

LEGISLATURE OF NEBRASKA
ONE HUNDRED FOURTH LEGISLATURE
SECOND SESSION

LEGISLATIVE BILL 793

Introduced by Watermeier, 1.

Read first time January 07, 2016

Committee: Judiciary

1 A BILL FOR AN ACT relating to crimes and offenses; to amend sections
2 28-913 and 83-417, Reissue Revised Statutes of Nebraska, and
3 sections 28-115, 28-929, 28-929.01, 28-930, 28-931, 28-1351, and
4 28-1354, Revised Statutes Cumulative Supplement, 2014; to change and
5 eliminate provisions and penalties relating to implements for escape
6 and contraband and assault on an officer, certain employees, or a
7 health care professional; to define a term; to harmonize provisions;
8 to repeal the original sections; and to outright repeal section
9 28-931.01, Revised Statutes Cumulative Supplement, 2014.
10 Be it enacted by the people of the State of Nebraska,

1 Section 1. Section 28-115, Revised Statutes Cumulative Supplement,
2 2014, is amended to read:

3 28-115 (1) Any person who commits any of the following criminal
4 offenses against a pregnant woman shall be punished by the imposition of
5 the next higher penalty classification than the penalty classification
6 prescribed for the criminal offense, unless such criminal offense is
7 already punishable as a Class IB felony or higher classification: Assault
8 in the first degree, section 28-308; assault in the second degree,
9 section 28-309; assault in the third degree, section 28-310; sexual
10 assault in the first degree, section 28-319; sexual assault in the second
11 or third degree, section 28-320; sexual assault of a child in the second
12 or third degree, section 28-320.01; sexual abuse of an inmate or parolee
13 in the first degree, section 28-322.02; sexual abuse of an inmate or
14 parolee in the second degree, section 28-322.03; sexual abuse of a
15 protected individual in the first or second degree, section 28-322.04;
16 domestic assault in the first, second, or third degree, section 28-323;
17 assault on a public safety an officer, ~~an emergency responder, a state~~
18 ~~correctional employee, a Department of Health and Human Services~~
19 ~~employee,~~ or a health care professional in the first degree, section
20 28-929; assault on a public safety an officer, ~~an emergency responder, a~~
21 ~~state correctional employee, a Department of Health and Human Services~~
22 ~~employee,~~ or a health care professional in the second degree, section
23 28-930; assault on a public safety an officer, ~~an emergency responder, a~~
24 ~~state correctional employee, a Department of Health and Human Services~~
25 ~~employee,~~ or a health care professional in the third degree, section
26 28-931; ~~assault on an officer, an emergency responder, a state~~
27 ~~correctional employee, a Department of Health and Human Services~~
28 ~~employee, or a health care professional using a motor vehicle,~~ section
29 ~~28-931.01;~~ assault by a confined person, section 28-932; confined person
30 committing offenses against another person, section 28-933; proximately
31 causing serious bodily injury while operating a motor vehicle, section

1 60-6,198; and sexual assault of a child in the first degree, section
2 28-319.01.

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

5 Sec. 2. Section 28-913, Reissue Revised Statutes of Nebraska, is
6 amended to read:

7 28-913 (1) A person commits an offense involving contraband in a
8 detention facility if he or she unlawfully and intentionally does any of
9 the following: if he unlawfully introduces within a detention facility,
10 or unlawfully provides an inmate with, any weapon, tool, or other thing
11 which may be useful for escape. An inmate commits an offense if he
12 unlawfully procures, makes, or otherwise provides himself with, or has in
13 his possession, any such implement of escape. Unlawfully means
14 surreptitiously or contrary to law, regulation, or order of the detaining
15 authority.

16 (a) Introduces contraband into, or onto the grounds of, a detention
17 facility;

18 (b) Conveys contraband to any inmate confined in a detention
19 facility; or

20 (c) Makes, obtains, or possesses contraband while confined in a
21 detention facility, or while being transported or moved incidental to
22 confinement.

23 (2) For purposes of this section: Introducing escape implements is a
24 Class I misdemeanor.

