

LEGISLATIVE BILL 771

Approved by the Governor April 13, 2010

Introduced by Flood, 19.

FOR AN ACT relating to crimes and offenses; to amend sections 28-115, 28-201, 28-931, 28-931.01, 28-932, 28-933, and 28-1212.01, Reissue Revised Statutes of Nebraska, and sections 28-309, 28-929, 28-930, 28-1206, 28-1212.04, 28-1354, 29-401, 29-901, 29-901.01, 29-1912, and 43-250, Revised Statutes Supplement, 2009; to change provisions relating to criminal offenses against a pregnant woman, criminal attempt, assault, assault on an officer, offenses by a confined or committed person, deadly weapons, firearms, arrest procedures, bail, conditions of release from custody, jailhouse witnesses, and juveniles in custody; and to repeal the original sections.

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

Section 1. Section 28-115, Reissue Revised Statutes of Nebraska, is amended to read:

28-115 (1) Any person who commits any of the following criminal offenses against a pregnant woman shall be punished by the imposition of the next higher penalty classification than the penalty classification prescribed for the criminal offense, unless such criminal offense is already punishable as a Class IB felony or higher classification: Assault in the first degree, section 28-308; assault in the second degree, section 28-309; assault in the third degree, section 28-310; sexual assault in the first degree, section 28-319; sexual assault in the second or third degree, section 28-320; sexual assault of a child in the second or third degree, section 28-320.01; sexual abuse of an inmate or parolee in the first degree, section 28-322.01; sexual abuse of an inmate or parolee in the second degree, section 28-322.03; sexual abuse of a protected individual in the first or second degree, section 28-322.04; domestic assault in the first, second, or third degree, section 28-323; assault on an officer in the first degree, section 28-929; assault on an officer in the second degree, section 28-930; assault on an officer in the third degree, section 28-931; assault on an officer using a motor vehicle, section 28-931.01; assault by a confined person, section 28-932; confined person committing offenses against another person, section 28-933; proximately causing serious bodily injury while operating a motor vehicle, section 60-6,198; and sexual assault of a child in the first degree, section 28-319.01.

(2) The prosecution shall allege and prove beyond a reasonable doubt that the victim was pregnant at the time of the offense.

Sec. 2. Section 28-201, Reissue Revised Statutes of Nebraska, is amended to read:

28-201 (1) A person shall be guilty of an attempt to commit a crime if he or she:

(a) Intentionally engages in conduct which would constitute the crime if the attendant circumstances were as he or she believes them to be; or

(b) Intentionally engages in conduct which, under the circumstances as he or she believes them to be, constitutes a substantial step in a course of conduct intended to culminate in his or her commission of the crime.

(2) When causing a particular result is an element of the crime, a person shall be guilty of an attempt to commit the crime if, acting with the state of mind required to establish liability with respect to the attendant circumstances specified in the definition of the crime, he or she intentionally engages in conduct which is a substantial step in a course of conduct intended or known to cause such a result.

(3) Conduct shall not be considered a substantial step under this section unless it is strongly corroborative of the defendant's criminal intent.

(4) Criminal attempt is:

(a) A Class II felony when the crime attempted is a Class I, ~~Class IA, or Class IB~~ IA, IB, IC, or ID felony;

(b) A Class III felony when the crime attempted is a Class II felony;

(c) A Class IIIA felony when the crime attempted is ~~assault in the first degree under section 28-308, sexual assault in the second degree under section 28-320, manufacturing, distributing, delivering, dispensing, or possessing with intent to manufacture, distribute, deliver, or dispense controlled substances listed in Schedule I, II, or III of section 28-405 under section 28-416~~ except for an exceptionally hazardous drug, a violation of

subdivision (2)(b) of section 28-416, incest under section 28-703, child abuse under subsection (5) of section 28-707, assault on an officer in the second degree under section 28-930, or assault by a confined person with a deadly or dangerous weapon under section 28-932;

(d) A Class IV felony when the crime attempted is a Class III felony not listed in subdivision (4)(c) of this section;

(e) A Class I misdemeanor when the crime attempted is a Class IIIA or Class IV felony;

(f) A Class II misdemeanor when the crime attempted is a Class I misdemeanor; and

(g) A Class III misdemeanor when the crime attempted is a Class II misdemeanor.

