

LEGISLATURE OF NEBRASKA
ONE HUNDRED THIRD LEGISLATURE
SECOND SESSION
LEGISLATIVE BILL 877

Introduced by Harr, 8.

Read first time January 14, 2014

Committee: Judiciary

A BILL

1 FOR AN ACT relating to crimes and offenses; to amend section 28-1205,
2 Revised Statutes Cumulative Supplement, 2012; to change
3 provisions relating to use of a deadly weapon to commit a
4 felony; to define a term; and to repeal the original
5 section.
6 Be it enacted by the people of the State of Nebraska,

1 Section 1. Section 28-1205, Revised Statutes Cumulative
2 Supplement, 2012, is amended to read:

3 28-1205 (1)(a) Any person who uses a firearm, a knife,
4 brass or iron knuckles, ~~or~~ any other deadly weapon, a facsimile
5 firearm, or a nonfunctioning firearm to commit any felony which may
6 be prosecuted in a court of this state commits the offense of use of
7 a deadly weapon to commit a felony.

8 (b) Use of a deadly weapon, other than a firearm, to
9 commit a felony is a Class II felony.

10 (c) Use of a deadly weapon, which is a firearm, to commit
11 a felony is a Class IC felony.

12 (d) Use of a facsimile firearm or nonfunctioning firearm
13 to commit a felony is a Class III felony.

14 (2)(a) Any person who possesses a firearm, a knife, brass
15 or iron knuckles, or a destructive device during the commission of
16 any felony which may be prosecuted in a court of this state commits
17 the offense of possession of a deadly weapon during the commission of
18 a felony.

19 (b) Possession of a deadly weapon, other than a firearm,
20 during the commission of a felony is a Class III felony.

21 (c) Possession of a deadly weapon, which is a firearm,
22 during the commission of a felony is a Class II felony.

23 (3) The crimes defined in this section shall be treated
24 as separate and distinct offenses from the felony being committed,
25 and sentences imposed under this section shall be consecutive to any

1 other sentence imposed.

2 (4) Possession of a deadly weapon may be proved through
3 evidence demonstrating either actual or constructive possession of a
4 firearm, a knife, brass or iron knuckles, or a destructive device
5 during, immediately prior to, or immediately after the commission of
6 a felony.

7 (5) For purposes of this section:

8 (a) Destructive device has the same meaning as in section
9 28-1213; ~~and~~

10 (b) A facsimile firearm means an instrument which could
11 reasonably be perceived to be a real firearm which includes, but is
12 not limited to, a replica gun, an imitation gun, a BB gun, a pellet
13 gun, a paintball gun, a toy gun, a lighter gun, or any other
14 instrument that is fashioned to be perceived as a real firearm by a
15 reasonable person; and

16 ~~(b)~~-(c) Use of a deadly weapon includes the discharge,
17 employment, or visible display of any part of a firearm, a knife,
18 brass or iron knuckles, a facsimile firearm, a nonfunctioning
19 firearm, any other deadly weapon, or a destructive device during,
20 immediately prior to, or immediately after the commission of a felony
21 or communication to another indicating the presence of a firearm, a
22 knife, brass or iron knuckles, a facsimile firearm, a nonfunctioning
23 firearm, any other deadly weapon, or a destructive device during,
24 immediately prior to, or immediately after the commission of a
25 felony, regardless of whether such firearm, knife, brass or iron

1 knuckles, facsimile firearm, nonfunctioning firearm, deadly weapon,
2 or destructive device was discharged, actively employed, or
3 displayed.

4 Sec. 2. Original section 28-1205, Revised Statutes
5 Cumulative Supplement, 2012, is repealed.