

LEGISLATIVE BILL 316

Approved by the Governor March 4, 1988

Introduced by Wesely, 26; Marsh, 29; Chambers, 11

AN ACT relating to schools; to amend sections 28-1413 and 79-4,180, Reissue Revised Statutes of Nebraska, 1943; to prohibit corporal punishment in public schools; to eliminate a justification for the use of force; to change provisions relating to student discipline; to define a term; and to repeal the original sections.

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

Section 1. Corporal punishment shall be prohibited in public schools.

Sec. 2. That section 28-1413, Reissue Revised Statutes of Nebraska, 1943, be amended to read as follows:

28-1413. The use of force upon or toward the person of another is justifiable if:

(1) The actor is the parent or guardian or other person similarly responsible for the general care and supervision of a minor or a person acting at the request of such parent, guardian, or other responsible person and:

(a) Such force is used for the purpose of safeguarding or promoting the welfare of the minor, including the prevention or punishment of his or her misconduct; and

(b) Such force used is not designed to cause or known to create a substantial risk of causing death, serious bodily harm, disfigurement, extreme pain or mental distress, or gross degradation; or

(2) The actor is a teacher or a person otherwise entrusted with the care or supervision for a special purpose of a minor and-

(a) The actor believes that the force used is necessary to further such special purpose, including the maintenance of reasonable discipline in a school, class or other group, and that the use of such force is consistent with the welfare of the minor; and

(b) The degree of force, if it had been used by the parent or guardian of the minor, would not be unjustifiable under subdivision (1)(b) of this section;

(3) The actor is the guardian or other person

similarly responsible for the general care and supervision of an incompetent person; and:

(a) Such force is used for the purpose of safeguarding or promoting the welfare of the incompetent person, including the prevention of his or her misconduct, or, when such incompetent person is in a hospital or other institution for his or her care and custody, for the maintenance of reasonable discipline in such institution; and

(b) Such force used is not designed to cause or known to create a substantial risk of causing death, serious bodily harm, disfigurement, extreme or unnecessary pain, mental distress, or humiliation;

~~(4)~~ (3) The actor is a doctor or other therapist or a person assisting him or her at his or her direction; and:

(a) Such force is used for the purpose of administering a recognized form of treatment which the actor believes to be adapted to promoting the physical or mental health of the patient; and

(b) Such treatment is administered with the consent of the patient or, if the patient is a minor or an incompetent person, with the consent of his or her parent or guardian or other person legally competent to consent in his or her behalf; or the treatment is administered in an emergency when the actor believes that no one competent to consent can be consulted and that a reasonable person, wishing to safeguard the welfare of the patient, would consent;

~~(5)~~ (4) The actor is a warden or other authorized official of a correctional institution; and:

(a) He or she believes that the force used is necessary for the purpose of enforcing the lawful rules or procedures of the institution, unless his or her belief in the lawfulness of the rule or procedure sought to be enforced is erroneous and his or her error is the result of ignorance or mistake as to the provisions of sections 28-1406 to 28-1416, any other provision of the criminal law, or the law governing the administration of the institution;

(b) The nature or degree of force used is not forbidden by section 28-1408 or 28-1409; and

(c) If deadly force is used, its use is otherwise justifiable under sections 28-1406 to 28-1416;

~~(6)~~ (5) The actor is a person responsible for the safety of a vessel or an aircraft or a person acting at his or her direction; and:

(a) He or she believes that the force used is necessary to prevent interference with the operation of

the vessel or aircraft or obstruction of the execution of a lawful order, unless such belief in the lawfulness of the order is erroneous and such error is the result of ignorance or mistake as to the law defining such authority; and

(b) If deadly force is used, its use is otherwise justifiable under sections 28-1406 to 28-1416; and

(7) (6) The actor is a person who is authorized or required by law to maintain order or decorum in a vehicle, train, or other carrier or in a place where others are assembled, and:

(a) He or she believes that the force used is necessary for such purpose; and

(b) Such force used is not designed to cause or known to create a substantial risk of causing death, bodily harm, or extreme mental distress.

Sec. 3. That section 79-4,180, Reissue Revised Statutes of Nebraska, 1943, be amended to read as follows:

79-4,180. The following student conduct shall constitute grounds for long-term suspension, expulsion, or mandatory reassignment, subject to the procedural provisions of sections 79-4,170 to 79-4,205, when such activity occurs on school grounds or during an educational function or event off school grounds:

(1) Use of violence, force, coercion, threat, intimidation, or similar conduct in a manner that constitutes a substantial interference with school purposes;

(2) Willfully causing or attempting to cause substantial damage to private or school property, stealing or attempting to steal private or school property of substantial value, or repeated damage or theft involving private or school property of small value;

(3) Causing or attempting to cause physical injury to a school employee or to any student. Physical injury caused by accident, self-defense, or other action undertaken on the reasonable belief that it was necessary to protect some other person shall not constitute a violation of this subdivision;

(4) Threatening or intimidating any student for the purpose of, or with the intent of, obtaining money or anything of value from such student;

(5) Knowingly possessing, handling, or transmitting any object or material that is ordinarily or generally considered a weapon;

(6) Engaging in the unlawful possession,

selling, dispensing, or use of a controlled substance or alcoholic liquor;

(7) Public indecency, as defined in section 28-806, except that this subdivision shall apply only to students at least twelve years of age but less than nineteen years of age;

(8) Sexually assaulting or attempting to sexually assault any school employee or any student if a complaint has been filed by a prosecutor in a court of competent jurisdiction alleging that the student has sexually assaulted or attempted to sexually assault the school employee or student. For conduct described in this subdivision, including sexual assaults or attempted sexual assaults which occur off school grounds not at an educational function or event, if the student attends the same school as the victim attends or is employed by, the student may be subject to mandatory reassignment to another school within the system and the mandatory reassignment may be in addition to long-term suspension or expulsion. For purposes of this subdivision, sexual assault shall mean sexual assault in the first degree and sexual assault in the second degree as defined in sections 28-319 and 28-320, as such sections now provide or may hereafter from time to time be amended;

(9) ~~(8)~~ Engaging in any other activity forbidden by the laws of the State of Nebraska which activity constitutes a danger to other students or interferes with school purposes; or

(10) ~~(9)~~ A repeated violation of any rules and standards validly established pursuant to section 79-4,176 if such violations constitute a substantial interference with school purposes.

Sec. 4. That original sections 28-1413 and 79-4,180, Reissue Revised Statutes of Nebraska, 1943, are repealed.