which the juvenile is to appear  
12 shall not accept a plea from the juvenile until finding that the  
13 parents of the juvenile have been notified or that reasonable  
14 efforts to notify such parents have been made as provided in  
15 section ~~43-253.~~ 43-250.

16           Sec. 15. Section 29-901, Revised Statutes Supplement,  
17 2009, is amended to read:

18           29-901 Any bailable defendant shall be ordered released  
19 from custody pending judgment on his or her personal recognizance  
20 unless the judge determines in the exercise of his or her  
21 discretion that such a release will not reasonably assure the  
22 appearance of the defendant as required or that such a release  
23 could jeopardize the safety and maintenance of evidence or the  
24 safety of victims, witnesses, or other persons in the community.  
25 When such determination is made, the judge shall either in lieu of

1 or in addition to such a release impose the first of the following  
2 conditions of release which will reasonably assure the appearance  
3 of the person for trial or, if no single condition gives that  
4 assurance, any combination of the following conditions:

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

7 (2) Place restrictions on the travel, association, or  
8 place of abode of the defendant during the period of such release;

9 (3) Require, at the option of any bailable defendant,  
10 either of the following:

11 (a) The execution of an appearance bond in a specified  
12 amount and the deposit with the clerk of the court in cash of a  
13 sum not to exceed ten percent of the amount of the bond, ninety  
14 percent of such deposit to be returned to the defendant upon the  
15 performance of the appearance or appearances and ten percent to be  
16 retained by the clerk as appearance bond costs, except that when  
17 no charge is subsequently filed against the defendant or if the  
18 charge or charges which are filed are dropped before the appearance  
19 of the defendant which the bond was to assure, the entire deposit  
20 shall be returned to the defendant. If the bond is subsequently  
21 reduced by the court after the original bond has been posted, no  
22 additional appearance bond costs shall be retained by the clerk.  
23 The difference in the appearance bond costs between the original  
24 bond and the reduced bond shall be returned to the defendant.  
25 In no event shall the deposit be less than twenty-five dollars.

1 Whenever jurisdiction is transferred from a court requiring an  
2 appearance bond under this subdivision to another state court, the  
3 transferring court shall transfer the ninety percent of the deposit  
4 remaining after the appearance bond costs have been retained. No  
5 further costs shall be levied or collected by the court acquiring  
6 jurisdiction; or

7 (b) The execution of a bail bond with such surety or  
8 sureties as shall seem proper to the judge or, in lieu of such  
9 surety or sureties, at the option of such person, a cash deposit  
10 of such sum so fixed, conditioned for his or her appearance before  
11 the proper court, to answer the offense with which he or she may be  
12 charged and to appear at such times thereafter as may be ordered  
13 by the proper court. The cash deposit shall be returned to the  
14 defendant upon the performance of all appearances.

15 If the amount of bail is deemed insufficient by the  
16 court before which the offense is pending, the court may order  
17 an increase of such bail and the defendant shall provide the  
18 additional undertaking, written or cash, to secure his or her  
19 release. All recognizances in criminal cases shall be in writing  
20 and be continuous from term to term until final judgment of the  
21 court in such cases and shall also extend, when the court has  
22 suspended execution of sentence for a limited time, as provided  
23 in section 29-2202, or, when the court has suspended execution of  
24 sentence to enable the defendant to apply for a writ of error  
25 to the Supreme Court or Court of Appeals, as provided in section

1 29-2301, until the period of suspension has expired. When two or  
2 more indictments or informations are returned against the same  
3 person at the same term of court, the recognizance given may be  
4 made to include all offenses charged therein. Each surety on such  
5 recognizance shall be required to justify under oath in a sum  
6 twice the amount of such recognizance and give the description  
7 of real estate owned by him or her of a value above encumbrance  
8 equal to the amount of such justification and shall name all other  
9 cases pending in which he or she is a surety. No one shall be  
10 accepted as surety on recognizance aggregating a sum in excess of  
11 his or her equity in the real estate, but such recognizance shall  
12 not constitute a lien on the real estate described therein until  
13 judgment is entered thereon against such surety; or

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

18 Sec. 16. Section 29-901.01, Revised Statutes Supplement,  
19 2009, is amended to read:

20 29-901.01 In determining which condition or conditions  
21 of release shall reasonably assure appearance and deter possible  
22 threats to the safety and maintenance of evidence, or the safety  
23 of victims, witnesses, or other persons in the community, the  
24 judge shall, on the basis of available information, take into  
25 account the nature and circumstances of the offense charged,

1 including any information to indicate that the defendant might  
2 engage in additional criminal activity or pose a threat to  
3 himself or herself, yet to be collected evidence, alleged victims,  
4 potential witnesses, or members of the general public, the  
5 defendant's family ties, employment, financial resources, character  
6 and mental condition, the length of the defendant's residence  
7 in the community, the defendant's record of convictions, and the  
8 defendant's record of appearances at court proceedings or of flight  
9 to avoid prosecution or of failure to appear at court proceedings.

