

LEGISLATURE OF NEBRASKA
ONE HUNDRED SIXTH LEGISLATURE
SECOND SESSION

LEGISLATIVE BILL 749

Introduced by Blood, 3.

Read first time January 08, 2020

Committee: Judiciary

- 1 A BILL FOR AN ACT relating to crimes and offenses; to amend section
- 2 28-101, Revised Statutes Supplement, 2019; to adopt the Nebraska
- 3 Anti-Terrorism Act; to prohibit poisoning as prescribed; to
- 4 harmonize provisions; and to repeal the original section.
- 5 Be it enacted by the people of the State of Nebraska,

1 Section 1. Section 28-101, Revised Statutes Supplement, 2019, is
2 amended to read:

3 28-101 Sections 28-101 to 28-1357 and 28-1601 to 28-1603 and
4 sections 2 to 18 of this act shall be known and may be cited as the
5 Nebraska Criminal Code.

6 Sec. 2. Sections 2 to 17 of this act shall be known and may be
7 cited as the Nebraska Anti-Terrorism Act.

8 Sec. 3. For purposes of the Nebraska Anti-Terrorism Act, the
9 definitions found in section 28-109 and sections 4 to 11 of this act
10 apply.

11 Sec. 4. (1) Critical infrastructure facility means:

12 (a) A chemical manufacturing facility;

13 (b) A refinery;

14 (c) Energy equipment as defined in section 70-601;

15 (d) A water intake structure, water treatment facility, wastewater
16 treatment plant, or pump station;

17 (e) A natural gas transmission compressor station;

18 (f) A liquid natural gas terminal or storage facility;

19 (g) A telecommunications central switching office;

20 (h) A railroad switching yard; or

21 (i) A gas processing plant, including a plant used in the
22 processing, treatment, or fractionation of natural gas.

23 (2) Critical infrastructure facility also includes public or private
24 systems or assets, whether physical or virtual, the incapacity or
25 destruction of which would have a material, negative effect on the public
26 health or safety or on the economic security of the public.

27 Sec. 5. Designated foreign terrorist organization means an
28 organization designated as a terrorist organization under section 219 of
29 the federal Immigration and Nationality Act, 8 U.S.C. 1189, as such
30 section and designation existed on January 1, 2020.

31 Sec. 6. Destructive device means explosive materials and

1 destructive devices, as such terms are defined in section 28-1213.

2 Sec. 7. Firearm has the same meaning as in section 28-1201.

3 Sec. 8. Influencing government policy or affecting the conduct of
4 government does not include improperly or unlawfully influencing the
5 policies, decisions, or conduct, in a specific case, of a specific court,
6 tribunal or other adjudicative board or agency. This includes, by way of
7 example, but not exclusively:

8 (1) A violation of Chapter 28, article 9, not specifically listed in
9 section 10 of this act;

10 (2) Threatening the Board of Parole, section 83-198; or

11 (3) Threatening the Board of Pardons, section 83-1,133.

12 Sec. 9. Military-type training means training:

13 (1) In means or methods that can:

14 (a) Cause the death of, or serious bodily injury to, another person;

15 (b) Destroy or damage property; or

16 (c) Cause damage to or disrupt the operations of a critical
17 infrastructure facility; or

18 (2) On the use, storage, concealment, production, or assembly of a
19 destructive device, firearm, or any other weapon.

