

LEGISLATURE OF NEBRASKA
ONE HUNDRED FIFTH LEGISLATURE
FIRST SESSION

LEGISLATIVE BILL 162

Introduced by Krist, 10.

Read first time January 09, 2017

Committee: Judiciary

- 1 A BILL FOR AN ACT relating to crimes and offenses; to amend sections
- 2 28-111, 28-502, 28-503, 28-519, 28-918, 28-919, 28-920, and 28-1354,
- 3 Reissue Revised Statutes of Nebraska; to change provisions relating
- 4 to criminal mischief; to change and provide additional penalties for
- 5 bribing or tampering with witnesses or informants and bribing a
- 6 juror or jury tampering; to harmonize provisions; and to repeal the
- 7 original sections.
- 8 Be it enacted by the people of the State of Nebraska,

1 Section 1. Section 28-111, Reissue Revised Statutes of Nebraska, is
2 amended to read:

3 28-111 Any person who commits one or more of the following criminal
4 offenses against a person or a person's property because of the person's
5 race, color, religion, ancestry, national origin, gender, sexual
6 orientation, age, or disability or because of the person's association
7 with a person of a certain race, color, religion, ancestry, national
8 origin, gender, sexual orientation, age, or disability shall be punished
9 by the imposition of the next higher penalty classification than the
10 penalty classification prescribed for the criminal offense, unless such
11 criminal offense is already punishable as a Class IB felony or higher
12 classification: Manslaughter, section 28-305; assault in the first
13 degree, section 28-308; assault in the second degree, section 28-309;
14 assault in the third degree, section 28-310; terroristic threats, section
15 28-311.01; stalking, section 28-311.03; kidnapping, section 28-313; false
16 imprisonment in the first degree, section 28-314; false imprisonment in
17 the second degree, section 28-315; sexual assault in the first degree,
18 section 28-319; sexual assault in the second or third degree, section
19 28-320; sexual assault of a child, sections 28-319.01 and 28-320.01;
20 arson in the first degree, section 28-502; arson in the second degree,
21 section 28-503; arson in the third degree, section 28-504; criminal
22 damage to property mischief, section 28-519; unauthorized application of
23 graffiti, section 28-524; criminal trespass in the first degree, section
24 28-520; or criminal trespass in the second degree, section 28-521.

25 Sec. 2. Section 28-502, Reissue Revised Statutes of Nebraska, is
26 amended to read:

27 28-502 (1) A person commits arson in the first degree if he or she
28 intentionally damages a building or property contained within a building
29 by starting a fire or causing an explosion when another person is present
30 in the building at the time and either (a) the actor knows that fact, or
31 (b) the circumstances are such as to render the presence of a person

1 therein a reasonable probability.

2 (2) A person commits arson in the first degree if a fire is started
3 or an explosion is caused in the perpetration of any robbery, burglary,
4 or felony criminal damage to property mischief when another person is
5 present in the building at the time and either (a) the actor knows that
6 fact, or (b) the circumstances are such as to render the presence of a
7 person therein a reasonable probability.

8 (3) Arson in the first degree is a Class II felony.

9 Sec. 3. Section 28-503, Reissue Revised Statutes of Nebraska, is
10 amended to read:

11 28-503 (1) A person commits arson in the second degree if he or she
12 intentionally damages a building or property contained within a building
13 by starting a fire or causing an explosion or if a fire is started or an
14 explosion is caused in the perpetration of any robbery, burglary, or
15 felony criminal damage to property mischief.

16 (2) The following affirmative defenses may be introduced into
17 evidence upon prosecution for a violation of this section:

18 (a) No person other than the accused has a security or proprietary
19 interest in the damaged building, or, if other persons have such
20 interests, all of them consented to his or her conduct; or

21 (b) The accused's sole intent was to destroy or damage the building
22 for a lawful and proper purpose.

23 (3) Arson in the second degree is a Class III felony.

