

LEGISLATURE OF NEBRASKA
ONE HUNDRED FIFTH LEGISLATURE
FIRST SESSION

LEGISLATIVE BILL 623

Introduced by Wishart, 27.

Read first time January 18, 2017

Committee: Judiciary

1 A BILL FOR AN ACT relating to crimes and offenses; to amend sections
2 28-115, 28-929, 28-929.01, 28-930, 28-931, 28-1351, and 28-1354,
3 Reissue Revised Statutes of Nebraska; to change and eliminate
4 provisions and penalties relating to assault on an officer, certain
5 employees, or a health care professional; to define terms; to
6 harmonize provisions; to repeal the original sections; and to
7 outright repeal section 28-931.01, Reissue Revised Statutes of
8 Nebraska.
9 Be it enacted by the people of the State of Nebraska,

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

3 28-115 (1) Except as provided in subsection (2) of this section, any
4 person who commits any of the following criminal offenses against a
5 pregnant woman shall be punished by the imposition of the next higher
6 penalty classification than the penalty classification prescribed for the
7 criminal offense:

8 (a) Assault in the first degree, section 28-308;

9 (b) Assault in the second degree, section 28-309;

10 (c) Assault in the third degree, section 28-310;

11 (d) Sexual assault in the first degree, section 28-319;

12 (e) Sexual assault in the second or third degree, section 28-320;

13 (f) Sexual assault of a child in the first degree, section
14 28-319.01;

15 (g) Sexual assault of a child in the second or third degree, section
16 28-320.01;

17 (h) Sexual abuse of an inmate or parolee in the first degree,
18 section 28-322.02;

19 (i) Sexual abuse of an inmate or parolee in the second degree,
20 section 28-322.03;

21 (j) Sexual abuse of a protected individual in the first or second
22 degree, section 28-322.04;

23 (k) Domestic assault in the first, second, or third degree, section
24 28-323;

25 (l) Assault on a public safety ~~an officer, an emergency responder, a~~
26 ~~state correctional employee, a Department of Health and Human Services~~
27 ~~employee, or a health care professional~~ in the first degree, section
28 28-929;

29 (m) Assault on a public safety ~~an officer, an emergency responder, a~~
30 ~~state correctional employee, a Department of Health and Human Services~~
31 ~~employee, or a health care professional~~ in the second degree, section

1 28-930;

2 (n) Assault on a public safety an officer, ~~an emergency responder, a~~
3 ~~state correctional employee, a Department of Health and Human Services~~
4 ~~employee, or a health care professional in the third degree, section~~
5 28-931;

6 ~~(o) Assault on an officer, an emergency responder, a state~~
7 ~~correctional employee, a Department of Health and Human Services~~
8 ~~employee, or a health care professional using a motor vehicle, section~~
9 ~~28-931.01;~~

10 (o) ~~(p)~~ Assault by a confined person, section 28-932;

11 (p) ~~(q)~~ Confined person committing offenses against another person,
12 section 28-933; and

13 (q) ~~(r)~~ Proximately causing serious bodily injury while operating a
14 motor vehicle, section 60-6,198.

15 (2) The enhancement in subsection (1) of this section does not apply
16 to any criminal offense listed in subsection (1) of this section that is
17 already punishable as a Class I, IA, or IB felony. If any criminal
18 offense listed in subsection (1) of this section is punishable as a Class
19 I misdemeanor, the penalty under this section is a Class IIIA felony.

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

22 Sec. 2. Section 28-929, Reissue Revised Statutes of Nebraska, is
23 amended to read:

24 28-929 (1) A person commits the offense of assault on a public
25 safety an officer, ~~an emergency responder, a state correctional employee,~~
26 ~~a Department of Health and Human Services employee,~~ or a health care
27 professional in the first degree if:

28 (a) He or she intentionally or knowingly causes serious bodily
29 injury:

30 (i) To a public safety peace officer while such officer is engaged
31 in the performance of his or her official duties , ~~a probation officer, a~~

1 ~~firefighter, an out-of-hospital emergency care provider, or an employee~~
2 ~~of the Department of Correctional Services; or~~

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

6 ~~(ii) (iii) To a health care professional; and~~

7 ~~(b) The offense is committed while such officer, firefighter, out-of-~~
8 ~~hospital emergency care provider, or employee is engaged in the~~
9 ~~performance of his or her official duties or while such the health care~~
10 ~~professional is on duty at a hospital or a health clinic.~~

