

LEGISLATURE OF NEBRASKA
ONE HUNDRED SIXTH LEGISLATURE
FIRST SESSION

LEGISLATIVE BILL 198

Introduced by Halloran, 33.

Read first time January 11, 2019

Committee: Judiciary

1 A BILL FOR AN ACT relating to crimes and offenses; to amend section
2 28-1205, Reissue Revised Statutes of Nebraska, and sections 28-101,
3 28-1201, 28-1351, and 28-1354, Revised Statutes Cumulative
4 Supplement, 2018; to define terms; to change provisions relating to
5 use of a deadly weapon to commit a felony; to create the offense of
6 use of a facsimile firearm to commit a felony; to harmonize
7 provisions; and to repeal the original sections.
8 Be it enacted by the people of the State of Nebraska,

1 Section 1. Section 28-101, Revised Statutes Cumulative Supplement,
2 2018, is amended to read:

3 28-101 Sections 28-101 to 28-1357 and 28-1601 to 28-1603 and section
4 4 of this act shall be known and may be cited as the Nebraska Criminal
5 Code.

6 Sec. 2. Section 28-1201, Revised Statutes Cumulative Supplement,
7 2018, is amended to read:

8 28-1201 For purposes of sections 28-1201 to 28-1212.04 and section 4
9 of this act, unless the context otherwise requires:

10 (1) Facsimile firearm means any replica, toy, starter pistol, or
11 other object that bears a reasonable resemblance to or that reasonably
12 can be perceived to be an actual firearm;

13 (2) ~~(1)~~ Firearm means any weapon which is designed to or may readily
14 be converted to expel any projectile by the action of an explosive or
15 frame or receiver of any such weapon;

16 (3) ~~(2)~~ Fugitive from justice means any person who has fled or is
17 fleeing from any peace officer to avoid prosecution or incarceration for
18 a felony;

19 (4) ~~(3)~~ Handgun means any firearm with a barrel less than sixteen
20 inches in length or any firearm designed to be held and fired by the use
21 of a single hand;

22 (5) ~~(4)~~ Juvenile means any person under the age of eighteen years;

23 (6) ~~(5)~~ Knife means:

24 (a) Any dagger, dirk, knife, or stiletto with a blade over three and
25 one-half inches in length and which, in the manner it is used or intended
26 to be used, is capable of producing death or serious bodily injury; or

27 (b) Any other dangerous instrument which is capable of inflicting
28 cutting, stabbing, or tearing wounds and which, in the manner it is used
29 or intended to be used, is capable of producing death or serious bodily
30 injury;

31 (7) ~~(6)~~ Knuckles and brass or iron knuckles means any instrument

1 that consists of finger rings or guards made of a hard substance and that
2 is designed, made, or adapted for the purpose of inflicting serious
3 bodily injury or death by striking a person with a fist enclosed in the
4 knuckles;

5 (8) ~~(7)~~ Machine gun means any firearm, whatever its size and usual
6 designation, that shoots automatically more than one shot, without manual
7 reloading, by a single function of the trigger;

8 (9) ~~(8)~~ School means a public, private, denominational, or parochial
9 elementary, vocational, or secondary school, a private postsecondary
10 career school as defined in section 85-1603, a community college, a
11 public or private college, a junior college, or a university;

12 (10) ~~(9)~~ Short rifle means a rifle having a barrel less than sixteen
13 inches long or an overall length of less than twenty-six inches; and

14 (11) ~~(10)~~ Short shotgun means a shotgun having a barrel or barrels
15 less than eighteen inches long or an overall length of less than twenty-
16 six inches.

17 Sec. 3. Section 28-1205, Reissue Revised Statutes of Nebraska, is
18 amended to read:

19 28-1205 (1)(a) Any person who uses a firearm, a knife, brass or iron
20 knuckles, or any other deadly weapon to commit any felony which may be
21 prosecuted in a court of this state commits the offense of use of a
22 deadly weapon to commit a felony.

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

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

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

31 (b) Possession of a deadly weapon, other than a firearm, during the

1 commission of a felony is a Class III felony.

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

4 (3) The crimes defined in this section shall be treated as separate
5 and distinct offenses from the felony being committed, and sentences
6 imposed under this section shall be consecutive to any other sentence
7 imposed.

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

12 (5) For purposes of this section:

13 (a) Destructive device has the same meaning as in section 28-1213;
14 and

15 (b) Firearm includes a nonfunctioning firearm but does not include a
16 facsimile firearm; and

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

27 Sec. 4. (1) Any person who uses a facsimile firearm to commit a
28 felony which may be prosecuted in a court of this state commits the
29 offense of use of a facsimile firearm to commit a felony.

30 (2) Use of a facsimile firearm to commit a felony is a Class IIA
31 felony.

1 (3) The crime defined in this section shall be treated as a separate
2 and distinct offense from the felony being committed, and a sentence
3 imposed under this section shall be consecutive to any other sentence
4 imposed.

5 (4) For purposes of this section, use of a facsimile firearm
6 includes the employment of such firearm or visible display of any part of
7 such firearm during, immediately prior to, or immediately after the
8 commission of a felony.