24 Sec. 4. Section 28-519, Reissue Revised Statutes of Nebraska, is
25 amended to read:

26 28-519 (1) A person commits criminal damage to property mischief if
27 he or she:

28 (a) Damages property of another intentionally or recklessly; or

29 (b) Intentionally tampers with property of another so as to endanger
30 person or property; or

31 (c) Intentionally or maliciously causes another to suffer pecuniary

1 loss by deception or threat.

2 (2) Criminal damage to property mischief is a Class IV felony if the
3 actor intentionally, ~~or~~ maliciously, or recklessly causes pecuniary loss
4 of five thousand dollars or more, ~~or~~ a substantial interruption or
5 impairment of public communication, transportation, supply of water, gas,
6 or power, or other public service.

7 (3) Criminal damage to property mischief is a Class I misdemeanor if
8 the actor intentionally, ~~or~~ maliciously, or recklessly causes pecuniary
9 loss of one thousand five hundred dollars or more but less than five
10 thousand dollars.

11 (4) Criminal damage to property mischief is a Class II misdemeanor
12 if the actor intentionally, ~~or~~ maliciously, or recklessly causes
13 pecuniary loss of five hundred dollars or more but less than one thousand
14 five hundred dollars.

15 (5) Criminal damage to property mischief is a Class III misdemeanor
16 if the actor intentionally, maliciously, or recklessly causes pecuniary
17 loss in an amount of less than five hundred dollars, ~~or~~ if his or her
18 action results in no pecuniary loss.

19 Sec. 5. Section 28-918, Reissue Revised Statutes of Nebraska, is
20 amended to read:

21 28-918 (1) A person commits bribery of a witness if he or she
22 offers, confers, or agrees to confer any benefit upon a witness or a
23 person he or she believes is about to be called as a witness in any
24 official proceeding with intent to:

25 (a) Influence him or her to testify falsely or unlawfully withhold
26 any testimony; or

27 (b) Induce him or her to avoid legal process summoning him or her to
28 testify; or

29 (c) Induce him or her to absent himself or herself from an official
30 proceeding to which he or she has been legally summoned.

31 (2) Bribery of a witness is a Class III IV felony, except it shall

1 be a Class IIA felony when the official proceeding or investigation is
2 for a violation of any statute punishable as a Class IIA felony or higher
3 classification.

4 (3) A person who is a witness or has been called as a witness in any
5 official proceeding commits a Class ~~III~~ ~~IV~~ felony if he or she accepts or
6 agrees to accept any benefit from any other person for the purposes set
7 forth in subsection (1) of this section, except it shall be a Class IIA
8 felony when the official proceeding or investigation is for a violation
9 of any statute punishable as a Class IIA felony or higher classification.

10 Sec. 6. Section 28-919, Reissue Revised Statutes of Nebraska, is
11 amended to read:

12 28-919 (1) A person commits the offense of tampering with a witness
13 or informant if, believing that an official proceeding or investigation
14 of a criminal or civil matter is pending or about to be instituted, he or
15 she attempts to induce or otherwise cause a witness or informant to:

16 (a) Testify or inform falsely;

17 (b) Withhold any testimony, information, document, or thing;

18 (c) Elude legal process summoning him or her to testify or supply
19 evidence; or

20 (d) Absent himself or herself from any proceeding or investigation
21 to which he or she has been legally summoned.

22 (2) A person commits the offense of jury tampering if, with intent
23 to influence a juror's vote, opinion, decision, or other action in a
24 case, he or she attempts directly or indirectly to communicate with a
25 juror other than as a part of the proceedings in the trial of the case.

26 (3) Tampering with witnesses or informants is a Class ~~III~~ ~~IV~~ felony,
27 except it shall be a Class IIA felony when the official proceeding or
28 investigation is for a violation of any statute punishable as a Class IIA
29 felony or higher classification.

30 (4) Jury tampering is a Class ~~III~~ ~~IV~~ felony, except it shall be a
31 Class IIA felony when the official proceeding or investigation is for a

1 violation of any statute punishable as a Class IIA felony or higher
2 classification.