11 (2) Assault on a public safety ~~an officer, an emergency responder, a~~
12 ~~state correctional employee, a Department of Health and Human Services~~
13 ~~employee, or a health care professional in the first degree shall be a~~
14 ~~Class ID felony.~~

15 Sec. 3. Section 28-929.01, Reissue Revised Statutes of Nebraska, is
16 amended to read:

17 28-929.01 For purposes of sections 28-929, 28-929.02, 28-930, and
18 ~~28-931, and 28-931.01:~~

19 (1) Detention facility means:

20 (a) A Department of Correctional Services adult correctional
21 facility or secure youth confinement facility;

22 (b) A county jail as defined in section 47-117;

23 (c) A city jail as defined in section 47-207;

24 (d) A joint county and city jail authorized under sections 47-302 to
25 47-308;

26 (e) A criminal detention facility as defined in section 83-4,125;

27 (f) A juvenile detention facility as defined in section 83-4,125;

28 (g) A staff secure juvenile facility as defined in section 83-4,125;

29 (h) A youth rehabilitation and treatment center; or

30 (i) A regional center as defined in section 71-911;

31 (2) (1) Health care professional means a physician or other health

1 care practitioner who is licensed, certified, or registered to perform
2 specified health services consistent with state law who practices at a
3 hospital or a health clinic;

4 (3) ~~(2)~~ Health clinic has the definition found in section 71-416;

5 (4) ~~(3)~~ Hospital has the definition found in section 71-419; ~~and~~

6 (5) ~~(4)~~ Out-of-hospital emergency care provider means (a) an
7 emergency medical responder; (b) an emergency medical technician; (c) an
8 advanced emergency medical technician; or (d) a paramedic, as those
9 persons are licensed and classified under the Emergency Medical Services
10 Practice Act; ~~and~~ -

11 (6) Public safety officer means any of the following persons who are
12 engaged in the performance of their official duties at the time of the
13 offense: A peace officer; a probation officer; a parole officer; a
14 firefighter; an out-of-hospital emergency care provider; an employee of a
15 detention facility; or an employee of the Department of Health and Human
16 Services if the person committing the offense is committed as a dangerous
17 sex offender under the Sex Offender Commitment Act.

18 Sec. 4. Section 28-930, Reissue Revised Statutes of Nebraska, is
19 amended to read:

20 28-930 (1) A person commits the offense of assault on a public
21 safety an officer, ~~an emergency responder, a state correctional employee,~~
22 ~~a Department of Health and Human Services employee,~~ or a health care
23 professional in the second degree if:

24 (a) He or she intentionally, ÷

25 ~~(i) Intentionally or knowingly, or recklessly~~ causes bodily injury with a
26 dangerous instrument:

27 (i) ~~(A)~~ To a public safety peace officer while such officer is
28 engaged in the performance of his or her official duties, ~~a probation~~
29 ~~officer, a firefighter, an out-of-hospital emergency care provider, or an~~
30 ~~employee of the Department of Correctional Services; or~~

31 ~~(B) To an employee of the Department of Health and Human Services if~~

1 ~~the person committing the offense is committed as a dangerous sex~~
2 ~~offender under the Sex Offender Commitment Act; or~~

3 ~~(ii) (C) To a health care professional; or~~

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

5 ~~(A) To a peace officer, a probation officer, a firefighter, an out-of-~~
6 ~~hospital emergency care provider, or an employee of the Department of~~
7 ~~Correctional Services;~~

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

11 ~~(C) To a health care professional; and~~

12 ~~(b) The offense is committed while such officer, firefighter, out-of-~~
13 ~~hospital emergency care provider, or employee is engaged in the~~
14 ~~performance of his or her official duties or while the health care~~
15 ~~professional is on duty at a hospital or a health clinic.~~

16 (2) Assault on a public safety ~~an officer, an emergency responder, a~~
17 ~~state correctional employee, a Department of Health and Human Services~~
18 ~~employee, or a health care professional in the second degree shall be a~~
19 ~~Class II felony.~~

20 Sec. 5. Section 28-931, Reissue Revised Statutes of Nebraska, is
21 amended to read:

22 28-931 (1) A person commits the offense of assault on a public
23 safety ~~an officer, an emergency responder, a state correctional employee,~~
24 ~~a Department of Health and Human Services employee, or a health care~~
25 ~~professional in the third degree if:~~

