

LEGISLATURE OF NEBRASKA
ONE HUNDRED SEVENTH LEGISLATURE
FIRST SESSION

LEGISLATIVE BILL 229

Introduced by Hunt, 8.

Read first time January 11, 2021

Committee: Judiciary

1 A BILL FOR AN ACT relating to the Nebraska Criminal Code; to amend
2 sections 28-109, 28-110, 28-111, 28-112, 28-113, and 28-114, Reissue
3 Revised Statutes of Nebraska; to define a term; to provide for
4 enhanced penalties for commission of a crime because of a victim's
5 gender identity or association with a person of a certain gender
6 identity; to include assault by strangulation or suffocation as an
7 offense to which enhanced penalties apply; to change provisions
8 relating to legislative intent, civil actions, and duties of the
9 Nebraska Commission on Law Enforcement and Criminal Justice; and to
10 repeal the original sections.

11 Be it enacted by the people of the State of Nebraska,

1 Section 1. Section 28-109, Reissue Revised Statutes of Nebraska, is
2 amended to read:

3 28-109 For purposes of the Nebraska Criminal Code, unless the
4 context otherwise requires:

5 (1) Act shall mean a bodily movement, and includes words and
6 possession of property;

7 (2) Aid or assist shall mean knowingly to give or lend money or
8 credit to be used for, or to make possible or available, or to further
9 activity thus aided or assisted;

10 (3) Benefit shall mean any gain or advantage to the beneficiary
11 including any gain or advantage to another person pursuant to the desire
12 or consent of the beneficiary;

13 (4) Bodily injury shall mean physical pain, illness, or any
14 impairment of physical condition;

15 (5) Conduct shall mean an action or omission and its accompanying
16 state of mind, or, where relevant, a series of acts and omissions;

17 (6) Conveyance shall mean a mode of transportation that includes any
18 vehicle, aircraft, or watercraft;

19 (7) Deadly physical force shall mean force, the intended, natural,
20 and probable consequence of which is to produce death, or which does, in
21 fact, produce death;

22 (8) Deadly weapon shall mean any firearm, knife, bludgeon, or other
23 device, instrument, material, or substance, whether animate or inanimate,
24 which in the manner it is used or intended to be used is capable of
25 producing death or serious bodily injury;

26 (9) Deface shall mean to alter the appearance of something by
27 removing, distorting, adding to, or covering all or a part of the thing;

28 (10) Dwelling shall mean a building or other thing which is used,
29 intended to be used, or usually used by a person for habitation;

30 (11) Gender identity means a person's internal sense of their own
31 gender, regardless of the sex the person was assigned at birth;

1 (12) ~~(11)~~ Government shall mean the United States, any state,
2 county, municipality, or other political unit, any branch, department,
3 agency, or subdivision of any of the foregoing, and any corporation or
4 other entity established by law to carry out any governmental function;

5 (13) ~~(12)~~ Governmental function shall mean any activity which a
6 public servant is legally authorized to undertake on behalf of
7 government;

8 (14) ~~(13)~~ Motor vehicle shall mean every self-propelled land
9 vehicle, not operated upon rails, except self-propelled chairs used by
10 persons who are disabled, electric personal assistive mobility devices as
11 defined in section 60-618.02, and bicycles as defined in section 60-611;

12 (15) ~~(14)~~ Omission shall mean a failure to perform an act as to
13 which a duty of performance is imposed by law;

14 (16) ~~(15)~~ Peace officer shall mean any officer or employee of the
15 state or a political subdivision authorized by law to make arrests, and
16 shall include members of the National Guard on active service by
17 direction of the Governor during periods of emergency or civil disorder;

18 (17) ~~(16)~~ Pecuniary benefit shall mean benefit in the form of money,
19 property, commercial interest, or anything else, the primary significance
20 of which is economic gain;

21 (18) ~~(17)~~ Person shall mean any natural person and where relevant a
22 corporation or an unincorporated association;

23 (19) ~~(18)~~ Public place shall mean a place to which the public or a
24 substantial number of the public has access, and includes but is not
25 limited to highways, transportation facilities, schools, places of
26 amusement, parks, playgrounds, and the common areas of public and private
27 buildings and facilities;

28 (20) ~~(19)~~ Public servant shall mean any officer or employee of
29 government, whether elected or appointed, and any person participating as
30 an advisor, consultant, process server, or otherwise in performing a
31 governmental function, but the term does not include witnesses;

1 (21) ~~(20)~~ Recklessly shall mean acting with respect to a material
2 element of an offense when any person disregards a substantial and
3 unjustifiable risk that the material element exists or will result from
4 his or her conduct. The risk must be of such a nature and degree that,
5 considering the nature and purpose of the actor's conduct and the
6 circumstances known to the actor, its disregard involves a gross
7 deviation from the standard of conduct that a law-abiding person would
8 observe in the actor's situation;

9 (22) ~~(21)~~ Serious bodily injury shall mean bodily injury which
10 involves a substantial risk of death, or which involves substantial risk
11 of serious permanent disfigurement, or protracted loss or impairment of
12 the function of any part or organ of the body;

13 (23) ~~(22)~~ Tamper shall mean to interfere with something improperly
14 or to make unwarranted alterations in its condition;

15 (24) ~~(23)~~ Thing of value shall mean real property, tangible and
16 intangible personal property, contract rights, choses in action,
17 services, and any rights of use or enjoyment connected therewith; and

18 (25) ~~(24)~~ Voluntary act shall mean an act performed as a result of
19 effort or determination, and includes the possession of property if the
20 actor was aware of his or her physical possession or control thereof for
21 a sufficient period to have been able to terminate it.