3 Sec. 7. Section 28-920, Reissue Revised Statutes of Nebraska, is
4 amended to read:

5 28-920 (1) A person commits bribery of a juror if he or she offers,
6 confers, or agrees to confer any benefit upon a juror with intent to
7 influence the juror's vote, opinion, decision, or other action as a
8 juror.

9 (2) Bribery of a juror is a Class ~~III~~ ~~IV~~ felony, except it shall be
10 a Class IIA felony when the official proceeding or investigation is for a
11 violation of any statute punishable as a Class IIA felony or higher
12 classification.

13 (3) A juror commits a Class ~~III~~ ~~IV~~ felony if he or she accepts or
14 agrees to accept any benefit from another person for the purpose of
15 influencing his or her vote, opinion, decision, or other action as a
16 juror, except it shall be a Class IIA felony when the official proceeding
17 or investigation is for a violation of any statute punishable as a Class
18 IIA felony or higher classification.

19 Sec. 8. Section 28-1354, Reissue Revised Statutes of Nebraska, is
20 amended to read:

21 28-1354 For purposes of the Public Protection Act:

22 (1) Enterprise means any individual, sole proprietorship,
23 partnership, corporation, trust, association, or any legal entity, union,
24 or group of individuals associated in fact although not a legal entity,
25 and shall include illicit as well as licit enterprises as well as other
26 entities;

27 (2) Pattern of racketeering activity means a cumulative loss for one
28 or more victims or gains for the enterprise of not less than one thousand
29 five hundred dollars resulting from at least two acts of racketeering
30 activity, one of which occurred after August 30, 2009, and the last of
31 which occurred within ten years, excluding any period of imprisonment,

1 after the commission of a prior act of racketeering activity;

2 (3) Until January 1, 2017, person means any individual or entity, as
3 defined in section 21-2014, holding or capable of holding a legal,
4 equitable, or beneficial interest in property. Beginning January 1, 2017,
5 person means any individual or entity, as defined in section 21-214,
6 holding or capable of holding a legal, equitable, or beneficial interest
7 in property;

8 (4) Prosecutor includes the Attorney General of the State of
9 Nebraska, the deputy attorney general, assistant attorneys general, a
10 county attorney, a deputy county attorney, or any person so designated by
11 the Attorney General, a county attorney, or a court of the state to carry
12 out the powers conferred by the act;

13 (5) Racketeering activity includes the commission of, criminal
14 attempt to commit, conspiracy to commit, aiding and abetting in the
15 commission of, aiding in the consummation of, acting as an accessory to
16 the commission of, or the solicitation, coercion, or intimidation of
17 another to commit or aid in the commission of any of the following:

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

27 (b) Offenses relating to controlled substances which include: To
28 unlawfully manufacture, distribute, deliver, dispense, or possess with
29 intent to manufacture, distribute, deliver, or dispense a controlled
30 substance under subsection (1) of section 28-416; possession of marijuana
31 weighing more than one pound under subsection (12) of section 28-416;

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

10 (c) Offenses against property which include: Arson in the first
11 degree under section 28-502; arson in the second degree under section
12 28-503; arson in the third degree under section 28-504; burglary under
13 section 28-507; theft by unlawful taking or disposition under section
14 28-511; theft by shoplifting under section 28-511.01; theft by deception
15 under section 28-512; theft by extortion under section 28-513; theft of
16 services under section 28-515; theft by receiving stolen property under
17 section 28-517; criminal damage to property ~~mischief~~ under section
18 28-519; and unlawfully depriving or obtaining property or services using
19 a computer under section 28-1344;

20 (d) Offenses involving fraud which include: Burning to defraud an
21 insurer under section 28-505; forgery in the first degree under section
22 28-602; forgery in the second degree under section 28-603; criminal
23 possession of a forged instrument under section 28-604; criminal
24 possession of written instrument forgery devices under section 28-605;
25 criminal impersonation under section 28-638; identity theft under section
26 28-639; identity fraud under section 28-640; false statement or book
27 entry under section 28-612; tampering with a publicly exhibited contest
28 under section 28-614; issuing a false financial statement for purposes of
29 obtaining a financial transaction device under section 28-619;
30 unauthorized use of a financial transaction device under section 28-620;
31 criminal possession of a financial transaction device under section