20 Sec. 10. (1) Predicate offense means:

21 (a) Murder in the first degree, section 28-303;

22 (b) Murder in the second degree, section 28-304;

23 (c) Manslaughter, section 28-305;

24 (d) Assault in the first degree, section 28-308;

25 (e) Assault in the second degree, subdivision (1)(a) of section
26 28-309;

27 (f) Assault by strangulation or suffocation, section 28-310.01;

28 (g) Terroristic threats, section 28-311.01;

29 (h) Stalking, section 28-311.04, except for a misdemeanor violation;

30 (i) Violation of harassment protection order, section 28-311.09;

31 (j) Violation of sexual assault protection order, section 28-311.11;

- 1 (k) Kidnapping, section 28-313;
- 2 (l) False imprisonment in the first degree, section 28-314;
- 3 (m) False imprisonment in the second degree, section 28-315;
- 4 (n) Sexual assault in the first degree, section 28-319;
- 5 (o) Sexual assault of a child in the first degree, section
6 28-319.01;
- 7 (p) Sexual assault in the second or third degree, section 28-320;
- 8 (q) Sexual assault of a child in the second or third degree, section
9 28-320.01;
- 10 (r) Robbery, section 28-324;
- 11 (s) Any violation of the Homicide of the Unborn Child Act, sections
12 28-388 to 28-394, except for a misdemeanor violation of motor vehicle
13 homicide of an unborn child under section 28-394;
- 14 (t) Any violation of the Assault of an Unborn Child Act, sections
15 28-395 to 28-3,101;
- 16 (u) Arson in the first degree, section 28-502;
- 17 (v) Arson in the second degree, section 28-503;
- 18 (w) Arson in the third degree, section 28-504;
- 19 (x) Burglary, section 28-507;
- 20 (y) Labor trafficking or sex trafficking or labor trafficking or sex
21 trafficking of a minor under section 28-831;
- 22 (z) Assault on an officer, an emergency responder, a state
23 correctional employee, a Department of Health and Human Services
24 employee, or a health care professional in the first degree, section
25 28-929;
- 26 (aa) 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 in the second degree, section
29 28-930;
- 30 (bb) Assault on an officer, an emergency responder, a state
31 correctional employee, a Department of Health and Human Services

1 employee, or a health care professional using a motor vehicle, section
2 28-931.01;

3 (cc) Transportation or possession of machine guns, short rifles, or
4 short shotguns under section 28-1203;

5 (dd) Unlawful possession of a firearm at a school, section
6 28-1204.04;

7 (ee) Using a deadly weapon to commit a felony or possession of a
8 deadly weapon during the commission of a felony under section 28-1205;

9 (ff) Unlawful discharge of a firearm under section 28-1212.02;

10 (gg) Discharge of a firearm in certain cities and counties, section
11 28-1212.04;

12 (hh) Unlawful possession of explosive materials in the first degree,
13 section 28-1215;

14 (ii) Unlawful possession of explosive materials in the second
15 degree, section 28-1216;

16 (jj) Unlawful sale of explosives, section 28-1217;

17 (kk) Use of explosives without a permit, section 28-1218;

18 (ll) Obtaining a permit through false representation, section
19 28-1219;

20 (mm) Possession of a destructive device, section 28-1220;

21 (nn) Threatening the use of explosives or placing a false bomb,
22 section 28-1221;

23 (oo) Using explosives to commit a felony, section 28-1222;

24 (pp) Using explosives to damage or destroy property, section
25 28-1223;

26 (qq) Using explosives to kill or injure any person, section 28-1224;

27 (rr) Storing explosives in violation of safety regulations, section
28 28-1225;

29 (ss) Miscellaneous violations of explosives and destructive device
30 laws, section 28-1227;

31 (tt) Unlawful transportation of anhydrous ammonia, section 28-1240;

- 1 (uu) Interfering with a public service company, section 28-1311;
- 2 (vv) Interfering with the police radio system, section 28-1312;
- 3 (ww) Any violation of the Computer Crimes Act, sections 28-1341 to
- 4 28-1348;
- 5 (xx) Unlawful paramilitary activities, section 28-1481;
- 6 (yy) Violation of domestic abuse protection order, section 42-924;
- 7 (zz) Unlawful interference, section 76-2325.01;
- 8 (aaa) Unauthorized access to electronic communication service,
- 9 section 86-2,104; or
- 10 (bbb) Poisoning, section 18 of this act.

