

LEGISLATURE OF NEBRASKA

ONE HUNDRED FIRST LEGISLATURE

SECOND SESSION

LEGISLATIVE BILL 771

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 person, deadly weapons, firearms,
10 arrest procedures, bail, conditions of release from
11 custody, discovery, and juveniles in custody; and to
12 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 or
8 higher classification: Assault in the first degree, section 28-308;
9 assault in the second degree, section 28-309; assault in the
10 third degree, section 28-310; sexual assault in the first degree,
11 section 28-319; sexual assault in the second or third degree,
12 section 28-320; sexual assault of a child in the second or third
13 degree, section 28-320.01; sexual abuse of an inmate or parolee
14 in the first degree, section 28-322.01; sexual abuse of an inmate
15 or parolee in the second degree, section 28-322.03; sexual abuse
16 of a protected individual in the first or second degree, section
17 28-322.04; domestic assault in the first, second, or third degree,
18 section 28-323; assault on an officer in the first degree, section
19 28-929; assault on an officer in the second degree, section 28-930;
20 assault on an officer in the third degree, section 28-931; assault
21 on an officer using a motor vehicle, section 28-931.01; assault by
22 a confined person, section 28-932; assault by a confined person,
23 section 28-933; proximately causing serious bodily injury while
24 operating a motor vehicle, section 60-6,198; and sexual assault of
25 a child in the first degree, section 28-319.01.

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

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

6 28-201 (1) A person shall be guilty of an attempt to
7 commit a crime if he or she:

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

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

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

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

25 (4) Criminal attempt is:

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

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

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

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

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

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

23 (g) A Class III misdemeanor when the crime attempted is
24 a Class II misdemeanor.

25 Sec. 3. Section 28-309, Revised Statutes Supplement,

1 2009, is amended to read:

2 28-309 (1) A person commits the offense of assault in the
3 second degree if he or she:

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

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

8 ~~(c) (i) While during confinement or legally confined~~
9 in a jail, an adult correctional or penal institution, a youth
10 rehabilitation and treatment center, or a treatment facility as
11 defined in section 71-914, (ii) while otherwise in legal custody
12 of the Department of Correctional Services, or in any county
13 jail, (iii) while committed as a mentally ill dangerous person or
14 dangerous sex offender under the Nebraska Mental Health Commitment
15 Act or the Sex Offender Commitment Act, unlawfully strikes or
16 wounds another.

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

19 Sec. 4. Section 28-929, Revised Statutes Supplement,
20 2009, is amended to read:

21 28-929 (1) A person commits the offense of assault on an
22 officer in the first degree if he or she intentionally or knowingly
23 causes serious bodily injury to a peace officer, a probation
24 officer, ~~or~~ an employee of the Department of Correctional Services,
25 or an employee of the Department of Health and Human Services

1 who works in a youth rehabilitation and treatment center or a
2 treatment facility as defined in section 71-914, while such officer
3 or 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 he or she:

11 (a) Intentionally or knowingly causes bodily injury with
12 a dangerous instrument to a peace officer, a probation officer,
13 ~~or~~ an employee of the Department of Correctional Services, or an
14 employee of the Department of Health and Human Services who works
15 in a youth rehabilitation and a treatment center or treatment
16 facility as defined in section 71-914, while such officer or
17 employee is engaged in the performance of his or her official
18 duties; or

19 (b) Recklessly causes bodily injury with a dangerous
20 instrument to a peace officer, a probation officer, ~~or~~ an employee
21 of the Department of Correctional Services, or an employee of
22 the Department of Health and Human Services who works in a youth
23 rehabilitation and treatment center or a treatment facility as
24 defined in section 71-914, while such officer or employee is
25 engaged in the performance of his or her official duties.

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

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

5 28-931 (1) A person commits the offense of assault on an
6 officer in the third degree if he or she intentionally, knowingly,
7 or recklessly causes bodily injury to a peace officer, a probation
8 officer, ~~or~~ an employee of the Department of Correctional Services,
9 or an employee of the Department of Health and Human Services
10 who works in a youth rehabilitation and treatment center or a
11 treatment facility as defined in section 71-914, while such officer
12 or employee is engaged in the performance of his or her official
13 duties.