1 28-621; unlawful circulation of a financial transaction device in the
2 first degree under section 28-622; unlawful circulation of a financial
3 transaction device in the second degree under section 28-623; criminal
4 possession of a blank financial transaction device under section 28-624;
5 criminal sale of a blank financial transaction device under section
6 28-625; criminal possession of a financial transaction forgery device
7 under section 28-626; unlawful manufacture of a financial transaction
8 device under section 28-627; laundering of sales forms under section
9 28-628; unlawful acquisition of sales form processing services under
10 section 28-629; unlawful factoring of a financial transaction device
11 under section 28-630; and fraudulent insurance acts under section 28-631;

12 (e) Offenses involving governmental operations which include: Abuse
13 of public records under section 28-911; perjury or subornation of perjury
14 under section 28-915; bribery under section 28-917; bribery of a witness
15 under section 28-918; tampering with a witness or informant or jury
16 tampering under section 28-919; bribery of a juror under section 28-920;
17 assault on an officer, an emergency responder, a state correctional
18 employee, a Department of Health and Human Services employee, or a health
19 care professional in the first degree under section 28-929; assault on an
20 officer, an emergency responder, a state correctional employee, a
21 Department of Health and Human Services employee, or a health care
22 professional in the second degree under section 28-930; assault on an
23 officer, an emergency responder, a state correctional employee, a
24 Department of Health and Human Services employee, or a health care
25 professional in the third degree under section 28-931; and assault on an
26 officer, an emergency responder, a state correctional employee, a
27 Department of Health and Human Services employee, or a health care
28 professional using a motor vehicle under section 28-931.01;

29 (f) Offenses involving gambling which include: Promoting gambling in
30 the first degree under section 28-1102; possession of gambling records
31 under section 28-1105; gambling debt collection under section 28-1105.01;

1 and possession of a gambling device under section 28-1107;

2 (g) Offenses relating to firearms, weapons, and explosives which
3 include: Carrying a concealed weapon under section 28-1202;
4 transportation or possession of machine guns, short rifles, or short
5 shotguns under section 28-1203; unlawful possession of a handgun under
6 section 28-1204; unlawful transfer of a firearm to a juvenile under
7 section 28-1204.01; using a deadly weapon to commit a felony or
8 possession of a deadly weapon during the commission of a felony under
9 section 28-1205; possession of a deadly weapon by a prohibited person
10 under section 28-1206; possession of a defaced firearm under section
11 28-1207; defacing a firearm under section 28-1208; unlawful discharge of
12 a firearm under section 28-1212.02; possession, receipt, retention, or
13 disposition of a stolen firearm under section 28-1212.03; unlawful
14 possession of explosive materials in the first degree under section
15 28-1215; unlawful possession of explosive materials in the second degree
16 under section 28-1216; unlawful sale of explosives under section 28-1217;
17 use of explosives without a permit under section 28-1218; obtaining an
18 explosives permit through false representations under section 28-1219;
19 possession of a destructive device under section 28-1220; threatening the
20 use of explosives or placing a false bomb under section 28-1221; using
21 explosives to commit a felony under section 28-1222; using explosives to
22 damage or destroy property under section 28-1223; and using explosives to
23 kill or injure any person under section 28-1224;

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

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

28 (j) Offenses relating to public health and morals which include:
29 Prostitution under section 28-801; pandering under section 28-802;
30 keeping a place of prostitution under section 28-804; labor trafficking,
31 sex trafficking, labor trafficking of a minor, or sex trafficking of a

1 minor under section 28-831; a violation of section 28-1005; and any act
2 relating to the visual depiction of sexually explicit conduct prohibited
3 in the Child Pornography Prevention Act; and

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

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

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

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

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

17 Sec. 9. Original sections 28-111, 28-502, 28-503, 28-519, 28-918,
18 28-919, 28-920, and 28-1354, Reissue Revised Statutes of Nebraska, are
19 repealed.