26 (a) He or she intentionally, knowingly, or recklessly causes bodily
27 injury:

28 (i) To a public safety peace officer while such officer is engaged
29 in the performance of his or her official duties ~~, a probation officer, a~~
30 ~~firefighter, an out-of-hospital emergency care provider, or an employee~~
31 ~~of the Department of Correctional Services; or~~

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

4 ~~(i) (iii) To a health care professional; and~~

5 ~~(b) The offense is committed while such officer, firefighter, out-of-~~
6 ~~hospital emergency care provider, or employee is engaged in the~~
7 ~~performance of his or her official duties or while the health care~~
8 ~~professional is on duty at a hospital or a health clinic.~~

9 (2) Assault on a public safety ~~an officer, an emergency responder, a~~
10 ~~state correctional employee, a Department of Health and Human Services~~
11 ~~employee, or a health care professional in the third degree shall be a~~
12 ~~Class IIIA felony.~~

13 Sec. 6. Section 28-1351, Reissue Revised Statutes of Nebraska, is
14 amended to read:

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

24 (a) Robbery under section 28-324;

25 (b) Arson in the first, second, or third degree under section
26 28-502, 28-503, or 28-504, respectively;

27 (c) Burglary under section 28-507;

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

30 (e) Violations of the Uniform Controlled Substances Act that involve
31 possession with intent to deliver, distribution, delivery, or manufacture

1 of a controlled substance;

2 (f) Unlawful use, possession, or discharge of a firearm or other
3 deadly weapon under sections 28-1201 to 28-1212.04;

4 (g) Assault in the first degree or assault in the second degree
5 under section 28-308 or 28-309, respectively;

6 (h) Assault on a public safety ~~an officer, an emergency responder, a~~
7 ~~state correctional employee, a Department of Health and Human Services~~
8 ~~employee, or a health care professional in the first, second, or third~~
9 ~~degree under section 28-929, 28-930, or 28-931, respectively, or assault~~
10 ~~on an officer, an emergency responder, a state correctional employee, a~~
11 ~~Department of Health and Human Services employee, or a health care~~
12 ~~professional using a motor vehicle under section 28-931.01;~~

13 (i) Theft by unlawful taking or disposition under section 28-511;

14 (j) Theft by receiving stolen property under section 28-517;

15 (k) Theft by deception under section 28-512;

16 (l) Theft by extortion under section 28-513;

17 (m) Kidnapping under section 28-313;

18 (n) Any forgery offense under sections 28-602 to 28-605;

19 (o) Criminal impersonation under section 28-638;

20 (p) Tampering with a publicly exhibited contest under section
21 28-614;

22 (q) Unauthorized use of a financial transaction device or criminal
23 possession of a financial transaction device under section 28-620 or
24 28-621, respectively;

25 (r) Pandering under section 28-802;

26 (s) Bribery, bribery of a witness, or bribery of a juror under
27 section 28-917, 28-918, or 28-920, respectively;

28 (t) Tampering with a witness or an informant or jury tampering under
29 section 28-919;

30 (u) Unauthorized application of graffiti under section 28-524;

31 (v) Dogfighting, cockfighting, bearbaiting, or pitting an animal

1 against another under section 28-1005; or

2 (w) Promoting gambling in the first degree under section 28-1102.

3 (2) Unlawful membership recruitment into an organization or
4 association is a Class IV felony.

5 Sec. 7. Section 28-1354, Reissue Revised Statutes of Nebraska, is
6 amended to read:

7 28-1354 For purposes of the Public Protection Act:

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

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

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

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

30 (5) Racketeering activity includes the commission of, criminal
31 attempt to commit, conspiracy to commit, aiding and abetting in the

1 commission of, aiding in the consummation of, acting as an accessory to
2 the commission of, or the solicitation, coercion, or intimidation of
3 another to commit or aid in the commission of any of the following:

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

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

27 (c) Offenses against property which include: Arson in the first
28 degree under section 28-502; arson in the second degree under section
29 28-503; arson in the third degree under section 28-504; burglary under
30 section 28-507; theft by unlawful taking or disposition under section
31 28-511; theft by shoplifting under section 28-511.01; theft by deception