25 (a) Contraband means:

26 (i) Any controlled substance, imitation controlled substance, or
27 counterfeit substance as such terms are defined in section 28-401, or
28 drug paraphernalia as defined in section 28-439;

29 (ii) Any dangerous weapon, firearm, knife, incendiary device,
30 combustible material, explosive material, or other material or thing
31 capable of inflicting injury or death;

1 (iii) Any electronic communication device as defined in section
2 28-833, telecommunications equipment, or component hardware, including,
3 but not limited to, cellular telephones, pagers, global positioning
4 satellite system equipment, subscriber identity module (SIM) cards,
5 portable memory chips, batteries, or chargers;

6 (iv) Any rope, ladder component, key or key pattern, metal file, or
7 any other thing which may be used to facilitate an escape;

8 (v) Any intoxicating beverage or tobacco product; or

9 (vi) Any credit card, currency, or written instrument of value;

10 (b) Detention facility means:

11 (i) A Department of Correctional Services adult correctional
12 facility or secure youth confinement facility;

13 (ii) A county jail as defined in section 47-117;

14 (iii) A city jail as defined in section 47-207;

15 (iv) A joint county and city jail authorized under sections 47-302
16 to 47-308;

17 (v) A criminal detention facility as defined in section 83-4,125;

18 (vi) A juvenile detention facility as defined in section 83-4,125;

19 (vii) A staff secure juvenile facility as defined in section
20 83-4,125;

21 (viii) A youth rehabilitation and treatment center; or

22 (ix) A regional center as defined in section 71-911; and

23 (c) Unlawfully means surreptitiously or contrary to law, rule,
24 regulation, or order of the detaining authority.

25 (3) A violation of this section involving contraband as defined in
26 subdivisions (2)(a)(i) through (iv) of this section shall be a Class III
27 felony. A violation of this section involving contraband as defined in
28 subdivisions (2)(a)(v) and (vi) of this section shall be a Class I
29 misdemeanor.

30 (4) When an offender is serving a criminal sentence in a detention
31 facility at the time he or she violates this section, the sentence

1 imposed under this section shall be consecutive to any other sentence.
2 This subsection does not apply to persons detained in a detention
3 facility as a result of a juvenile court proceeding or civil commitment.

4 Sec. 3. Section 28-929, Revised Statutes Cumulative Supplement,
5 2014, is amended to read:

6 28-929 (1) A person commits the offense of assault on a public
7 safety an officer,~~an emergency responder, a state correctional employee,~~
8 a ~~Department of Health and Human Services employee,~~ or a health care
9 professional in the first degree if:

10 (a) He or she intentionally or knowingly causes serious bodily
11 injury:

12 (i) To a public safety peace officer,~~a probation officer, a~~
13 ~~firefighter, an out-of-hospital emergency care provider, or an employee~~
14 ~~of the Department of Correctional Services; or~~

15 ~~(ii) To an employee of the Department of Health and Human Services~~
16 ~~if the person committing the offense is committed as a dangerous sex~~
17 ~~offender under the Sex Offender Commitment Act; or~~

18 ~~(ii iii)~~ To a health care professional; and

19 (b) The offense is committed while such public safety officer,~~or~~
20 ~~firefighter, out-of-hospital emergency care provider, or employee~~ is
21 engaged in the performance of his or her official duties or while the
22 health care professional is on duty at a hospital or a health clinic.

23 (2) Assault on a public safety an officer,~~an emergency responder, a~~
24 ~~state correctional employee, a Department of Health and Human Services~~
25 ~~employee,~~ or a health care professional in the first degree shall be a
26 Class ID felony.