Sec. 3. Section 28-309, Revised Statutes Supplement, 2009, is amended to read:

28-309 (1) A person commits the offense of assault in the second degree if he or she:

(a) Intentionally or knowingly causes bodily injury to another person with a dangerous instrument;

(b) Recklessly causes serious bodily injury to another person with a dangerous instrument; or

~~(c) While during confinement or~~ (c) Unlawfully strikes or wounds another (i) while legally confined in a jail or an adult correctional or penal institution, (ii) while otherwise in legal custody of the Department of Correctional Services, or in any county jail, unlawfully strikes or wounds another, (iii) while committed as a dangerous sex offender under the Sex Offender Commitment Act.

(2) Assault in the second degree shall be a Class III felony.

Sec. 4. Section 28-929, Revised Statutes Supplement, 2009, is amended to read:

28-929 (1) A person commits the offense of assault on an officer in the first degree if:

(a) He ~~he~~ or she intentionally or knowingly causes serious bodily injury: ~~to~~

(i) To a peace officer, a probation officer, or an employee of the Department of Correctional Services; or

(ii) To an employee of the Department of Health and Human Services if the person committing the offense is committed as a dangerous sex offender under the Sex Offender Commitment Act; and

(b) The offense is committed while such officer or employee is engaged in the performance of his or her official duties.

(2) Assault on an officer in the first degree shall be a Class ID felony.

Sec. 5. Section 28-930, Revised Statutes Supplement, 2009, is amended to read:

28-930 (1) A person commits the offense of assault on an officer in the second degree if:

(a) He ~~he~~ or she:

~~(a)~~ (i) Intentionally or knowingly causes bodily injury with a dangerous instrument: ~~to~~

(A) To a peace officer, a probation officer, or an employee of the Department of Correctional Services; or

(B) To an employee of the Department of Health and Human Services if the person committing the offense is committed as a dangerous sex offender under the Sex Offender Commitment Act; or ~~while such officer or employee is engaged in the performance of his or her official duties; or~~

~~(b)~~ (ii) Recklessly causes bodily injury with a dangerous instrument: ~~to~~

(A) To a peace officer, a probation officer, or an employee of the Department of Correctional Services; or

(B) To an employee of the Department of Health and Human Services if the person committing the offense is committed as a dangerous sex offender under the Sex Offender Commitment Act; and

(b) The offense is committed while such officer or employee is engaged in the performance of his or her official duties.

(2) Assault on an officer in the second degree shall be a Class II felony.

Sec. 6. Section 28-931, Reissue Revised Statutes of Nebraska, is amended to read:

28-931 (1) A person commits the offense of assault on an officer in the third degree if:

(a) He ~~he~~ or she intentionally, knowingly, or recklessly causes bodily injury: ~~to~~

(i) To a peace officer, a probation officer, or an employee of the Department of Correctional Services; or

(ii) To an employee of the Department of Health and Human Services if the person committing the offense is committed as a dangerous sex offender under the Sex Offender Commitment Act; and

(b) The offense is committed while such officer or employee is engaged in the performance of his or her official duties.

(2) Assault on an officer in the third degree shall be a Class IIIA felony.

Sec. 7. Section 28-931.01, Reissue Revised Statutes of Nebraska, is amended to read:

28-931.01 (1) A person commits the offense of assault on an officer using a motor vehicle if:

(a) By using a motor vehicle to run over or to strike an officer or employee or by using a motor vehicle to collide with an officer's or employee's motor vehicle, he or she intentionally and knowingly causes bodily injury; to

(i) To a peace officer, a probation officer, or an employee of the Department of Correctional Services; or

(ii) To an employee of the Department of Health and Human Services if the person committing the offense is committed as a dangerous sex offender under the Sex Offender Commitment Act; and (a) by using a motor vehicle to run over or to strike such officer or employee or (b) by using a motor vehicle to collide with such officer's or employee's motor vehicle,

(b) The offense is committed while such officer or employee is engaged in the performance of his or her duties.

(2) Assault on an officer using a motor vehicle shall be a Class IIIA felony.

