

LEGISLATURE OF NEBRASKA

ONE HUNDRED SECOND LEGISLATURE

FIRST SESSION

LEGISLATIVE BILL 226

Final Reading

Introduced by Gloor, 35; Bloomfield, 17; Carlson, 38; Coash, 27;
Dubas, 34; Hadley, 37; Lautenbaugh, 18; McCoy, 39;
Utter, 33; Wallman, 30.

Read first time January 10, 2011

Committee: Judiciary

A BILL

1 FOR AN ACT relating to crimes and offenses; to amend section 28-101,
2 Revised Statutes Cumulative Supplement, 2010; to create
3 the offense of assault with a bodily fluid against a
4 public safety officer; to provide penalties; to harmonize
5 provisions; and to repeal the original section.
6 Be it enacted by the people of the State of Nebraska,

1 Section 1. Section 28-101, Revised Statutes Cumulative
2 Supplement, 2010, is amended to read:

3 28-101 Sections 28-101 to 28-1356 and section 2 of this
4 act shall be known and may be cited as the Nebraska Criminal Code.

5 Sec. 2. (1) Any person who knowingly and intentionally
6 strikes any public safety officer with any bodily fluid is guilty of
7 assault with a bodily fluid against a public safety officer.

8 (2) Except as provided in subsection (3) of this section,
9 assault with a bodily fluid against a public safety officer is a
10 Class I misdemeanor.

11 (3) Assault with a bodily fluid against a public safety
12 officer is a Class IIIA felony if the person committing the offense
13 strikes with a bodily fluid the eyes, mouth, or skin of a public
14 safety officer and knew the source of the bodily fluid was infected
15 with the human immunodeficiency virus, hepatitis B, or hepatitis C at
16 the time the offense was committed.

17 (4) Upon a showing of probable cause by affidavit to a
18 judge of this state that an offense as defined in subsection (1) of
19 this section has been committed and that identifies the probable
20 source of the bodily fluid or bodily fluids used to commit the
21 offense, the judge shall grant an order or issue a search warrant
22 authorizing the collection of any evidence, including any bodily
23 fluid or medical records or the performance of any medical or
24 scientific testing or analysis, that may assist with the
25 determination of whether or not the person committing the offense or

1 the person from whom the person committing the offense obtained the
2 bodily fluid or bodily fluids is infected with the human
3 immunodeficiency virus, hepatitis B, or hepatitis C.

4 (5) As used in this section:

5 (a) Bodily fluid means any naturally produced secretion
6 or waste product generated by the human body and shall include, but
7 not be limited to, any quantity of human blood, urine, saliva, mucus,
8 vomit, seminal fluid, or feces; and

9 (b) Public safety officer includes any of the following
10 persons who are engaged in the performance of their official duties
11 at the time of the offense: A peace officer; a probation officer; an
12 employee of a county, city, or village jail; an employee of the
13 Department of Correctional Services; an employee of the secure youth
14 confinement facility operated by the Department of Correctional
15 Services, if the person committing the offense is committed to such
16 facility; an employee of the Youth Rehabilitation and Treatment
17 Center-Geneva or the Youth Rehabilitation and Treatment Center-
18 Kearney; or 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.

21 Sec. 3. Original section 28-101, Revised Statutes
22 Cumulative Supplement, 2010, is repealed.