27 Sec. 4. Section 28-929.01, Revised Statutes Cumulative Supplement,
28 2014, is amended to read:

29 28-929.01 For purposes of sections 28-929, 28-929.02, 28-930, and
30 ~~28-931, and 28-931.01:~~

31 (1) Health care professional means a physician or other health care

1 practitioner who is licensed, certified, or registered to perform
2 specified health services consistent with state law who practices at a
3 hospital or a health clinic;

4 (2) Health clinic has the definition found in section 71-416;

5 (3) Hospital has the definition found in section 71-419; ~~and~~

6 (4) Out-of-hospital emergency care provider means (a) an emergency
7 medical responder; (b) an emergency medical technician; (c) an advanced
8 emergency medical technician; or (d) a paramedic, as those persons are
9 licensed and classified under the Emergency Medical Services Practice
10 Act; ~~and~~ ÷

11 (5) Public safety officer means any of the following persons who are
12 engaged in the performance of their official duties at the time of the
13 offense: A peace officer; a probation officer; a parole officer; a
14 firefighter; an out-of-hospital emergency care provider; an employee of a
15 detention facility as defined in section 28-913; or an employee of the
16 Department of Health and Human Services if the person committing the
17 offense is committed as a dangerous sex offender under the Sex Offender
18 Commitment Act.

19 Sec. 5. Section 28-930, Revised Statutes Cumulative Supplement,
20 2014, is amended to read:

21 28-930 (1) A person commits the offense of assault on a public
22 safety ~~an officer, an emergency responder, a state correctional employee,~~
23 ~~a Department of Health and Human Services employee,~~ or a health care
24 professional in the second degree if:

25 (a) He or she intentionally, ÷

26 ~~(i) Intentionally or knowingly, or recklessly~~ causes bodily injury with a
27 dangerous instrument:

28 ~~(i A) To a public safety peace officer, a probation officer, a~~
29 ~~firefighter, an out-of-hospital emergency care provider, or an employee~~
30 ~~of the Department of Correctional Services; or~~

31 ~~(B) To an employee of the Department of Health and Human Services if~~

1 ~~the person committing the offense is committed as a dangerous sex~~
2 ~~offender under the Sex Offender Commitment Act; or~~

3 ~~(ii) (C) To a health care professional; and or~~

4 ~~(ii) Recklessly causes bodily injury with a dangerous instrument:~~

5 ~~(A) To a peace officer, a probation officer, a firefighter, an out-~~
6 ~~of-hospital emergency care provider, or an employee of the Department of~~
7 ~~Correctional Services;~~

8 ~~(B) To an employee of the Department of Health and Human Services if~~
9 ~~the person committing the offense is committed as a dangerous sex~~
10 ~~offender under the Sex Offender Commitment Act; or~~

11 ~~(C) To a health care professional; and~~

12 ~~(b) The offense is committed while such public safety officer,~~
13 ~~firefighter, out-of-hospital emergency care provider, or employee is~~
14 ~~engaged in the performance of his or her official duties or while the~~
15 ~~health care professional is on duty at a hospital or a health clinic.~~

16 ~~(2) Assault on a public safety an officer, an emergency responder, a~~
17 ~~state correctional employee, a Department of Health and Human Services~~
18 ~~employee, or a health care professional in the second degree shall be a~~
19 ~~Class II felony.~~

20 ~~Sec. 6. Section 28-931, Revised Statutes Cumulative Supplement,~~
21 ~~2014, is amended to read:~~

22 ~~28-931 (1) A person commits the offense of assault on a public~~
23 ~~safety an officer, an emergency responder, a state correctional employee,~~
24 ~~a Department of Health and Human Services employee, or a health care~~
25 ~~professional in the third degree if:~~

26 ~~(a) He or she intentionally, knowingly, or recklessly causes bodily~~
27 ~~injury:~~

28 ~~(i) To a public safety peace officer, a probation officer, a~~
29 ~~firefighter, an out-of-hospital emergency care provider, or an employee~~
30 ~~of the Department of Correctional Services; or~~

31 ~~(ii) To an employee of the Department of Health and Human Services~~

1 ~~if the person committing the offense is committed as a dangerous sex~~
2 ~~offender under the Sex Offender Commitment Act; or~~

3 (~~ii~~ ~~iii~~) To a health care professional; and

4 (b) The offense is committed while such public safety officer,
5 ~~firefighter, out of hospital emergency care provider, or employee~~ is
6 engaged in the performance of his or her official duties or while the
7 health care professional is on duty at a hospital or a health clinic.