Sec. 8. Section 28-932, Reissue Revised Statutes of Nebraska, is amended to read:

28-932 (1) Any person (a) (i) who is legally confined in a jail or an adult correctional or penal institution, (ii) who is otherwise in legal custody of the Department of Correctional Services, or (iii) who is committed as a dangerous sex offender under the Sex Offender Commitment Act and (b) who intentionally, knowingly, or recklessly causes bodily injury to another person shall be guilty of a Class IIIA felony, except that if a deadly or dangerous weapon is used to commit such assault he or she shall be guilty of a Class III felony.

(2) Sentences imposed under subsection (1) of this section shall be consecutive to any sentence or sentences imposed for violations committed prior to the violation of subsection (1) of this section and shall not include any credit for time spent in custody prior to sentencing unless the time in custody is solely related to the offense for which the sentence is being imposed under this section.

Sec. 9. Section 28-933, Reissue Revised Statutes of Nebraska, is amended to read:

28-933 (1) Any person (a) (i) who is legally confined in a jail or an adult correctional or penal institution, (ii) who is otherwise in legal custody of the Department of Correctional Services, or (iii) who is committed as a dangerous sex offender under the Sex Offender Commitment Act and (b) who commits (a) (i) assault in the first, second, or third degree as defined in sections 28-308 to 28-310, (b) (ii) terroristic threats as defined in section 28-311.01, (c) (iii) kidnapping as defined in section 28-313, or (d) (iv) false imprisonment in the first or second degree as defined in sections 28-314 and 28-315, against any person for the purpose of compelling or inducing the performance of any act by such person or any other person shall be guilty of a Class II felony.

(2) Sentences imposed under subsection (1) of this section shall be served consecutive to any sentence or sentences imposed for violations committed prior to the violation of subsection (1) of this section and shall not include any credit for time spent in custody prior to sentencing unless the time in custody is solely related to the offense for which the sentence is being imposed under this section.

Sec. 10. Section 28-1206, Revised Statutes Supplement, 2009, is amended to read:

28-1206 (1) (a) Any person who possesses a firearm, a knife, or brass or iron knuckles and who has previously been convicted of a felony, who is a fugitive from justice, or who is the subject of a current and validly issued domestic violence protection order and is knowingly violating such order, or (b) any person who possesses any a firearm or brass or iron knuckles and who has been convicted within the past seven years of a misdemeanor crime of domestic violence, commits the offense of possession of a deadly weapon by a

prohibited person.

(2) The felony conviction may have been had in any court in the United States, the several states, territories, or possessions, or the District of Columbia.

(3) (a) Possession of a deadly weapon which is not a firearm by a prohibited person is a Class III felony.

(b) Possession of a deadly weapon which is a firearm by a prohibited person is a Class ID felony for a first offense and a Class IB felony for a second or subsequent offense.

(4) (a) (i) For purposes of this section, misdemeanor crime of domestic violence means:

(A) (I) A crime that is classified as a misdemeanor under the laws of the United States or the District of Columbia or the laws of any state, territory, possession, or tribe;

(II) A crime that has, as an element, the use or attempted use of physical force or the threatened use of a deadly weapon; and

(III) A crime that is committed by another against his or her spouse, his or her former spouse, a person with whom he or she has a child in common whether or not they have been married or lived together at any time, or a person with whom he or she is or was involved in a dating relationship as defined in section 28-323; or

(B) (I) Assault in the third degree under section 28-310, stalking under subsection (1) of section 28-311.04, false imprisonment in the second degree under section 28-315, or first offense domestic assault in the third degree under subsection (1) of section 28-323 or any attempt or conspiracy to commit one of these offenses; and

(II) The crime is committed by another against his or her spouse, his or her former spouse, a person with whom he or she has a child in common whether or not they have been married or lived together at any time, or a person with whom he or she is or was involved in a dating relationship as defined in section 28-323.

(ii) A person shall not be considered to have been convicted of a misdemeanor crime of domestic violence unless:

(A) The person was represented by counsel in the case or knowingly and intelligently waived the right to counsel in the case; and

(B) In the case of a prosecution for a misdemeanor crime of domestic violence for which a person was entitled to a jury trial in the jurisdiction in which the case was tried, either:

(I) The case was tried to a jury; or

(II) The person knowingly and intelligently waived the right to have the case tried to a jury.