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

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

18 28-931.01 (1) A person commits the offense of assault
19 on an officer using a motor vehicle if he or she intentionally
20 and knowingly causes bodily injury to a peace officer, a probation
21 officer, ~~or~~ an employee of the Department of Correctional Services,
22 or an employee of the Department of Health and Human Services who
23 works in a youth rehabilitation and treatment center or a treatment
24 facility as defined in section 71-914, (a) by using a motor vehicle
25 to run over or to strike such officer or employee or (b) by

1 using a motor vehicle to collide with such officer's or employee's
2 motor vehicle, while such officer or employee is engaged in the
3 performance of his or her duties.

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

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

8 28-932 (1) Any person who is legally confined in (a)
9 a jail, an adult ~~or~~ correctional or penal institution, a youth
10 rehabilitation and treatment center, or a treatment facility as
11 defined in section 71-914, (b) who is otherwise in legal custody
12 of the Department of Correctional Services, or (c) who is committed
13 as a mentally ill dangerous person or dangerous sex offender under
14 the Nebraska Mental Health Commitment Act or the Sex Offender
15 Commitment Act, and intentionally, knowingly, or recklessly causes
16 bodily injury to another person shall be guilty of a Class IIIA
17 felony, except that if a deadly or dangerous weapon is used to
18 commit such assault he or she shall be guilty of a Class III
19 felony.

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

1 under this section.

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

4 28-933 (1) Any person who is legally confined in (a)
5 a jail, an adult ~~or~~ correctional or penal institution, a youth
6 rehabilitation and treatment center, or a treatment facility as
7 defined in section 71-914, (b) who is otherwise in legal custody
8 of the Department of Correctional Services, or (c) who is committed
9 as a mentally ill dangerous person or dangerous sex offender under
10 the Nebraska Mental Health Commitment Act or the Sex Offender
11 Commitment Act, and who commits ~~(a)~~ (i) assault in the first,
12 second, or third degree as defined in sections 28-308 to 28-310,
13 ~~(b)~~ (ii) terroristic threats as defined in section 28-311.01, ~~(e)~~
14 (iii) kidnapping as defined in section 28-313, or ~~(d)~~ (iv) false
15 imprisonment in the first or second degree as defined in sections
16 28-314 and 28-315, against any person for the purpose of compelling
17 or inducing the performance of any act by such person or any other
18 person shall be guilty of a Class 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.

1 Sec. 10. Section 28-1206, Revised Statutes Supplement,
2 2009, is amended to read:

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

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

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

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

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

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

25 (II) A crime that has, as an element, the use or

1 attempted use of physical force or the threatened use of a deadly
2 weapon; and

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

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

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

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

22 (A) The person was represented by counsel in the case
23 or knowingly and intelligently waived the right to counsel in the
24 case; and

25 (B) In the case of a prosecution for a misdemeanor crime

1 of domestic violence for which a person was entitled to a jury
2 trial in the jurisdiction in which the case was tried, either:

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

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

6 (b) For purposes of this section, subject of a current
7 and validly issued domestic violence protection order pertains to
8 a current court order that was validly issued pursuant to section
9 28-311.09 or 42-924 or that meets or exceeds the criteria set forth
10 in section 28-311.10 regarding protection orders issued by a court
11 in ~~another~~ any other state, or a territory, possession, or tribe.

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

14 28-1212.01 For purposes of ~~section~~ sections 28-1212.02
15 and 28-1212.04:

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

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

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

22 Sec. 12. Section 28-1212.04, Revised Statutes Supplement,
23 2009, is amended to read:

24 28-1212.04 Any person, within the territorial boundaries
25 of any city, incorporated village, or county containing a city of

1 the metropolitan class or primary class, who unlawfully, knowingly,
2 and intentionally or recklessly discharges a firearm, while in a
3 motor vehicle or in the proximity of ~~any~~ a motor vehicle that
4 such person has just exited, at or in the general direction of
5 any person, dwelling, building, structure, occupied motor vehicle,
6 occupied aircraft, inhabited motor home as defined in section
7 71-4603, or inhabited camper unit as defined in section 60-1801, is
8 guilty of a Class IC felony.