8 (2) Assault on a public safety an officer, ~~an emergency responder, a~~
9 ~~state correctional employee, a Department of Health and Human Services~~
10 ~~employee,~~ or a health care professional in the third degree shall be a
11 Class IIIA felony.

12 Sec. 7. Section 28-1351, Revised Statutes Cumulative Supplement,
13 2014, is amended to read:

14 28-1351 (1) A person commits the offense of unlawful membership
15 recruitment into an organization or association when he or she knowingly
16 and intentionally coerces, intimidates, threatens, or inflicts bodily
17 harm upon another person in order to entice that other person to join or
18 prevent that other person from leaving any organization, group,
19 enterprise, or association whose members, individually or collectively,
20 engage in or have engaged in any of the following criminal acts for the
21 benefit of, at the direction of, or on behalf of the organization, group,
22 enterprise, or association or any of its members:

23 (a) Robbery under section 28-324;

24 (b) Arson in the first, second, or third degree under section
25 28-502, 28-503, or 28-504, respectively;

26 (c) Burglary under section 28-507;

27 (d) Murder in the first degree, murder in the second degree, or
28 manslaughter under section 28-303, 28-304, or 28-305, respectively;

29 (e) Violations of the Uniform Controlled Substances Act that involve
30 possession with intent to deliver, distribution, delivery, or manufacture
31 of a controlled substance;

- 1 (f) Unlawful use, possession, or discharge of a firearm or other
2 deadly weapon under sections 28-1201 to 28-1212.04;
- 3 (g) Assault in the first degree or assault in the second degree
4 under section 28-308 or 28-309, respectively;
- 5 (h) Assault on a public safety ~~an officer, an emergency responder, a~~
6 ~~state correctional employee, a Department of Health and Human Services~~
7 ~~employee, or a health care professional in the first, second, or third~~
8 ~~degree under section 28-929, 28-930, or 28-931, respectively, or assault~~
9 ~~on an officer, an emergency responder, a state correctional employee, a~~
10 ~~Department of Health and Human Services employee, or a health care~~
11 ~~professional using a motor vehicle under section 28-931.01;~~
- 12 (i) Theft by unlawful taking or disposition under section 28-511;
- 13 (j) Theft by receiving stolen property under section 28-517;
- 14 (k) Theft by deception under section 28-512;
- 15 (l) Theft by extortion under section 28-513;
- 16 (m) Kidnapping under section 28-313;
- 17 (n) Any forgery offense under sections 28-602 to 28-605;
- 18 (o) Criminal impersonation under section 28-638;
- 19 (p) Tampering with a publicly exhibited contest under section
20 28-614;
- 21 (q) Unauthorized use of a financial transaction device or criminal
22 possession of a financial transaction device under section 28-620 or
23 28-621, respectively;
- 24 (r) Pandering under section 28-802;
- 25 (s) Bribery, bribery of a witness, or bribery of a juror under
26 section 28-917, 28-918, or 28-920, respectively;
- 27 (t) Tampering with a witness or an informant or jury tampering under
28 section 28-919;
- 29 (u) Unauthorized application of graffiti under section 28-524;
- 30 (v) Dogfighting, cockfighting, bearbaiting, or pitting an animal
31 against another under section 28-1005; or

1 (w) Promoting gambling in the first degree under section 28-1102.

2 (2) Unlawful membership recruitment into an organization or
3 association is a Class IV felony.

4 Sec. 8. Section 28-1354, Revised Statutes Cumulative Supplement,
5 2014, is amended to read:

6 28-1354 For purposes of the Public Protection Act:

7 (1) Enterprise means any individual, sole proprietorship,
8 partnership, corporation, trust, association, or any legal entity, union,
9 or group of individuals associated in fact although not a legal entity,
10 and shall include illicit as well as licit enterprises as well as other
11 entities;

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

18 (3) Person means any individual or entity, as defined in section
19 21-214, holding or capable of holding a legal, equitable, or beneficial
20 interest in property;

21 (4) Prosecutor includes the Attorney General of the State of
22 Nebraska, the deputy attorney general, assistant attorneys general, a
23 county attorney, a deputy county attorney, or any person so designated by
24 the Attorney General, a county attorney, or a court of the state to carry
25 out the powers conferred by the act;

