

LEGISLATURE OF NEBRASKA
ONE HUNDRED FIFTH LEGISLATURE
FIRST SESSION

LEGISLATIVE BILL 638

Introduced by Bostelman, 23.

Read first time January 18, 2017

Committee:

1 A BILL FOR AN ACT relating to crimes and offenses; to amend sections
2 28-111, 28-115, 28-929, 28-929.01, 28-930, 28-931, 28-931.01,
3 28-1351, and 28-1354, Reissue Revised Statutes of Nebraska; to
4 provide enhanced criminal penalties based upon a person's employment
5 as an officer, a firefighter, an emergency responder, a correctional
6 employee, a Department of Health and Human Services employee, or a
7 health care professional as prescribed; to create the offense of
8 assault on local correctional employees as prescribed; and to repeal
9 the original sections.
10 Be it enacted by the people of the State of Nebraska,

1 Section 1. Section 28-111, Reissue Revised Statutes of Nebraska, is
2 amended to read:

3 28-111 (1) Any person who commits one or more of the following
4 criminal offenses listed in subsection (3) of this section against a
5 person or a person's property:

6 (a) Because because of the person's race, color, religion, ancestry,
7 national origin, gender, sexual orientation, age, or disability; or

8 (b) Because of the person's employment as a peace officer, a
9 probation officer, a firefighter, an out-of-hospital emergency care
10 provider, a local correctional employee, an employee of the Department of
11 Correctional Services, an employee of the Department of Health and Human
12 Services if the person committing the offense is a dangerous sex offender
13 under the Sex Offender Commitment Act, or a health care professional,
14 shall be punished by the imposition of the next higher penalty
15 classification than the penalty classification prescribed for the
16 criminal offense, unless such criminal offense is already punishable as a
17 Class IB felony or higher classification.

18 (2) Any person who commits one or more of the criminal offenses
19 listed in subsection (3) of this section against a person or a person's
20 property:

21 (a) Because or because of the person's association with a person of
22 a certain race, color, religion, ancestry, national origin, gender,
23 sexual orientation, age, or disability; or

24 (b) Because of the person's association with a person employed as a
25 peace officer, a probation officer, a firefighter, an out-of-hospital
26 emergency care provider, a local correctional employee, an employee of
27 the Department of Correctional Services, an employee of the Department of
28 Health and Human Services if the person committing the offense is a
29 dangerous sex offender under the Sex Offender Commitment Act, or a health
30 care professional, shall be punished by the imposition of the next higher
31 penalty classification than the penalty classification prescribed for the

1 criminal offense, unless such criminal offense is already punishable as a
2 Class IB felony or higher classification. ÷

3 (3) The following criminal offenses apply to subsections (1) and (2)
4 of this section: Manslaughter, section 28-305; assault in the first
5 degree, section 28-308; assault in the second degree, section 28-309;
6 assault in the third degree, section 28-310; terroristic threats, section
7 28-311.01; stalking, section 28-311.03; kidnapping, section 28-313; false
8 imprisonment in the first degree, section 28-314; false imprisonment in
9 the second degree, section 28-315; sexual assault in the first degree,
10 section 28-319; sexual assault in the second or third degree, section
11 28-320; sexual assault of a child, sections 28-319.01 and 28-320.01;
12 arson in the first degree, section 28-502; arson in the second degree,
13 section 28-503; arson in the third degree, section 28-504; criminal
14 mischief, section 28-519; unauthorized application of graffiti, section
15 28-524; criminal trespass in the first degree, section 28-520; ~~or~~
16 criminal trespass in the second degree, section 28-521; assault on an
17 officer, an emergency responder, a state or local correctional employee,
18 a Department of Health and Human Services employee, or a health care
19 professional in the first degree, section 28-929; assault on an officer,
20 an emergency responder, a state or local correctional employee, a
21 Department of Health and Human Services employee, or a health care
22 professional in the second degree, section 28-930; assault on an officer,
23 an emergency responder, a state or local correctional employee, a
24 Department of Health and Human Services employee, or a health care
25 professional in the third degree, section 28-931; or assault on an
26 officer, an emergency responder, a state or local correctional employee,
27 a Department of Health and Human Services employee, or a health care
28 professional using a motor vehicle, section 28-931.01.