9 Sec. 13. Section 28-1354, Revised Statutes Supplement,
10 2009, is amended to read:

11 28-1354 For purposes of the Public Protection Act:

12 (1) Enterprise means any individual, sole proprietorship,
13 partnership, corporation, trust, association, or any legal entity,
14 union, or group of individuals associated in fact although not
15 a legal entity, and shall include illicit as well as licit
16 enterprises as well as other entities;

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

24 (3) Person means any individual or entity, as defined in
25 section 21-2014, holding or capable of holding a legal, equitable,

1 or beneficial interest in property;

2 (4) Prosecutor includes the Attorney General of the
3 State of Nebraska, the deputy attorney general, assistant attorneys
4 general, a county attorney, a deputy county attorney, or any person
5 so designated by the Attorney General, a county attorney, or a
6 court of the state to carry out the powers conferred by the act;

7 (5) Racketeering activity includes the commission of,
8 criminal attempt to commit, conspiracy to commit, aiding and
9 abetting in the commission of, aiding in the consummation of,
10 acting as an accessory to the commission of, or the solicitation,
11 coercion, or intimidation of another to commit or aid in the
12 commission of any of the following:

13 (a) Offenses against the person which include: Murder in
14 the first degree under section 28-303; murder in the second degree
15 under section 28-304; manslaughter under section 28-305; assault in
16 the first degree under section 28-308; assault in the second degree
17 under section 28-309; assault in the third degree under section
18 28-310; terroristic threats under section 28-311.01; kidnapping
19 under section 28-313; false imprisonment in the first degree under
20 section 28-314; false imprisonment in the second degree under
21 section 28-315; sexual assault in the first degree under section
22 28-319; and robbery under section 28-324;

23 (b) Offenses relating to controlled substances which
24 include: To unlawfully manufacture, distribute, deliver, dispense,
25 or possess with intent to manufacture, distribute, deliver, or

1 dispense a controlled substance under subsection (1) of section
2 28-416; possession of marijuana weighing more than one pound
3 under subsection (12) of section 28-416; possession of money
4 used or intended to be used to facilitate a violation of
5 subsection (1) of section 28-416 prohibited under subsection
6 (17) of section 28-416; any violation of section 28-418; to
7 unlawfully manufacture, distribute, deliver, or possess with intent
8 to distribute or deliver an imitation controlled substance under
9 section 28-445; possession of anhydrous ammonia with the intent to
10 manufacture methamphetamine under section 28-451; and possession of
11 ephedrine, pseudoephedrine, or phenylpropanolamine with the intent
12 to manufacture methamphetamine under section 28-452;

13 (c) Offenses against property which include: Arson in
14 the first degree under section 28-502; arson in the second degree
15 under section 28-503; arson in the third degree under section
16 28-504; burglary under section 28-507; theft by unlawful taking
17 or disposition under section 28-511; theft by shoplifting under
18 section 28-511.01; theft by deception under section 28-512; theft
19 by extortion under section 28-513; theft of services under section
20 28-515; theft by receiving stolen property under section 28-517;
21 criminal mischief under section 28-519; and unlawfully depriving
22 or obtaining property or services using a computer under section
23 28-1344;

24 (d) Offenses involving fraud which include: Burning
25 to defraud an insurer under section 28-505; forgery in the

1 first degree under section 28-602; forgery in the second degree
2 under section 28-603; criminal possession of a forged instrument
3 under section 28-604; criminal possession of forgery devices
4 under section 28-605; criminal impersonation under section 28-638;
5 identity theft under section 28-639; identity fraud under section
6 28-640; false statement or book entry under section 28-612;
7 tampering with a publicly exhibited contest under section 28-614;
8 issuing a false financial statement for purposes of obtaining a
9 financial transaction device under section 28-619; unauthorized use
10 of a financial transaction device under section 28-620; criminal
11 possession of a financial transaction device under section 28-621;
12 unlawful circulation of a financial transaction device in the first
13 degree under section 28-622; unlawful circulation of a financial
14 transaction device in the second degree under section 28-623;
15 criminal possession of a blank financial transaction device under
16 section 28-624; criminal sale of a blank financial transaction
17 device under section 28-625; criminal possession of a forgery
18 device under section 28-626; unlawful manufacture of a financial
19 transaction device under section 28-627; laundering of sales forms
20 under section 28-628; unlawful acquisition of sales form processing
21 services under section 28-629; unlawful factoring of a financial
22 transaction device under section 28-630; and fraudulent insurance
23 acts under section 28-631;

24 (e) Offenses involving governmental operations which
25 include: Abuse of public records under section 28-911; perjury or

1 subornation of perjury under section 28-915; bribery under section
2 28-917; bribery of a witness under section 28-918; tampering with
3 a witness or informant or jury tampering under section 28-919;
4 bribery of a juror under section 28-920; assault on an officer in
5 the first degree under section 28-929; assault on an officer in the
6 second degree under section 28-930; assault on an officer in the
7 third degree under section 28-931; and assault on an officer using
8 a motor vehicle under section 28-931.01;