9 Sec. 5. Section 28-1351, Revised Statutes Cumulative Supplement,
10 2018, is amended to read:

11 28-1351 (1) A person commits the offense of unlawful membership
12 recruitment into an organization or association when he or she knowingly
13 and intentionally coerces, intimidates, threatens, or inflicts bodily
14 harm upon another person in order to entice that other person to join or
15 prevent that other person from leaving any organization, group,
16 enterprise, or association whose members, individually or collectively,
17 engage in or have engaged in any of the following criminal acts for the
18 benefit of, at the direction of, or on behalf of the organization, group,
19 enterprise, or association or any of its members:

20 (a) Robbery under section 28-324;

21 (b) Arson in the first, second, or third degree under section
22 28-502, 28-503, or 28-504, respectively;

23 (c) Burglary under section 28-507;

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

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

29 (f) Unlawful use, possession, or discharge of a firearm, facsimile
30 firearm, or other deadly weapon under sections 28-1201 to 28-1212.04 and
31 section 4 of this act;

- 1 (g) Assault in the first degree or assault in the second degree
2 under section 28-308 or 28-309, respectively;
- 3 (h) Assault on an officer, an emergency responder, a state
4 correctional employee, a Department of Health and Human Services
5 employee, or a health care professional in the first, second, or third
6 degree under section 28-929, 28-930, or 28-931, respectively, or assault
7 on an officer, an emergency responder, a state correctional employee, a
8 Department of Health and Human Services employee, or a health care
9 professional using a motor vehicle under section 28-931.01;
- 10 (i) Theft by unlawful taking or disposition under section 28-511;
- 11 (j) Theft by receiving stolen property under section 28-517;
- 12 (k) Theft by deception under section 28-512;
- 13 (l) Theft by extortion under section 28-513;
- 14 (m) Kidnapping under section 28-313;
- 15 (n) Any forgery offense under sections 28-602 to 28-605;
- 16 (o) Criminal impersonation under section 28-638;
- 17 (p) Tampering with a publicly exhibited contest under section
18 28-614;
- 19 (q) Unauthorized use of a financial transaction device or criminal
20 possession of a financial transaction device under section 28-620 or
21 28-621, respectively;
- 22 (r) Pandering under section 28-802;
- 23 (s) Bribery, bribery of a witness, or bribery of a juror under
24 section 28-917, 28-918, or 28-920, respectively;
- 25 (t) Tampering with a witness or an informant or jury tampering under
26 section 28-919;
- 27 (u) Unauthorized application of graffiti under section 28-524;
- 28 (v) Dogfighting, cockfighting, bearbaiting, or pitting an animal
29 against another under section 28-1005; or
- 30 (w) Promoting gambling in the first degree under section 28-1102.
- 31 (2) Unlawful membership recruitment into an organization or

1 association is a Class IV felony.

2 Sec. 6. Section 28-1354, Revised Statutes Cumulative Supplement,
3 2018, is amended to read:

4 28-1354 For purposes of the Public Protection Act:

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

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

16 (3) Until January 1, 2017, person means any individual or entity, as
17 defined in section 21-2014, holding or capable of holding a legal,
18 equitable, or beneficial interest in property. Beginning January 1, 2017,
19 person means any individual or entity, as defined in section 21-214,
20 holding or capable of holding a legal, equitable, or beneficial interest
21 in property;

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

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

1 (a) Offenses against the person which include: Murder in the first
2 degree under section 28-303; murder in the second degree under section
3 28-304; manslaughter under section 28-305; assault in the first degree
4 under section 28-308; assault in the second degree under section 28-309;
5 assault in the third degree under section 28-310; terroristic threats
6 under section 28-311.01; kidnapping under section 28-313; false
7 imprisonment in the first degree under section 28-314; false imprisonment
8 in the second degree under section 28-315; sexual assault in the first
9 degree under section 28-319; and robbery under section 28-324;

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

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

1 depriving or obtaining property or services using a computer under
2 section 28-1344;

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

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

1 employee, a Department of Health and Human Services employee, or a health
2 care professional in the first degree under section 28-929; assault on an
3 officer, an emergency responder, a state correctional employee, a
4 Department of Health and Human Services employee, or a health care
5 professional in the second degree under section 28-930; assault on an
6 officer, an emergency responder, a state correctional employee, a
7 Department of Health and Human Services employee, or a health care
8 professional in the third degree under section 28-931; and assault on an
9 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 (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; possession of a firearm by a prohibited juvenile
22 offender under section 28-1204.05; using a deadly weapon to commit a
23 felony or possession of a deadly weapon during the commission of a felony
24 under section 28-1205; use of a facsimile firearm to commit a felony
25 under section 4 of this act; possession of a deadly weapon by a
26 prohibited person under section 28-1206; possession of a defaced firearm
27 under section 28-1207; defacing a firearm under section 28-1208; unlawful
28 discharge of a firearm under section 28-1212.02; possession, receipt,
29 retention, or disposition of a stolen firearm under section 28-1212.03;
30 unlawful possession of explosive materials in the first degree under
31 section 28-1215; unlawful possession of explosive materials in the second

1 degree under section 28-1216; unlawful sale of explosives under section
2 28-1217; use of explosives without a permit under section 28-1218;
3 obtaining an explosives permit through false representations under
4 section 28-1219; possession of a destructive device under section
5 28-1220; threatening the use of explosives or placing a false bomb under
6 section 28-1221; using explosives to commit a felony under section
7 28-1222; using explosives to damage or destroy property under section
8 28-1223; and using explosives to kill or injure any person under section
9 28-1224;

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

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

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

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

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

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

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

30 (b) Which was incurred in connection with the business of gambling
31 in violation of federal law or the law of the state or the business of

1 lending money or a thing of value at a rate usurious under state law if
2 the usurious rate is at least twice the enforceable rate.

3 Sec. 7. Original section 28-1205, Reissue Revised Statutes of
4 Nebraska, and sections 28-101, 28-1201, 28-1351, and 28-1354, Revised
5 Statutes Cumulative Supplement, 2018, are repealed.