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

31 28-115 (1) Except as provided in subsection (2) of this section, any

1 person who commits any of the following criminal offenses against a
2 pregnant woman shall be punished by the imposition of the next higher
3 penalty classification than the penalty classification prescribed for the
4 criminal offense:

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

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

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

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

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

10 (f) Sexual assault of a child in the first degree, section
11 28-319.01;

12 (g) Sexual assault of a child in the second or third degree, section
13 28-320.01;

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

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

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

20 (k) Domestic assault in the first, second, or third degree, section
21 28-323;

22 (l) Assault on an officer, an emergency responder, a state or local
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 (m) Assault on an officer, an emergency responder, a state or local
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 (n) Assault on an officer, an emergency responder, a state or local
31 correctional employee, a Department of Health and Human Services

1 employee, or a health care professional in the third degree, section
2 28-931;

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

7 (p) Assault by a confined person, section 28-932;

8 (q) Confined person committing offenses against another person,
9 section 28-933; and

10 (r) Proximately causing serious bodily injury while operating a
11 motor vehicle, section 60-6,198.

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

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

19 Sec. 3. Section 28-929, Reissue Revised Statutes of Nebraska, is
20 amended to read:

21 28-929 (1) A person commits the offense of assault on an officer, an
22 emergency responder, a state or local correctional employee, a Department
23 of Health and Human Services employee, or a health care professional in
24 the first degree if:

25 (a) He or she intentionally or knowingly causes serious bodily
26 injury:

27 (i) To a peace officer, a probation officer, a firefighter, an out-
28 of-hospital emergency care provider, local correctional employee, or an
29 employee of the Department of Correctional Services;

30 (ii) To an employee of the Department of Health and Human Services
31 if the person committing the offense is committed as a dangerous sex

1 offender under the Sex Offender Commitment Act; or

2 (iii) To a health care professional; and

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

7 (2) Assault on an officer, an emergency responder, a state or local
8 correctional employee, a Department of Health and Human Services
9 employee, or a health care professional in the first degree shall be a
10 Class ID felony.

11 Sec. 4. Section 28-929.01, Reissue Revised Statutes of Nebraska, is
12 amended to read:

13 28-929.01 For purposes of sections 28-929, 28-929.02, 28-930,
14 28-931, and 28-931.01:

15 (1) Health care professional means a physician or other health care
16 practitioner who is licensed, certified, or registered to perform
17 specified health services consistent with state law who practices at a
18 hospital or a health clinic;

19 (2) Health clinic has the definition found in section 71-416;

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

21 (4) Local correctional employee means an employee of a county, city,
22 or village jail;

23 (5) (4) Out-of-hospital emergency care provider means (a) an
24 emergency medical responder; (b) an emergency medical technician; (c) an
25 advanced emergency medical technician; or (d) a paramedic, as those
26 persons are licensed and classified under the Emergency Medical Services
27 Practice Act.

28 Sec. 5. Section 28-930, Reissue Revised Statutes of Nebraska, is
29 amended to read:

30 28-930 (1) A person commits the offense of assault on an officer, an
31 emergency responder, a state or local correctional employee, a Department

1 of Health and Human Services employee, or a health care professional in
2 the second degree if:

3 (a) He or she:

4 (i) Intentionally or knowingly causes bodily injury with a dangerous
5 instrument:

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

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

12 (C) To a health care professional; or

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

14 (A) To a peace officer, a probation officer, a firefighter, an out-
15 of-hospital emergency care provider, local correctional employee, or an
16 employee of the Department of Correctional Services;

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

20 (C) To a health care professional; and

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

25 (2) Assault on an officer, an emergency responder, a state or local
26 correctional employee, a Department of Health and Human Services
27 employee, or a health care professional in the second degree shall be a
28 Class II felony.