9 (f) Offenses involving gambling which include: Promoting
10 gambling in the first degree under section 28-1102; possession of
11 gambling records under section 28-1105; gambling debt collection
12 under section 28-1105.01; and possession of a gambling device under
13 section 28-1107;

14 (g) Offenses relating to firearms, weapons, and
15 explosives which include: Carrying a concealed weapon under
16 section 28-1202; transportation or possession of machine guns,
17 short rifles, or short shotguns under section 28-1203; unlawful
18 possession of a ~~revolver~~ handgun under section 28-1204; unlawful
19 transfer of a firearm to a juvenile under section 28-1204.01; using
20 a deadly weapon to commit a felony or possession of a deadly
21 weapon during the commission of a felony under section 28-1205;
22 possession of a deadly weapon by a ~~felen~~ or a fugitive from
23 justice prohibited person under section 28-1206; possession of a
24 defaced firearm under section 28-1207; defacing a firearm under
25 section 28-1208; unlawful discharge of a firearm under section

1 28-1212.02; possession, receipt, retention, or disposition of a
2 stolen firearm under section 28-1212.03; unlawful possession of
3 explosive materials in the first degree under section 28-1215;
4 unlawful possession of explosive materials in the second degree
5 under section 28-1216; unlawful sale of explosives under section
6 28-1217; use of explosives without a permit under section 28-1218;
7 obtaining an explosives permit through false representations under
8 section 28-1219; possession of a destructive device under section
9 28-1220; threatening the use of explosives or placing a false bomb
10 under section 28-1221; using explosives to commit a felony under
11 section 28-1222; using explosives to damage or destroy property
12 under section 28-1223; and using explosives to kill or injure any
13 person under section 28-1224;

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

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

18 (j) Offenses relating to public health and morals which
19 include: Prostitution under section 28-801; pandering under section
20 28-802; keeping a place of prostitution under section 28-804; human
21 trafficking or forced labor or services under section 28-831; a
22 violation of section 28-1005; and any act relating to the visual
23 depiction of sexually explicit conduct prohibited in the Child
24 Pornography Prevention Act; and

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

1 (6) State means the State of Nebraska or any political
2 subdivision or any department, agency, or instrumentality thereof;
3 and

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

6 (a) Incurred or contracted in gambling activity which was
7 in violation of federal law or the law of the state or which is
8 unenforceable under state or federal law in whole or in part as to
9 principal or interest because of the laws relating to usury; or

10 (b) Which was incurred in connection with the business
11 of gambling in violation of federal law or the law of the state
12 or the business of lending money or a thing of value at a rate
13 usurious under state law if the usurious rate is at least twice the
14 enforceable rate.

15 Sec. 14. Section 29-401, Revised Statutes Supplement,
16 2009, is amended to read:

17 29-401 Every sheriff, deputy sheriff, marshal, deputy
18 marshal, security guard, police officer, or peace officer as
19 defined in subdivision (15) of section 49-801 shall arrest and
20 detain any person found violating any law of this state or any
21 legal ordinance of any city or incorporated village until a legal
22 warrant can be obtained, except that (1) any such law enforcement
23 officer taking a juvenile under the age of eighteen years into his
24 or her custody for any violation herein defined shall proceed as
25 set forth in sections 43-248, 43-248.01, 43-250, 43-251, 43-251.01,

1 and 43-253 and (2) the court in which the juvenile is to appear
2 shall not accept a plea from the juvenile until finding that the
3 parents of the juvenile have been notified or that reasonable
4 efforts to notify such parents have been made as provided in
5 section ~~43-253~~, 43-250.