(b) For purposes of this section, subject of a current and validly issued domestic violence protection order pertains to a current court order that was validly issued pursuant to section 28-311.09 or 42-924 or that meets or exceeds the criteria set forth in section 28-311.10 regarding protection orders issued by a court in ~~another~~ any other state, or a territory, possession, or tribe.

Sec. 11. Section 28-1212.01, Reissue Revised Statutes of Nebraska, is amended to read:

28-1212.01 For purposes of ~~section~~ sections 28-1212.02 and 28-1212.04:

(1) Aircraft ~~shall mean~~ means any contrivance intended for and capable of transporting persons through the airspace;

(2) Inhabited ~~shall mean~~ means currently being used for dwelling purposes; and

(3) Occupied ~~shall mean~~ means that a person is physically present in a building, motor vehicle, or aircraft.

Sec. 12. Section 28-1212.04, Revised Statutes Supplement, 2009, is amended to read:

28-1212.04 Any person, within the territorial boundaries of any city, incorporated village, or county containing a city of the metropolitan class or primary class, who unlawfully, knowingly, and intentionally or recklessly discharges a firearm, while in any motor vehicle or in the proximity of any motor vehicle that such person has just exited, at or in the general direction of any person, dwelling, building, structure, occupied motor vehicle, occupied aircraft, inhabited motor home as defined in section 71-4603, or inhabited camper unit as defined in section 60-1801, is guilty of a Class IC felony.

Sec. 13. Section 28-1354, Revised Statutes Supplement, 2009, is amended to read:

28-1354 For purposes of the Public Protection Act:

(1) Enterprise means any individual, sole proprietorship,

partnership, corporation, trust, association, or any legal entity, union, or group of individuals associated in fact although not a legal entity, and shall include illicit as well as licit enterprises as well as other entities;

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

(3) Person means any individual or entity, as defined in section 21-2014, holding or capable of holding a legal, equitable, or beneficial interest in property;

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

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

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

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

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

(d) Offenses involving fraud which include: Burning to defraud an insurer under section 28-505; forgery in the first degree under section 28-602; forgery in the second degree under section 28-603; criminal possession of a forged instrument under section 28-604; criminal possession of forgery devices under section 28-605; criminal impersonation under section 28-638; identity theft under section 28-639; identity fraud under section 28-640; false statement or book entry under section 28-612; tampering with a publicly exhibited contest under section 28-614; issuing a false financial statement for purposes of obtaining a financial transaction device under section 28-619; unauthorized use of a financial transaction device under section 28-620; criminal possession of a financial transaction device under section 28-621; unlawful circulation of a financial transaction device in the first degree under section 28-622; unlawful circulation of a financial transaction device in the second degree under section 28-623; criminal possession of a blank financial transaction device under section 28-624; criminal sale of a blank financial transaction device under section 28-625; criminal possession of a forgery device under section 28-626; unlawful manufacture of a financial transaction device under section 28-627; laundering of sales forms under section 28-628; unlawful acquisition of sales form processing services under

section 28-629; unlawful factoring of a financial transaction device under section 28-630; and fraudulent insurance acts under section 28-631;

(e) Offenses involving governmental operations which include: Abuse of public records under section 28-911; perjury or subornation of perjury under section 28-915; bribery under section 28-917; bribery of a witness under section 28-918; tampering with a witness or informant or jury tampering under section 28-919; bribery of a juror under section 28-920; assault on an officer in the first degree under section 28-929; assault on an officer in the second degree under section 28-930; assault on an officer in the third degree under section 28-931; and assault on an officer using a motor vehicle under section 28-931.01;

(f) Offenses involving gambling which include: Promoting gambling in the first degree under section 28-1102; possession of gambling records under section 28-1105; gambling debt collection under section 28-1105.01; and possession of a gambling device under section 28-1107;