22 Sec. 2. Section 28-110, Reissue Revised Statutes of Nebraska, is
23 amended to read:

24 28-110 A person in the State of Nebraska has the right to live free
25 from violence, or intimidation by threat of violence, committed against
26 his or her person or the destruction or vandalism of, or intimidation by
27 threat of destruction or vandalism of, his or her property regardless of
28 his or her race, color, religion, ancestry, national origin, gender,
29 sexual orientation, gender identity, age, or disability.

30 Sec. 3. Section 28-111, Reissue Revised Statutes of Nebraska, is
31 amended to read:

1 28-111 Any person who commits one or more of the following criminal
2 offenses against a person or a person's property because of the person's
3 race, color, religion, ancestry, national origin, gender, sexual
4 orientation, gender identity, age, or disability or because of the
5 person's association with a person of a certain race, color, religion,
6 ancestry, national origin, gender, sexual orientation, gender identity,
7 age, or disability shall be punished by the imposition of the next higher
8 penalty classification than the penalty classification prescribed for the
9 criminal offense, unless such criminal offense is already punishable as a
10 Class IB felony or higher classification: Manslaughter, section 28-305;
11 assault in the first degree, section 28-308; assault in the second
12 degree, section 28-309; assault in the third degree, section 28-310;
13 assault by strangulation or suffocation, section 28-310.01; terroristic
14 threats, section 28-311.01; stalking, section 28-311.03; kidnapping,
15 section 28-313; false imprisonment in the first degree, section 28-314;
16 false imprisonment in the second degree, section 28-315; sexual assault
17 in the first degree, section 28-319; sexual assault in the second or
18 third degree, section 28-320; sexual assault of a child, sections
19 28-319.01 and 28-320.01; arson in the first degree, section 28-502; arson
20 in the second degree, section 28-503; arson in the third degree, section
21 28-504; criminal mischief, section 28-519; unauthorized application of
22 graffiti, section 28-524; criminal trespass in the first degree, section
23 28-520; or criminal trespass in the second degree, section 28-521.

24 Sec. 4. Section 28-112, Reissue Revised Statutes of Nebraska, is
25 amended to read:

26 28-112 The allegations stating that the underlying offense was
27 committed because of the person's race, color, religion, ancestry,
28 national origin, gender, sexual orientation, gender identity, age, or
29 disability or because of the person's association with a person of a
30 certain race, color, religion, ancestry, national origin, gender, sexual
31 orientation, gender identity, age, or disability shall be set forth in

1 the indictment or information. It is the burden of the prosecuting
2 attorney to prove such allegations beyond a reasonable doubt to the judge
3 or jury in the state's case in chief.

4 Sec. 5. Section 28-113, Reissue Revised Statutes of Nebraska, is
5 amended to read:

6 28-113 (1) A person against whom a violation of section 28-111 has
7 been committed may bring a civil action for equitable relief, general and
8 special damages, reasonable attorney's fees, and costs.

9 (2) A civil action brought pursuant to this section must be brought
10 within four years after the date of the violation of section 28-111.

11 (3) In a civil action brought pursuant to this section, the
12 plaintiff shall establish by a preponderance of the evidence that the
13 defendant committed the criminal offense against the plaintiff or the
14 plaintiff's property because of the plaintiff's race, color, religion,
15 ancestry, national origin, gender, sexual orientation, gender identity,
16 age, or disability or because of the plaintiff's association with a
17 person of a certain race, color, religion, ancestry, national origin,
18 gender, sexual orientation, gender identity, age, or disability.

19 Sec. 6. Section 28-114, Reissue Revised Statutes of Nebraska, is
20 amended to read:

21 28-114 The Nebraska Commission on Law Enforcement and Criminal
22 Justice shall establish and maintain a central repository for the
23 collection and analysis of information regarding criminal offenses
24 committed against a person because of the person's race, color, religion,
25 ancestry, national origin, gender, sexual orientation, gender identity,
26 age, or disability or because of the person's association with a person
27 of a certain race, color, religion, ancestry, national origin, gender,
28 sexual orientation, gender identity, age, or disability. Upon
29 establishing such a repository, the commission shall develop a procedure
30 to monitor, record, classify, and analyze information relating to
31 criminal offenses apparently directed against individuals or groups, or

1 their property, because of their race, color, religion, ancestry,
2 national origin, gender, sexual orientation, gender identity, age, or
3 disability or because of their association with a person of a certain
4 race, color, religion, ancestry, national origin, gender, sexual
5 orientation, gender identity, age, or disability.

6 Sec. 7. Original sections 28-109, 28-110, 28-111, 28-112, 28-113,
7 and 28-114, Reissue Revised Statutes of Nebraska, are repealed.