26 (5) Racketeering activity includes the commission of, criminal
27 attempt to commit, conspiracy to commit, aiding and abetting in the
28 commission of, aiding in the consummation of, acting as an accessory to
29 the commission of, or the solicitation, coercion, or intimidation of
30 another to commit or aid in the commission of any of the following:

31 (a) Offenses against the person which include: Murder in the first

1 degree under section 28-303; murder in the second degree under section
2 28-304; manslaughter under section 28-305; assault in the first degree
3 under section 28-308; assault in the second degree under section 28-309;
4 assault in the third degree under section 28-310; terroristic threats
5 under section 28-311.01; kidnapping under section 28-313; false
6 imprisonment in the first degree under section 28-314; false imprisonment
7 in the second degree under section 28-315; sexual assault in the first
8 degree under section 28-319; and robbery under section 28-324;

9 (b) Offenses relating to controlled substances which include: To
10 unlawfully manufacture, distribute, deliver, dispense, or possess with
11 intent to manufacture, distribute, deliver, or dispense a controlled
12 substance under subsection (1) of section 28-416; possession of marijuana
13 weighing more than one pound under subsection (12) of section 28-416;
14 possession of money used or intended to be used to facilitate a violation
15 of subsection (1) of section 28-416 prohibited under subsection (17) of
16 section 28-416; any violation of section 28-418; to unlawfully
17 manufacture, distribute, deliver, or possess with intent to distribute or
18 deliver an imitation controlled substance under section 28-445;
19 possession of anhydrous ammonia with the intent to manufacture
20 methamphetamine under section 28-451; and possession of ephedrine,
21 pseudoephedrine, or phenylpropanolamine with the intent to manufacture
22 methamphetamine under section 28-452;

23 (c) Offenses against property which include: Arson in the first
24 degree under section 28-502; arson in the second degree under section
25 28-503; arson in the third degree under section 28-504; burglary under
26 section 28-507; theft by unlawful taking or disposition under section
27 28-511; theft by shoplifting under section 28-511.01; theft by deception
28 under section 28-512; theft by extortion under section 28-513; theft of
29 services under section 28-515; theft by receiving stolen property under
30 section 28-517; criminal mischief under section 28-519; and unlawfully
31 depriving or obtaining property or services using a computer under

1 section 28-1344;

2 (d) Offenses involving fraud which include: Burning to defraud an
3 insurer under section 28-505; forgery in the first degree under section
4 28-602; forgery in the second degree under section 28-603; criminal
5 possession of a forged instrument under section 28-604; criminal
6 possession of forgery devices under section 28-605; criminal
7 impersonation under section 28-638; identity theft under section 28-639;
8 identity fraud under section 28-640; false statement or book entry under
9 section 28-612; tampering with a publicly exhibited contest under section
10 28-614; issuing a false financial statement for purposes of obtaining a
11 financial transaction device under section 28-619; unauthorized use of a
12 financial transaction device under section 28-620; criminal possession of
13 a financial transaction device under section 28-621; unlawful circulation
14 of a financial transaction device in the first degree under section
15 28-622; unlawful circulation of a financial transaction device in the
16 second degree under section 28-623; criminal possession of a blank
17 financial transaction device under section 28-624; criminal sale of a
18 blank financial transaction device under section 28-625; criminal
19 possession of a forgery device under section 28-626; unlawful manufacture
20 of a financial transaction device under section 28-627; laundering of
21 sales forms under section 28-628; unlawful acquisition of sales form
22 processing services under section 28-629; unlawful factoring of a
23 financial transaction device under section 28-630; and fraudulent
24 insurance acts under section 28-631;

25 (e) Offenses involving governmental operations which include: Abuse
26 of public records under section 28-911; perjury or subornation of perjury
27 under section 28-915; bribery under section 28-917; bribery of a witness
28 under section 28-918; tampering with a witness or informant or jury
29 tampering under section 28-919; bribery of a juror under section 28-920;
30 assault on a public safety an officer, ~~an emergency responder, a state~~
31 ~~correctional employee, a Department of Health and Human Services~~