(g) Offenses relating to firearms, weapons, and explosives which include: Carrying a concealed weapon under section 28-1202; transportation or possession of machine guns, short rifles, or short shotguns under section 28-1203; unlawful possession of a ~~revolver~~ handgun under section 28-1204; unlawful transfer of a firearm to a juvenile under section 28-1204.01; using a deadly weapon to commit a felony or possession of a deadly weapon during the commission of a felony under section 28-1205; possession of a deadly weapon by a ~~felon or a fugitive from justice~~ prohibited person under section 28-1206; possession of a defaced firearm under section 28-1207; defacing a firearm under section 28-1208; unlawful discharge of a firearm under section 28-1212.02; possession, receipt, retention, or disposition of a stolen firearm under section 28-1212.03; unlawful possession of explosive materials in the first degree under section 28-1215; unlawful possession of explosive materials in the second degree under section 28-1216; unlawful sale of explosives under section 28-1217; use of explosives without a permit under section 28-1218; obtaining an explosives permit through false representations under section 28-1219; possession of a destructive device under section 28-1220; threatening the use of explosives or placing a false bomb under section 28-1221; using explosives to commit a felony under section 28-1222; using explosives to damage or destroy property under section 28-1223; and using explosives to kill or injure any person under section 28-1224;

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

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

(j) Offenses relating to public health and morals which include: Prostitution under section 28-801; pandering under section 28-802; keeping a place of prostitution under section 28-804; human trafficking or forced labor or services under section 28-831; a violation of section 28-1005; and any act relating to the visual depiction of sexually explicit conduct prohibited in the Child Pornography Prevention Act; and

(k) A violation of the Computer Crimes Act;

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

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

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

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

Sec. 14. Section 29-401, Revised Statutes Supplement, 2009, is amended to read:

29-401 Every sheriff, deputy sheriff, marshal, deputy marshal, security guard, police officer, or peace officer as defined in subdivision (15) of section 49-801 shall arrest and detain any person found violating any law of this state or any legal ordinance of any city or incorporated village until a legal warrant can be obtained, except that (1) any such law enforcement officer taking a juvenile under the age of eighteen years into his or her custody for any violation herein defined shall proceed as set forth in sections 43-248, 43-248.01, 43-250, 43-251, 43-251.01, and 43-253 and (2) the court in which the juvenile is to appear shall not accept a plea from the juvenile until finding that the parents of the juvenile have been notified or that reasonable efforts to notify such parents have been made as provided in

section ~~43-253.~~ 43-250.

Sec. 15. Section 29-901, Revised Statutes Supplement, 2009, is amended to read:

29-901 Any bailable defendant shall be ordered released from custody pending judgment on his or her personal recognizance unless the judge determines in the exercise of his or her discretion that such a release will not reasonably assure the appearance of the defendant as required or that such a release could jeopardize the safety and maintenance of evidence or the safety of victims, witnesses, or other persons in the community. When such determination is made, the judge shall either in lieu of or in addition to such a release impose the first of the following conditions of release which will reasonably assure the appearance of the person for trial or, if no single condition gives that assurance, any combination of the following conditions:

(1) Place the defendant in the custody of a designated person or organization agreeing to supervise the defendant;

(2) Place restrictions on the travel, association, or place of abode of the defendant during the period of such release;

(3) Require, at the option of any bailable defendant, either of the following:

(a) The execution of an appearance bond in a specified amount and the deposit with the clerk of the court in cash of a sum not to exceed ten percent of the amount of the bond, ninety percent of such deposit to be returned to the defendant upon the performance of the appearance or appearances and ten percent to be retained by the clerk as appearance bond costs, except that when no charge is subsequently filed against the defendant or if the charge or charges which are filed are dropped before the appearance of the defendant which the bond was to assure, the entire deposit shall be returned to the defendant. If the bond is subsequently reduced by the court after the original bond has been posted, no additional appearance bond costs shall be retained by the clerk. The difference in the appearance bond costs between the original bond and the reduced bond shall be returned to the defendant. In no event shall the deposit be less than twenty-five dollars. Whenever jurisdiction is transferred from a court requiring an appearance bond under this subdivision to another state court, the transferring court shall transfer the ninety percent of the deposit remaining after the appearance bond costs have been retained. No further costs shall be levied or collected by the court acquiring jurisdiction; or

(b) The execution of a bail bond with such surety or sureties as shall seem proper to the judge or, in lieu of such surety or sureties, at the option of such person, a cash deposit of such sum so fixed, conditioned for his or her appearance before the proper court, to answer the offense with which he or she may be charged and to appear at such times thereafter as may be ordered by the proper court. The cash deposit shall be returned to the defendant upon the performance of all appearances.