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

31 28-931 (1) A person commits the offense of assault on an officer, an

1 emergency responder, a state or local correctional employee, a Department
2 of Health and Human Services employee, or a health care professional in
3 the third degree if:

4 (a) He or she intentionally, knowingly, or recklessly causes bodily
5 injury:

6 (i) To a peace officer, a probation officer, a firefighter, an out-
7 of-hospital emergency care provider, local correctional employee, or an
8 employee of the Department of Correctional Services;

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

12 (iii) To a health care professional; and

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

17 (2) Assault on an officer, an emergency responder, a state or local
18 correctional employee, a Department of Health and Human Services
19 employee, or a health care professional in the third degree shall be a
20 Class IIIA felony.

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

23 28-931.01 (1) A person commits the offense of assault on an officer,
24 an emergency responder, a state or local correctional employee, a
25 Department of Health and Human Services employee, or a health care
26 professional using a motor vehicle if:

27 (a) By using a motor vehicle to run over or to strike an officer, an
28 emergency responder, a state or local correctional employee, a Department
29 of Health and Human Services employee, or a health care professional or
30 by using a motor vehicle to collide with an officer's, an emergency
31 responder's, a state or local correctional employee's, a Department of

1 Health and Human Services employee's, or a health care professional's
2 motor vehicle, he or she intentionally and knowingly causes bodily
3 injury:

4 (i) To a peace officer, a probation officer, a firefighter, an out-
5 of-hospital emergency care provider, local correctional employee, or an
6 employee of the Department of Correctional Services;

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

10 (iii) To a health care professional; and

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

15 (2) Assault on an officer, an emergency responder, a state or local
16 correctional employee, a Department of Health and Human Services
17 employee, or a health care professional using a motor vehicle shall be a
18 Class IIIA felony.

19 Sec. 8. Section 28-1351, Reissue Revised Statutes of Nebraska, is
20 amended to read:

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

30 (a) Robbery under section 28-324;

31 (b) Arson in the first, second, or third degree under section

1 28-502, 28-503, or 28-504, respectively;

2 (c) Burglary under section 28-507;

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

5 (e) Violations of the Uniform Controlled Substances Act that involve
6 possession with intent to deliver, distribution, delivery, or manufacture
7 of a controlled substance;

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

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

12 (h) Assault on an officer, an emergency responder, a state or local
13 correctional employee, a Department of Health and Human Services
14 employee, or a health care professional in the first, second, or third
15 degree under section 28-929, 28-930, or 28-931, respectively, or assault
16 on an officer, an emergency responder, a state or local correctional
17 employee, a Department of Health and Human Services employee, or a health
18 care professional using a motor vehicle under section 28-931.01;

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

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

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

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

23 (m) Kidnapping under section 28-313;

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

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

26 (p) Tampering with a publicly exhibited contest under section
27 28-614;

28 (q) Unauthorized use of a financial transaction device or criminal
29 possession of a financial transaction device under section 28-620 or
30 28-621, respectively;

31 (r) Pandering under section 28-802;

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

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

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

6 (v) Dogfighting, cockfighting, bearbaiting, or pitting an animal
7 against another under section 28-1005; or

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

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

11 Sec. 9. Section 28-1354, Reissue Revised Statutes of Nebraska, is
12 amended to read:

13 28-1354 For purposes of the Public Protection Act:

14 (1) Enterprise means any individual, sole proprietorship,
15 partnership, corporation, trust, association, or any legal entity, union,
16 or group of individuals associated in fact although not a legal entity,
17 and shall include illicit as well as licit enterprises as well as other
18 entities;

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

25 (3) Until January 1, 2017, person means any individual or entity, as
26 defined in section 21-2014, holding or capable of holding a legal,
27 equitable, or beneficial interest in property. Beginning January 1, 2017,
28 person means any individual or entity, as defined in section 21-214,
29 holding or capable of holding a legal, equitable, or beneficial interest
30 in property;

31 (4) Prosecutor includes the Attorney General of the State of

1 Nebraska, the deputy attorney general, assistant attorneys general, a
2 county attorney, a deputy county attorney, or any person so designated by
3 the Attorney General, a county attorney, or a court of the state to carry
4 out the powers conferred by the act;

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

10 (a) Offenses against the person which include: Murder in the first
11 degree under section 28-303; murder in the second degree under section
12 28-304; manslaughter under section 28-305; assault in the first degree
13 under section 28-308; assault in the second degree under section 28-309;
14 assault in the third degree under section 28-310; terroristic threats
15 under section 28-311.01; kidnapping under section 28-313; false
16 imprisonment in the first degree under section 28-314; false imprisonment
17 in the second degree under section 28-315; sexual assault in the first
18 degree under section 28-319; and robbery under section 28-324;