11 (2) Predicate offense also includes any other offense involving as
12 an element of the offense:

- 13 (a) Sexual contact or sexual penetration, as those terms are defined
- 14 in section 28-318, of a person; or
- 15 (b) Knowing or intentionally causing serious bodily injury to or the
- 16 death of another person.

17 Sec. 11. Terrorist activity means any activity that:

18 (1) Involves:

- 19 (a) A violent act or an act dangerous to human life which is a
- 20 violation of the criminal laws of this state or of the United States; or
- 21 (b) A violation of the Computer Crimes Act; and

22 (2) Is intended to:

- 23 (a) Intimidate, injure, or coerce a civilian population;
- 24 (b) Influence government policy by intimidation or coercion; or
- 25 (c) Affect the conduct of government through mass destruction,
- 26 assassination, murder, kidnapping, or aircraft piracy.

27 Sec. 12. (1) A person commits the offense of terrorism if such
28 person commits a predicate offense in furtherance of:

- 29 (a) Intimidating, injuring, or coercing a civilian population;
- 30 (b) Influencing government policy by intimidation or coercion; or
- 31 (c) Affecting the conduct of government through mass destruction,

1 assassination, murder, kidnapping, or aircraft piracy.

2 (2) Except as provided in subsection (3) of this section, a
3 violation of this section is a Class II felony.

4 (3) A violation of this section is a Class IB felony if the
5 violation proximately results in the death of, or serious bodily injury
6 to, another person.

7 Sec. 13. (1) A person who has received military-type training from
8 a designated foreign terrorist organization shall not use, attempt to
9 use, or conspire to use such military-type training with the intent to
10 harm another person or cause damage to or disrupt the operations of a
11 critical infrastructure facility.

12 (2) Except as provided in subsection (3) of this section, a
13 violation of this section is a Class IIA felony.

14 (3) A violation of this section is a Class II felony if the
15 violation proximately results in the death of, or serious bodily injury
16 to, another person.

17 Sec. 14. (1) For purposes of this section:

18 (a) Material support or resources has the same meaning as in 18
19 U.S.C. 2339A, as such section existed on January 1, 2020;

20 (b) Party means the person alleged to have violated this section;
21 and

22 (c) Terrorist entity means:

23 (i) A designated terrorist organization; or

24 (ii) A person or organization that has engaged, engages in, or
25 intends to engage in terrorist activity or in a violation of section 12
26 or 16 of this act.

27 (2) A party shall not provide material support or resources or
28 conceal or disguise the nature, location, source, or ownership of
29 material support or resources, knowing or intending that the material
30 support or resources are to be used in preparation for or in carrying
31 out:

1 (a) Terrorist activity;

2 (b) A violation of section 12 or 16 of this act; or

3 (c) The concealment of an escape from the commission of conduct
4 described in subdivision (2)(a) or (2)(b) of this section.

5 (3) A party shall not knowingly provide material support or
6 resources to a terrorist entity. To prove a violation of this subsection,
7 the government must prove that the party had knowledge that the
8 organization was a terrorist entity.

9 (4) Except as provided in subsection (5) of this section, a
10 violation of this section is a Class IIA felony.

11 (5) A violation of this section is a Class II felony if the
12 violation proximately results in the death of, or serious bodily injury
13 to, another person.

14 (6)(a) For purposes of prosecution under this section, the
15 provision of personnel constitutes the provision of material support or
16 resources if the party knowingly provides, attempts to provide, or
17 conspires to provide one or more persons, which may include the party,
18 to:

19 (i) Work under the direction and control of a terrorist entity; or

20 (ii) Organize, manage, supervise, or otherwise direct the operations
21 of a terrorist entity.

22 (b) A party or third person who acts entirely independently of the
23 terrorist entity to advance the goals of such terrorist entity is not
24 working under the direction and control of the terrorist entity.