If the amount of bail is deemed insufficient by the court before which the offense is pending, the court may order an increase of such bail and the defendant shall provide the additional undertaking, written or cash, to secure his or her release. All recognizances in criminal cases shall be in writing and be continuous from term to term until final judgment of the court in such cases and shall also extend, when the court has suspended execution of sentence for a limited time, as provided in section 29-2202, or, when the court has suspended execution of sentence to enable the defendant to apply for a writ of error to the Supreme Court or Court of Appeals, as provided in section 29-2301, until the period of suspension has expired. When two or more indictments or informations are returned against the same person at the same term of court, the recognizance given may be made to include all offenses charged therein. Each surety on such recognizance shall be required to justify under oath in a sum twice the amount of such recognizance and give the description of real estate owned by him or her of a value above encumbrance equal to the amount of such justification and shall name all other cases pending in which he or she is a surety. No one shall be accepted as surety on recognizance aggregating a sum in excess of his or her equity in the real estate, but such recognizance shall not constitute a lien on the real estate described therein until judgment is entered thereon against such surety; or

(4) Impose any other condition deemed reasonably necessary to assure appearances as required, including a condition requiring that the defendant return to custody after specified hours.

Sec. 16. Section 29-901.01, Revised Statutes Supplement, 2009, is amended to read:

29-901.01 In determining which condition or conditions of release shall reasonably assure appearance and deter possible threats to the safety and maintenance of evidence, or the safety of victims, witnesses, or other

persons in the community, the judge shall, on the basis of available information, take into account the nature and circumstances of the offense charged, including any information to indicate that the defendant might engage in additional criminal activity or pose a threat to himself or herself, yet to be collected evidence, alleged victims, potential witnesses, or members of the general public, the defendant's family ties, employment, financial resources, character and mental condition, the length of the defendant's residence in the community, the defendant's record of convictions, and the defendant's record of appearances at court proceedings or of flight to avoid prosecution or of failure to appear at court proceedings.

Sec. 17. Section 29-1912, Revised Statutes Supplement, 2009, is amended to read:

29-1912 (1) When a defendant is charged with a felony or when a defendant is charged with a misdemeanor or a violation of a city or village ordinance for which imprisonment is a possible penalty, he or she may request the court where the case is to be tried, at any time after the filing of the indictment, information, or complaint, to order the prosecuting attorney to permit the defendant to inspect and copy or photograph:

(a) The defendant's statement, if any. For purposes of this subdivision, statement means a written statement made by the defendant and signed or otherwise adopted or approved by him or her, or a stenographic, mechanical, electrical, or other recording, or a transcription thereof, which is a substantially verbatim recital of an oral statement made by the defendant to an agent of the prosecution, state, or political subdivision thereof, and recorded contemporaneously with the making of such oral statement;

(b) The defendant's prior criminal record, if any;

(c) The defendant's recorded testimony before a grand jury;

(d) The names and addresses of witnesses on whose evidence the charge is based;

(e) The results and reports of physical or mental examinations, and of scientific tests, or experiments made in connection with the particular case, or copies thereof;

(f) Documents, papers, books, accounts, letters, photographs, objects, or other tangible things of whatsoever kind or nature which could be used as evidence by the prosecuting authority;

(g) The known criminal history of a jailhouse witness;

(h) Any deal, promise, inducement, or benefit that the prosecuting attorney or any person acting on behalf of the prosecuting attorney has knowingly made or may make in the future to the jailhouse witness;

(i) The specific statements allegedly made by the defendant against whom the jailhouse witness will testify and the time, place, and manner of the defendant's disclosures;

(j) The case name and jurisdiction of any criminal cases known to the prosecuting attorney in which a jailhouse witness testified about statements made by another criminal defendant that were disclosed to the jailhouse witness while he or she was a jailhouse witness and whether the jailhouse witness received any deal, promise, inducement, or benefit in exchange for or subsequent to such testimony; and

(k) Any occasion known to the prosecuting attorney in which the jailhouse witness recanted testimony about statements made by another criminal defendant that were disclosed to the jailhouse witness while he or she was a jailhouse witness and, if any are known, a transcript or copy of such recantation.

