

LEGISLATURE OF NEBRASKA

ONE HUNDRED SECOND LEGISLATURE

FIRST SESSION

LEGISLATIVE BILL 226

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 provide
3 for assault with a bodily fluid against a public safety
4 officer; to provide penalties; to harmonize provisions;
5 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 or who
7 throws, propels, expels, or emits any bodily fluid in the direction
8 of any public safety officer, is guilty of assault with a bodily
9 fluid against a public safety officer.

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

13 (3) Assault with a bodily fluid against a public safety
14 officer is a Class IIIA felony if the person committing the offense
15 knew the source of the bodily fluid was infected with the human
16 immunodeficiency virus, acquired immunodeficiency syndrome virus,
17 hepatitis B virus, or hepatitis C virus at the time the offense was
18 committed.

19 (4) A sentence imposed under this section shall be served
20 consecutively to any other sentence or sentences imposed for an
21 offense committed prior to a violation of this section and shall not
22 include any credit for time spent in custody prior to sentencing,
23 unless the time in custody is solely related to the offense for which
24 the sentence is being imposed under this section.

25 (5) Upon a showing of probable cause by affidavit to a

1 judge of this state that an offense as defined in subsection (1) of
2 this section has been committed and that identifies the probable
3 source of the bodily fluid or bodily fluids used to commit the
4 offense, the judge shall grant an order or issue a search warrant
5 authorizing the collection of any evidence, including any bodily
6 fluid or medical records or the performance of any medical or
7 scientific testing or analysis, that may assist with the
8 determination of whether or not the person committing the offense or
9 the person from whom the person committing the offense obtained the
10 bodily fluid or bodily fluids is infected with the human
11 immunodeficiency virus, acquired immunodeficiency syndrome virus,
12 hepatitis B virus, or hepatitis C virus.

13 (6) As used in this section:

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

18 (b) Public safety officer includes any of the following
19 persons who are engaged in the performance of their official duties
20 at the time of the offense: A peace officer; a probation officer; an
21 employee of a county, city, or village jail; an employee of the
22 Department of Correctional Services; an employee of the secure youth
23 confinement facility operated by the Department of Correctional
24 Services, a state, county, or local employee of a youth
25 rehabilitation and treatment center, or an employee of the Office of

1 Juvenile Services, if the person committing the offense is committed
2 to such a facility, center, or office; or an employee of the
3 Department of Health and Human Services if the person committing the
4 offense is committed as a dangerous sex offender under the Sex
5 Offender Commitment Act.

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