6 Sec. 15. Section 29-901, Revised Statutes Supplement,
7 2009, is amended to read:

8 29-901 Any bailable defendant shall be ordered released
9 from custody pending judgment on his or her personal recognizance
10 unless the judge determines in the exercise of his or her
11 discretion that such a release will not reasonably assure the
12 appearance of the defendant as required or that such a release
13 could jeopardize the safety and maintenance of evidence or the
14 safety of victims, witnesses, or other persons in the community.
15 When such determination is made, the judge shall either in lieu of
16 or in addition to such a release impose the first of the following
17 conditions of release which will reasonably assure the appearance
18 of the person for trial or, if no single condition gives that
19 assurance, any combination of the following conditions:

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

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

24 (3) Require, at the option of any bailable defendant,
25 either of the following:

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

22 (b) The execution of a bail bond with such surety or
23 sureties as shall seem proper to the judge or, in lieu of such
24 surety or sureties, at the option of such person, a cash deposit
25 of such sum so fixed, conditioned for his or her appearance before

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

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

1 his or her equity in the real estate, but such recognizance shall
2 not constitute a lien on the real estate described therein until
3 judgment is entered thereon against such surety; or

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

8 Sec. 16. Section 29-901.01, Revised Statutes Supplement,
9 2009, is amended to read:

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

25 Sec. 17. Section 29-1912, Revised Statutes Supplement,

1 2009, is amended to read:

2 29-1912 (1) When a defendant is charged with a felony or
3 when a defendant is charged with a misdemeanor or a violation of
4 a city or village ordinance for which imprisonment is a possible
5 penalty, he or she may request the court where the case is to be
6 tried, at any time after the filing of the indictment, information,
7 or complaint, to order the prosecuting attorney to permit the
8 defendant to inspect and copy or photograph:

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

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

18 (c) The defendant's recorded testimony before a grand
19 jury;

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

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

25 (f) Documents, papers, books, accounts, letters,

1 photographs, objects, or other tangible things of whatsoever kind
2 or nature which could be used as evidence by the prosecuting
3 authority;

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

5 (h) Any deal, promise, inducement, or benefit that
6 the prosecuting attorney or any person acting on behalf of the
7 prosecuting attorney has knowingly made or may make in the future
8 to the jailhouse witness;

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

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

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

24 (2) The court may issue such an order pursuant to
25 the provisions of this section. In the exercise of its judicial

1 discretion, the court shall consider among other things whether:

2 (a) The request is material to the preparation of the
3 defense;

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

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

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

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

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

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

25 (5) For purposes of subdivisions (1)(g) through (k) of

1 this section, jailhouse witness means a person in the physical
2 custody of any jail or correctional institution as (a) an accused
3 defendant, (b) a convicted defendant awaiting sentencing, or (c) a
4 convicted defendant serving a ~~jail~~ sentence of incarceration, at
5 the time the statements the jailhouse witness will testify about
6 were disclosed.

7 Sec. 18. Section 43-250, Revised Statutes Supplement,
8 2009, is amended to read:

9 43-250 A peace officer who takes a juvenile into
10 temporary custody under section 29-401 or 43-248 or pursuant
11 to a legal warrant of arrest shall immediately take reasonable
12 measures to notify the juvenile's parent, guardian, custodian, or
13 relative and shall proceed as follows:

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

15 (2) The peace officer shall prepare in triplicate a
16 written notice requiring the juvenile to appear before the juvenile
17 court of the county in which such juvenile was taken into custody
18 at a time and place specified in the notice or at the call of the
19 court. The notice shall also contain a concise statement of the
20 reasons such juvenile was taken into custody. The peace officer
21 shall deliver one copy of the notice to such juvenile and require
22 such juvenile or his or her parent, guardian, other custodian,
23 or relative, or both, to sign a written promise that such signer
24 will appear at the time and place designated in the notice. Upon
25 the execution of the promise to appear, the peace officer shall

1 immediately release such juvenile. The peace officer shall, as
2 soon as practicable, file one copy of the notice with the county
3 attorney and, when required by the juvenile court, also file a copy
4 of the notice with the juvenile court or the officer appointed by
5 the court for such purpose;

6 (3) While retaining temporary custody, the peace officer
7 shall communicate all relevant available information regarding such
8 juvenile to the probation officer and shall deliver the juvenile,
9 if necessary, to the probation officer. The probation officer shall
10 determine the need for detention of the juvenile as provided in
11 section 43-260.01. Upon determining that the juvenile should be
12 placed in a secure or nonsecure placement and securing placement
13 in such secure or nonsecure setting by the probation officer, the
14 peace officer shall implement the probation officer's decision to
15 release or to detain and place the juvenile. When secure detention
16 of a juvenile is necessary, such detention shall occur within a
17 juvenile detention facility except:

18 (a) When a juvenile described in subdivision (1) or
19 (2) of section 43-247, except for a status offender, is taken
20 into temporary custody within a metropolitan statistical area and
21 where no juvenile detention facility is reasonably available, the
22 juvenile may be delivered, for temporary custody not to exceed
23 six hours, to a secure area of a jail or other facility intended
24 or used for the detention of adults solely for the purposes of
25 identifying the juvenile and ascertaining his or her health and