1 under section 28-512; theft by extortion under section 28-513; theft of
2 services under section 28-515; theft by receiving stolen property under
3 section 28-517; criminal mischief under section 28-519; and unlawfully
4 depriving or obtaining property or services using a computer under
5 section 28-1344;

6 (d) Offenses involving fraud which include: Burning to defraud an
7 insurer under section 28-505; forgery in the first degree under section
8 28-602; forgery in the second degree under section 28-603; criminal
9 possession of a forged instrument under section 28-604; criminal
10 possession of written instrument forgery devices under section 28-605;
11 criminal impersonation under section 28-638; identity theft under section
12 28-639; identity fraud under section 28-640; false statement or book
13 entry under section 28-612; tampering with a publicly exhibited contest
14 under section 28-614; issuing a false financial statement for purposes of
15 obtaining a financial transaction device under section 28-619;
16 unauthorized use of a financial transaction device under section 28-620;
17 criminal possession of a financial transaction device under section
18 28-621; unlawful circulation of a financial transaction device in the
19 first degree under section 28-622; unlawful circulation of a financial
20 transaction device in the second degree under section 28-623; criminal
21 possession of a blank financial transaction device under section 28-624;
22 criminal sale of a blank financial transaction device under section
23 28-625; criminal possession of a financial transaction forgery device
24 under section 28-626; unlawful manufacture of a financial transaction
25 device under section 28-627; laundering of sales forms under section
26 28-628; unlawful acquisition of sales form processing services under
27 section 28-629; unlawful factoring of a financial transaction device
28 under section 28-630; and fraudulent insurance acts under section 28-631;

29 (e) Offenses involving governmental operations which include: Abuse
30 of public records under section 28-911; perjury or subornation of perjury
31 under section 28-915; bribery under section 28-917; bribery of a witness

1 under section 28-918; tampering with a witness or informant or jury
2 tampering under section 28-919; bribery of a juror under section 28-920;
3 assault on a public safety 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 degree under section~~
6 28-929; assault on a public safety an officer, ~~an emergency responder, a~~
7 ~~state correctional employee, a Department of Health and Human Services~~
8 ~~employee, or a health care professional in the second degree under~~
9 section 28-930; and assault on a public safety an officer, ~~an emergency~~
10 ~~responder, a state correctional employee, a Department of Health and~~
11 ~~Human Services employee, or a health care professional in the third~~
12 degree under section 28-931; ~~and assault on an officer, an emergency~~
13 ~~responder, a state correctional employee, a Department of Health and~~
14 ~~Human Services employee, or a health care professional using a motor~~
15 ~~vehicle under section 28-931.01;~~

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

20 (g) Offenses relating to firearms, weapons, and explosives which
21 include: Carrying a concealed weapon under section 28-1202;
22 transportation or possession of machine guns, short rifles, or short
23 shotguns under section 28-1203; unlawful possession of a handgun under
24 section 28-1204; unlawful transfer of a firearm to a juvenile under
25 section 28-1204.01; using a deadly weapon to commit a felony or
26 possession of a deadly weapon during the commission of a felony under
27 section 28-1205; possession of a deadly weapon by a prohibited person
28 under section 28-1206; possession of a defaced firearm under section
29 28-1207; defacing a firearm under section 28-1208; unlawful discharge of
30 a firearm under section 28-1212.02; possession, receipt, retention, or
31 disposition of a stolen firearm under section 28-1212.03; unlawful

1 possession of explosive materials in the first degree under section
2 28-1215; unlawful possession of explosive materials in the second degree
3 under section 28-1216; unlawful sale of explosives under section 28-1217;
4 use of explosives without a permit under section 28-1218; obtaining an
5 explosives permit through false representations under section 28-1219;
6 possession of a destructive device under section 28-1220; threatening the
7 use of explosives or placing a false bomb under section 28-1221; using
8 explosives to commit a felony under section 28-1222; using explosives to
9 damage or destroy property under section 28-1223; and using explosives to
10 kill or injure any person under section 28-1224;

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

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

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

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

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

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

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

31 (b) Which was incurred in connection with the business of gambling

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

4 Sec. 8. Original sections 28-115, 28-929, 28-929.01, 28-930,
5 28-931, 28-1351, and 28-1354, Reissue Revised Statutes of Nebraska, are
6 repealed.

7 Sec. 9. The following section is outright repealed: Section
8 28-931.01, Reissue Revised Statutes of Nebraska.