(2) The court may issue such an order pursuant to the provisions of this section. In the exercise of its judicial discretion, the court shall consider among other things whether:

(a) The request is material to the preparation of the defense;

(b) The request is not made primarily for the purpose of harassing the prosecution or its witnesses;

(c) The request, if granted, would not unreasonably delay the trial of the offense and an earlier request by the defendant could not have reasonably been made;

(d) There is no substantial likelihood that the request, if granted, would preclude a just determination of the issues at the trial of the offense; or

(e) The request, if granted, would not result in the possibility of bodily harm to, or coercion of, witnesses.

(3) Whenever the court refuses to grant an order pursuant to the provisions of this section, it shall render its findings in writing together with the facts upon which the findings are based.

(4) Whenever the prosecuting attorney believes that the granting of an order under the provisions of this section will result in the possibility

of bodily harm to witnesses or that witnesses will be coerced, the court may permit him or her to make such a showing in the form of a written statement to be inspected by the court alone. The statement shall be sealed and preserved in the records of the court to be made available to the appellate court in the event of an appeal by the defendant.

(5) For purposes of subdivisions (1)(g) through (k) of this section, jailhouse witness means a person in the physical custody of any jail or correctional institution as (a) an accused defendant, (b) a convicted defendant awaiting sentencing, or (c) a convicted defendant serving a jail sentence of incarceration, at the time the statements the jailhouse witness will testify about were disclosed.

Sec. 18. Section 43-250, Revised Statutes Supplement, 2009, is amended to read:

43-250 A peace officer who takes a juvenile into temporary custody under section 29-401 or 43-248 or pursuant to a legal warrant of arrest shall immediately take reasonable measures to notify the juvenile's parent, guardian, custodian, or relative and shall proceed as follows:

(1) The peace officer shall release such juvenile;

(2) The peace officer shall prepare in triplicate a written notice requiring the juvenile to appear before the juvenile court of the county in which such juvenile was taken into custody at a time and place specified in the notice or at the call of the court. The notice shall also contain a concise statement of the reasons such juvenile was taken into custody. The peace officer shall deliver one copy of the notice to such juvenile and require such juvenile or his or her parent, guardian, other custodian, or relative, or both, to sign a written promise that such signer will appear at the time and place designated in the notice. Upon the execution of the promise to appear, the peace officer shall immediately release such juvenile. The peace officer shall, as soon as practicable, file one copy of the notice with the county attorney and, when required by the juvenile court, also file a copy of the notice with the juvenile court or the officer appointed by the court for such purpose;

(3) While retaining temporary custody, the peace officer shall communicate all relevant available information regarding such juvenile to the probation officer and shall deliver the juvenile, if necessary, to the probation officer. The probation officer shall determine the need for detention of the juvenile as provided in section 43-260.01. Upon determining that the juvenile should be placed in a secure or nonsecure placement and securing placement in such secure or nonsecure setting by the probation officer, the peace officer shall implement the probation officer's decision to release or to detain and place the juvenile. When secure detention of a juvenile is necessary, such detention shall occur within a juvenile detention facility except:

(a) When a juvenile described in subdivision (1) or (2) of section 43-247, except for a status offender, is taken into temporary custody within a metropolitan statistical area and where no juvenile detention facility is reasonably available, the juvenile may be delivered, for temporary custody not to exceed six hours, to a secure area of a jail or other facility intended or used for the detention of adults solely for the purposes of identifying the juvenile and ascertaining his or her health and well-being and for safekeeping while awaiting transport to an appropriate juvenile placement or release to a responsible party;

(b) When a juvenile described in subdivision (1) or (2) of section 43-247, except for a status offender, is taken into temporary custody outside of a metropolitan statistical area and where no juvenile detention facility is reasonably available, the juvenile may be delivered, for temporary custody not to exceed twenty-four hours excluding nonjudicial days and while awaiting an initial court appearance, to a secure area of a jail or other facility intended or used for the detention of adults solely for the purposes of identifying the juvenile and ascertaining his or her health and well-being and for safekeeping while awaiting transport to an appropriate juvenile placement or release to a responsible party;