25 (7) Nothing in this section shall be construed or applied so as to
26 abridge the exercise of rights guaranteed under the First Amendment to
27 the Constitution of the United States or Article I, sections 4 and 5, of
28 the Constitution of Nebraska.

29 (8) This section shall be interpreted in a manner consistent with
30 federal case law interpreting 18 U.S.C. 2339A and 2339B and related
31 sections of federal law.

1 (9) A party shall not be prosecuted under this section if such
2 party's activity was authorized by a governmental or law enforcement
3 agency of this state or of the United States in the agency's official
4 capacity and pursuant to a lawful purpose.

5 (10) The Nebraska Commission on Law Enforcement and Criminal
6 Justice, in consultation with the Attorney General, shall create
7 guidelines for law enforcement investigations conducted pursuant to this
8 section to ensure the protection of privacy rights, civil rights, and
9 civil liberties.

10 Sec. 15. A person who knowingly and intentionally becomes a member
11 of a designated foreign terrorist organization and serves under the
12 direction or control of that organization with the intent to further the
13 illegal acts of the designated foreign terrorist organization commits a
14 Class IIA felony.

15 Sec. 16. (1) A person shall not, with the intent to intimidate,
16 injure, or coerce a civilian population or to influence government policy
17 by intimidation or coercion, add or cause to be spread any poison,
18 bacterium, radioactive material, virus, or harmful chemical compound to
19 farm plants or animals.

20 (2) This section does not apply to activity that is:

21 (a) Performed by the owner of the farm plants or animals or on such
22 owner's behalf or request and is:

23 (i) Consistent with a recognized veterinary procedure; or

24 (ii) Consistent with farming or animal husbandry practices; or

25 (b) Done in the course of legitimate scientific research.

26 (3) Except as provided in subsection (4) of this section, a
27 violation of this section is a Class IIA felony.

28 (4) A violation of this section is a Class II felony if the
29 violation proximately results in the death of, or serious bodily injury
30 to, another person.

31 (5) For purposes of this section, farm plants or animals means

1 plants and animals cultivated, grown, or raised by humans. This includes,
2 but is not limited to: Forages and sod crops, grains and feed crops,
3 dairy animals, poultry, livestock, equines, fish or other aquacultural
4 animals, bees, fruits, vegetables, flowers, seeds, grasses, and trees.

5 Sec. 17. (1) Except as provided in subsections (2) and (3) of this
6 section, if a person is convicted of committing a felony or misdemeanor
7 and such felony or misdemeanor intentionally and materially facilitated
8 or furthered terrorist activity or a violation of section 12 or 16 of
9 this act, such person shall be punished by the imposition of the next
10 higher penalty classification than the penalty classification prescribed
11 for the criminal offense.

12 (2)(a) The enhancement in subsection (1) of this section does not
13 apply to any offense that is already punishable as a Class I, IA, or IB
14 felony.

15 (b) If an offense is punishable as a Class I misdemeanor, the
16 enhanced penalty under this section is a Class IIIA felony.

17 (3) This section does not apply to a violation of sections 12, 13,
18 14, 15, or 16 of this act.

19 (4) The prosecution shall allege and prove beyond a reasonable doubt
20 that the felony or misdemeanor intentionally and materially facilitated
21 or furthered terrorist activity or a violation of section 12 or 16 of
22 this act.

23 Sec. 18. (1) A person shall not, with the intent to kill another
24 person or cause serious bodily injury to another person, add any poison,
25 bacterium, radioactive material, virus, or harmful chemical compound to:

26 (a) The waters of the state;

27 (b) Any food, drink, or medicine; or

28 (c) Any product designed to be ingested, consumed, or applied to the
29 body.

30 (2) A violation of this section is a Class ID felony, except that a
31 violation involving the waters of the state is a Class IB felony.

1 (3) For purposes of this section, waters of the state has the same
2 meaning as in section 81-1502.

3 Sec. 19. Original section 28-101, Revised Statutes Supplement,
4 2019, is repealed.