10           Sec. 17. Section 29-1912, Revised Statutes Supplement,  
11 2009, is amended to read:

12           29-1912 (1) When a defendant is charged with a felony or  
13 when a defendant is charged with a misdemeanor or a violation of  
14 a city or village ordinance for which imprisonment is a possible  
15 penalty, he or she may request the court where the case is to be  
16 tried, at any time after the filing of the indictment, information,  
17 or complaint, to order the prosecuting attorney to permit the  
18 defendant to inspect and copy or photograph:

19           (a) The defendant's statement, if any. For purposes of  
20 this subdivision, statement means a written statement made by the  
21 defendant and signed or otherwise adopted or approved by him or  
22 her, or a stenographic, mechanical, electrical, or other recording,  
23 or a transcription thereof, which is a substantially verbatim  
24 recital of an oral statement made by the defendant to an agent  
25 of the prosecution, state, or political subdivision thereof, and



1 recorded contemporaneously with the making of such oral statement;

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

3 (c) The defendant's recorded testimony before a grand  
4 jury;

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

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

10 (f) Documents, papers, books, accounts, letters,  
11 photographs, objects, or other tangible things of whatsoever kind  
12 or nature which could be used as evidence by the prosecuting  
13 authority;

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

15 (h) Any deal, promise, inducement, or benefit that  
16 the prosecuting attorney or any person acting on behalf of the  
17 prosecuting attorney has knowingly made or may make in the future  
18 to the jailhouse witness;

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

22 (j) The case name and jurisdiction of any criminal cases  
23 known to the prosecuting attorney in which a jailhouse witness  
24 testified about statements made by another criminal defendant that  
25 were disclosed to the jailhouse witness while he or she was a

1 jailhouse witness and whether the jailhouse witness received any  
2 deal, promise, inducement, or benefit in exchange for or subsequent  
3 to such testimony; and

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

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

12 (a) The request is material to the preparation of the  
13 defense;

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

16 (c) The request, if granted, would not unreasonably delay  
17 the trial of the offense and an earlier request by the defendant  
18 could not have reasonably been made;

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

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

24 (3) Whenever the court refuses to grant an order pursuant  
25 to the provisions of this section, it shall render its findings in

1 writing together with the facts upon which the findings are based.

2 (4) Whenever the prosecuting attorney believes that the  
3 granting of an order under the provisions of this section will  
4 result in the possibility of bodily harm to witnesses or that  
5 witnesses will be coerced, the court may permit him or her to make  
6 such a showing in the form of a written statement to be inspected  
7 by the court alone. The statement shall be sealed and preserved  
8 in the records of the court to be made available to the appellate  
9 court in the event of an appeal by the defendant.

10 (5) For purposes of subdivisions (1)(g) through (k) of  
11 this section, jailhouse witness means a person in the physical  
12 custody of any jail or correctional institution as (a) an accused  
13 defendant, (b) a convicted defendant awaiting sentencing, or (c) a  
14 convicted defendant serving a jail sentence of incarceration, at  
15 the time the statements the jailhouse witness will testify about  
16 were disclosed.

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

19 43-250 A peace officer who takes a juvenile into  
20 temporary custody under section 29-401 or 43-248 or pursuant  
21 to a legal warrant of arrest shall immediately take reasonable  
22 measures to notify the juvenile's parent, guardian, custodian, or  
23 relative and shall proceed as follows:

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

25 (2) The peace officer shall prepare in triplicate a

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

16 (3) While retaining temporary custody, the peace officer  
17 shall communicate all relevant available information regarding such  
18 juvenile to the probation officer and shall deliver the juvenile,  
19 if necessary, to the probation officer. The probation officer shall  
20 determine the need for detention of the juvenile as provided in  
21 section 43-260.01. Upon determining that the juvenile should be  
22 placed in a secure or nonsecure placement and securing placement  
23 in such secure or nonsecure setting by the probation officer, the  
24 peace officer shall implement the probation officer's decision to  
25 release or to detain and place the juvenile. When secure detention

1 of a juvenile is necessary, such detention shall occur within a  
2 juvenile detention facility except:

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

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

25 (c) Whenever a juvenile is held in a secure area of

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

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

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

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

1 the temporary custody by the department shall terminate and the  
2 juvenile shall be returned to the custody of his or her parent,  
3 guardian, custodian, or relative;

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

22 (6) Beginning July 1, 2010, a juvenile taken into custody  
23 pursuant to a legal warrant of arrest shall be delivered to ~~the~~  
24 a probation officer who shall determine the need for detention  
25 of the juvenile as provided in section 43-260.01. If detention is



1 not required, the juvenile may be released without bond if such  
2 release is in the best interests of the juvenile, the safety of the  
3 community is not at risk, and the court that issued the warrant is  
4 notified that the juvenile ~~has~~ had been taken into custody and was  
5 released.

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

11 Sec. 19. Original sections 28-115, 28-201, 28-931,  
12 28-931.01, 28-932, 28-933, and 28-1212.01, Reissue Revised Statutes  
13 of Nebraska, and sections 28-309, 28-929, 28-930, 28-1206,  
14 28-1212.04, 28-1354, 29-401, 29-901, 29-901.01, 29-1912, and  
15 43-250, Revised Statutes Supplement, 2009, are repealed.