1 well-being and for safekeeping while awaiting transport to an
2 appropriate juvenile placement or release to a responsible party;

3 (b) When a juvenile described in subdivision (1) or (2)
4 of section 43-247, except for a status offender, is taken into
5 temporary custody outside of 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 twenty-four hours excluding nonjudicial days and while awaiting an
9 initial court appearance, to a secure area of a jail or other
10 facility intended or used for the detention of adults solely for
11 the purposes of identifying the juvenile and ascertaining his
12 or her health and well-being and for safekeeping while awaiting
13 transport to an appropriate juvenile placement or release to a
14 responsible party;

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

23 (d) If a juvenile is under sixteen years of age or is a
24 juvenile as described in subdivision (3) of section 43-247, he or
25 she shall not be placed within a secure area of a jail or other

1 facility intended or used for the detention of adults;

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

7 (f) A status offender or nonoffender taken into temporary
8 custody shall not be held in a secure area of a jail or other
9 facility intended or used for the detention of adults. A status
10 offender accused of violating a valid court order may be securely
11 detained in a juvenile detention facility longer than twenty-four
12 hours if he or she is afforded a detention hearing before a
13 court within twenty-four hours, excluding nonjudicial days, and if,
14 prior to a dispositional commitment to secure placement, a public
15 agency, other than a court or law enforcement agency, is afforded
16 an opportunity to review the juvenile's behavior and possible
17 alternatives to secure placement and has submitted a written report
18 to the court; and

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

24 (4) When a juvenile is taken into temporary custody
25 pursuant to subdivision (3) of section 43-248, the peace officer

1 shall deliver the custody of such juvenile to the Department of
2 Health and Human Services which shall make a temporary placement of
3 the juvenile in the least restrictive environment consistent with
4 the best interests of the juvenile as determined by the department.
5 The department shall supervise such placement and, if necessary,
6 consent to any necessary emergency medical, psychological, or
7 psychiatric treatment for such juvenile. The department shall have
8 no other authority with regard to such temporary custody until or
9 unless there is an order by the court placing the juvenile in the
10 custody of the department. If the peace officer delivers temporary
11 custody of the juvenile pursuant to this subdivision, the peace
12 officer shall make a full written report to the county attorney
13 within twenty-four hours of taking such juvenile into temporary
14 custody. If a court order of temporary custody is not issued
15 within forty-eight hours of taking the juvenile into custody,
16 the temporary custody by the department shall terminate and the
17 juvenile shall be returned to the custody of his or her parent,
18 guardian, custodian, or relative;

19 (5) If the peace officer takes the juvenile into
20 temporary custody pursuant to subdivision (4) of section 43-248,
21 the peace officer may place the juvenile at a mental health
22 facility for evaluation and emergency treatment or may deliver
23 the juvenile to the Department of Health and Human Services as
24 provided in subdivision (4) of this section. At the time of the
25 admission or turning the juvenile over to the department, the

1 peace officer responsible for taking the juvenile into custody
2 shall execute a written certificate as prescribed by the Department
3 of Health and Human Services which will indicate that the peace
4 officer believes the juvenile to be mentally ill and dangerous,
5 a summary of the subject's behavior supporting such allegations,
6 and that the harm described in section 71-908 is likely to occur
7 before proceedings before a juvenile court may be invoked to
8 obtain custody of the juvenile. A copy of the certificate shall be
9 forwarded to the county attorney. The peace officer shall notify
10 the juvenile's parents, guardian, custodian, or relative of the
11 juvenile's placement; or

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

21 In determining the appropriate temporary placement of a
22 juvenile under this section, the peace officer shall select the
23 placement which is least restrictive of the juvenile's freedom so
24 long as such placement is compatible with the best interests of the
25 juvenile and the safety of the community.

LB 771

LB 771

1 Sec. 19. Original sections 28-115, 28-201, 28-931,
2 28-931.01, 28-932, 28-933, and 28-1212.01, Reissue Revised Statutes
3 of Nebraska, and sections 28-309, 28-929, 28-930, 28-1206,
4 28-1212.04, 28-1354, 29-401, 29-901, 29-901.01, 29-1912, and
5 43-250, Revised Statutes Supplement, 2009, are repealed.