

LEGISLATURE OF NEBRASKA

ONE HUNDRED FIRST LEGISLATURE

FIRST SESSION

LEGISLATIVE BILL 276

Introduced by Nordquist, 7; Ashford, 20; Cornett, 45; Giese, 17;
McGill, 26; Mello, 5; Nantkes, 46.

Read first time January 14, 2009

Committee: Judiciary

A BILL

1 FOR AN ACT relating to crimes and offenses; to amend sections
2 28-101 and 28-519, Reissue Revised Statutes of Nebraska;
3 to change provisions and penalties relating to criminal
4 mischief; to prohibit defacement as prescribed; to
5 provide penalties; to harmonize provisions; and to repeal
6 the original sections.

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

1 Section 1. Section 28-101, Reissue Revised Statutes of
2 Nebraska, is amended to read:

3 28-101 Sections 28-101 to 28-1350 and section 3 of this
4 act shall be known and may be cited as the Nebraska Criminal Code.

5 Sec. 2. Section 28-519, Reissue Revised Statutes of
6 Nebraska, is amended to read:

7 28-519 (1) A Except as provided in section 3 of this act,
8 a person commits criminal mischief if he or she:

9 (a) Damages or destroys property of another intentionally
10 or recklessly; or

11 (b) Intentionally tampers with property of another so as
12 to endanger person or property; or

13 (c) Intentionally or maliciously causes another to suffer
14 pecuniary loss by deception or threat.

15 (2) Criminal mischief is a Class IV felony if the actor
16 intentionally or maliciously causes pecuniary loss of one thousand
17 five hundred dollars or more, or a substantial interruption or
18 impairment of public communication, transportation, supply of
19 water, gas, or power, or other public service.

20 (3) Criminal mischief is a Class I misdemeanor if the
21 actor intentionally or maliciously causes pecuniary loss of five
22 hundred dollars or more but less than one thousand five hundred
23 dollars. For a second or subsequent offense under this subsection,
24 criminal mischief is a Class IV felony.

25 (4) Criminal mischief is a Class II misdemeanor if the

1 actor intentionally or maliciously causes pecuniary loss of two
2 hundred dollars or more but less than five hundred dollars. For
3 a second offense under this subsection, criminal mischief is a
4 Class I misdemeanor. For a third or subsequent offense under this
5 subsection, criminal mischief is a Class IV felony.

6 (5) Criminal mischief is a Class III misdemeanor if the
7 actor intentionally, maliciously, or recklessly causes pecuniary
8 loss in an amount of less than two hundred dollars, or if his
9 or her action results in no pecuniary loss. For a second offense
10 under this subsection, criminal mischief is a Class I misdemeanor.
11 For a third or subsequent offense under this subsection, criminal
12 mischief is a Class IV felony.

13 Sec. 3. (1) (a) A person who intentionally or maliciously
14 defaces property not his or her own with graffiti or other
15 inscribed material is guilty of defacement.

16 (b) Whenever a person commits defacement with respect to
17 property belonging to the state, any political subdivision, or the
18 federal government, it shall be a rebuttable presumption that the
19 person neither owned the property nor had the permission of the
20 owner to deface the property.

21 (2) (a) Defacement which is gang-related or advances the
22 interest of organized criminal activity shall be punished (i) as
23 a Class I misdemeanor for a first offense and (ii) as a Class IV
24 felony for a second or subsequent offense.

25 (b) Defacement which causes a pecuniary loss of five

1 hundred dollars or more shall be punished (i) as a Class II
2 misdemeanor for a first offense, (ii) as a Class I misdemeanor for
3 a second offense, and (iii) as a Class IV felony for a third or
4 subsequent offense.

5 (c) Defacement which causes a pecuniary loss of less
6 than five hundred dollars shall be punished (i) as a Class III
7 misdemeanor for a first offense, (ii) as a Class II misdemeanor for
8 a second offense, and (iii) as a Class I misdemeanor for a third or
9 subsequent offense.

10 (3) For purposes of this section, graffiti or other
11 inscribed material includes any unauthorized inscription, word,
12 figure, mark, or design that is written, marked, etched, scratched,
13 drawn, or painted on property.

14 (4) Upon conviction of a person for defacement, the
15 court may, in addition to any other punishment imposed under this
16 section, order the defendant to clean up, repair, or replace the
17 damaged property, keep the defaced property or another specified
18 property in the community free of graffiti or other inscribed
19 materials for up to one year, or order a combination of restitution
20 and labor.

21 (5) Upon conviction of a person for defacement, the
22 court may, in addition to any other punishment imposed under this
23 section, order any person ordered to perform graffiti removal under
24 this section to undergo counseling.

25 (6) Upon conviction of a person for defacement, the

1 court may, in addition to any other punishment imposed under this
2 section, order the suspension of the defendant's operator's license
3 for up to one year.

4 (7) It is not a violation of this section if the person
5 has the express permission of the owner of the property and the
6 defacement is allowed by law.

7 (8) For purposes of this section, pecuniary loss means
8 the actual cost of restoring the defaced property to its original
9 appearance and any incidental costs resulting from the damage and
10 subsequent repair of the defaced property.

11 Sec. 4. Original sections 28-101 and 28-519, Reissue
12 Revised Statutes of Nebraska, are repealed.