(c) Whenever a juvenile is held in a secure area of any jail or other facility intended or used for the detention of adults, there shall be no verbal, visual, or physical contact between the juvenile and any incarcerated adult and there shall be adequate staff to supervise and monitor the juvenile's activities at all times. This subdivision shall not apply to a juvenile charged with a felony as an adult in county or district court if he or she is sixteen years of age or older;

(d) If a juvenile is under sixteen years of age or is a juvenile as described in subdivision (3) of section 43-247, he or she shall not be placed within a secure area of a jail or other facility intended or used for the

detention of adults;

(e) If, within the time limits specified in subdivision (3)(a) or (3)(b) of this section, a felony charge is filed against the juvenile as an adult in county or district court, he or she may be securely held in a jail or other facility intended or used for the detention of adults beyond the specified time limits;

(f) A status offender or nonoffender taken into temporary custody shall not be held in a secure area of a jail or other facility intended or used for the detention of adults. A status offender accused of violating a valid court order may be securely detained in a juvenile detention facility longer than twenty-four hours if he or she is afforded a detention hearing before a court within twenty-four hours, excluding nonjudicial days, and if, prior to a dispositional commitment to secure placement, a public agency, other than a court or law enforcement agency, is afforded an opportunity to review the juvenile's behavior and possible alternatives to secure placement and has submitted a written report to the court; and

(g) A juvenile described in subdivision (1) or (2) of section 43-247, except for a status offender, may be held in a secure area of a jail or other facility intended or used for the detention of adults for up to six hours before and six hours after any court appearance;

(4) When a juvenile is taken into temporary custody pursuant to subdivision (3) of section 43-248, the peace officer shall deliver the custody of such juvenile to the Department of Health and Human Services which shall make a temporary placement of the juvenile in the least restrictive environment consistent with the best interests of the juvenile as determined by the department. The department shall supervise such placement and, if necessary, consent to any necessary emergency medical, psychological, or psychiatric treatment for such juvenile. The department shall have no other authority with regard to such temporary custody until or unless there is an order by the court placing the juvenile in the custody of the department. If the peace officer delivers temporary custody of the juvenile pursuant to this subdivision, the peace officer shall make a full written report to the county attorney within twenty-four hours of taking such juvenile into temporary custody. If a court order of temporary custody is not issued within forty-eight hours of taking the juvenile into custody, the temporary custody by the department shall terminate and the juvenile shall be returned to the custody of his or her parent, guardian, custodian, or relative;

(5) If the peace officer takes the juvenile into temporary custody pursuant to subdivision (4) of section 43-248, the peace officer may place the juvenile at a mental health facility for evaluation and emergency treatment or may deliver the juvenile to the Department of Health and Human Services as provided in subdivision (4) of this section. At the time of the admission or turning the juvenile over to the department, the peace officer responsible for taking the juvenile into custody shall execute a written certificate as prescribed by the Department of Health and Human Services which will indicate that the peace officer believes the juvenile to be mentally ill and dangerous, a summary of the subject's behavior supporting such allegations, and that the harm described in section 71-908 is likely to occur before proceedings before a juvenile court may be invoked to obtain custody of the juvenile. A copy of the certificate shall be forwarded to the county attorney. The peace officer shall notify the juvenile's parents, guardian, custodian, or relative of the juvenile's placement; or

(6) Beginning July 1, 2010, a juvenile taken into custody pursuant to a legal warrant of arrest shall be delivered to ~~the~~ a probation officer who shall determine the need for detention of the juvenile as provided in section 43-260.01. If detention is not required, the juvenile may be released without bond if such release is in the best interests of the juvenile, the safety of the community is not at risk, and the court that issued the warrant is notified that the juvenile ~~has had been taken into custody and was released.~~

In determining the appropriate temporary placement of a juvenile under this section, the peace officer shall select the placement which is least restrictive of the juvenile's freedom so long as such placement is compatible with the best interests of the juvenile and the safety of the community.

Sec. 19. Original sections 28-115, 28-201, 28-931, 28-931.01, 28-932, 28-933, and 28-1212.01, Reissue Revised Statutes of Nebraska, and sections 28-309, 28-929, 28-930, 28-1206, 28-1212.04, 28-1354, 29-401, 29-901, 29-901.01, 29-1912, and 43-250, Revised Statutes Supplement, 2009, are repealed.