1 ~~employee, or a health care professional in the first degree under section~~
2 ~~28-929; assault on a public safety an officer, ~~an emergency responder, a~~~~
3 ~~state correctional employee, a Department of Health and Human Services~~
4 ~~employee, or a health care professional in the second degree under~~
5 ~~section 28-930; and assault on a public safety an officer, ~~an emergency~~~~
6 ~~responder, a state correctional employee, a Department of Health and~~
7 ~~Human Services employee, or a health care professional in the third~~
8 ~~degree under section 28-931; and assault on an officer, ~~an emergency~~~~
9 ~~responder, a state correctional employee, a Department of Health and~~
10 ~~Human Services employee, or a health care professional using a motor~~
11 ~~vehicle under section 28-931.01;~~

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

16 (g) Offenses relating to firearms, weapons, and explosives which
17 include: Carrying a concealed weapon under section 28-1202;
18 transportation or possession of machine guns, short rifles, or short
19 shotguns under section 28-1203; unlawful possession of a handgun under
20 section 28-1204; unlawful transfer of a firearm to a juvenile under
21 section 28-1204.01; using a deadly weapon to commit a felony or
22 possession of a deadly weapon during the commission of a felony under
23 section 28-1205; possession of a deadly weapon by a prohibited person
24 under section 28-1206; possession of a defaced firearm under section
25 28-1207; defacing a firearm under section 28-1208; unlawful discharge of
26 a firearm under section 28-1212.02; possession, receipt, retention, or
27 disposition of a stolen firearm under section 28-1212.03; unlawful
28 possession of explosive materials in the first degree under section
29 28-1215; unlawful possession of explosive materials in the second degree
30 under section 28-1216; unlawful sale of explosives under section 28-1217;
31 use of explosives without a permit under section 28-1218; obtaining an

1 explosives permit through false representations under section 28-1219;
2 possession of a destructive device under section 28-1220; threatening the
3 use of explosives or placing a false bomb under section 28-1221; using
4 explosives to commit a felony under section 28-1222; using explosives to
5 damage or destroy property under section 28-1223; and using explosives to
6 kill or injure any person under section 28-1224;

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

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

11 (j) Offenses relating to public health and morals which include:
12 Prostitution under section 28-801; pandering under section 28-802;
13 keeping a place of prostitution under section 28-804; labor trafficking,
14 sex trafficking, labor trafficking of a minor, or sex trafficking of a
15 minor under section 28-831; a violation of section 28-1005; and any act
16 relating to the visual depiction of sexually explicit conduct prohibited
17 in the Child Pornography Prevention Act; and

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

19 (6) State means the State of Nebraska or any political subdivision
20 or any department, agency, or instrumentality thereof; and

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

23 (a) Incurred or contracted in gambling activity which was in
24 violation of federal law or the law of the state or which is
25 unenforceable under state or federal law in whole or in part as to
26 principal or interest because of the laws relating to usury; or

27 (b) Which was incurred in connection with the business of gambling
28 in violation of federal law or the law of the state or the business of
29 lending money or a thing of value at a rate usurious under state law if
30 the usurious rate is at least twice the enforceable rate.

31 Sec. 9. Section 83-417, Reissue Revised Statutes of Nebraska, is

1 amended to read:

2 83-417 Any person who purposely or knowingly allows any committed
3 offender to escape or, without the approval of the chief executive
4 officer of the facility, allows any offender to be visited, conversed
5 with, comforted, or relieved or conveys to or from any committed offender
6 any communication ~~or article~~ shall be guilty of a Class IV felony.

7 Sec. 10. Original sections 28-913 and 83-417, Reissue Revised
8 Statutes of Nebraska, and sections 28-115, 28-929, 28-929.01, 28-930,
9 28-931, 28-1351, and 28-1354, Revised Statutes Cumulative Supplement,
10 2014, are repealed.

11 Sec. 11. The following section is outright repealed: Section
12 28-931.01, Revised Statutes Cumulative Supplement, 2014.