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

1 methamphetamine under section 28-452;

2 (c) Offenses against property which include: Arson in the first
3 degree under section 28-502; arson in the second degree under section
4 28-503; arson in the third degree under section 28-504; burglary under
5 section 28-507; theft by unlawful taking or disposition under section
6 28-511; theft by shoplifting under section 28-511.01; theft by deception
7 under section 28-512; theft by extortion under section 28-513; theft of
8 services under section 28-515; theft by receiving stolen property under
9 section 28-517; criminal mischief under section 28-519; and unlawfully
10 depriving or obtaining property or services using a computer under
11 section 28-1344;

12 (d) Offenses involving fraud which include: Burning to defraud an
13 insurer under section 28-505; forgery in the first degree under section
14 28-602; forgery in the second degree under section 28-603; criminal
15 possession of a forged instrument under section 28-604; criminal
16 possession of written instrument forgery devices under section 28-605;
17 criminal impersonation under section 28-638; identity theft under section
18 28-639; identity fraud under section 28-640; false statement or book
19 entry under section 28-612; tampering with a publicly exhibited contest
20 under section 28-614; issuing a false financial statement for purposes of
21 obtaining a financial transaction device under section 28-619;
22 unauthorized use of a financial transaction device under section 28-620;
23 criminal possession of a financial transaction device under section
24 28-621; unlawful circulation of a financial transaction device in the
25 first degree under section 28-622; unlawful circulation of a financial
26 transaction device in the second degree under section 28-623; criminal
27 possession of a blank financial transaction device under section 28-624;
28 criminal sale of a blank financial transaction device under section
29 28-625; criminal possession of a financial transaction forgery device
30 under section 28-626; unlawful manufacture of a financial transaction
31 device under section 28-627; laundering of sales forms under section

1 28-628; unlawful acquisition of sales form processing services under
2 section 28-629; unlawful factoring of a financial transaction device
3 under section 28-630; and fraudulent insurance acts under section 28-631;

4 (e) Offenses involving governmental operations which include: Abuse
5 of public records under section 28-911; perjury or subornation of perjury
6 under section 28-915; bribery under section 28-917; bribery of a witness
7 under section 28-918; tampering with a witness or informant or jury
8 tampering under section 28-919; bribery of a juror under section 28-920;
9 assault on an officer, an emergency responder, a state or local
10 correctional employee, a Department of Health and Human Services
11 employee, or a health care professional in the first degree under section
12 28-929; assault on an officer, an emergency responder, a state or local
13 correctional employee, a Department of Health and Human Services
14 employee, or a health care professional in the second degree under
15 section 28-930; assault on an officer, an emergency responder, a state or
16 local correctional employee, a Department of Health and Human Services
17 employee, or a health care professional in the third degree under section
18 28-931; and assault on an officer, an emergency responder, a state or
19 local correctional employee, a Department of Health and Human Services
20 employee, or a health care professional using a motor vehicle under
21 section 28-931.01;

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

26 (g) Offenses relating to firearms, weapons, and explosives which
27 include: Carrying a concealed weapon under section 28-1202;
28 transportation or possession of machine guns, short rifles, or short
29 shotguns under section 28-1203; unlawful possession of a handgun under
30 section 28-1204; unlawful transfer of a firearm to a juvenile under
31 section 28-1204.01; using a deadly weapon to commit a felony or

1 possession of a deadly weapon during the commission of a felony under
2 section 28-1205; possession of a deadly weapon by a prohibited person
3 under section 28-1206; possession of a defaced firearm under section
4 28-1207; defacing a firearm under section 28-1208; unlawful discharge of
5 a firearm under section 28-1212.02; possession, receipt, retention, or
6 disposition of a stolen firearm under section 28-1212.03; unlawful
7 possession of explosive materials in the first degree under section
8 28-1215; unlawful possession of explosive materials in the second degree
9 under section 28-1216; unlawful sale of explosives under section 28-1217;
10 use of explosives without a permit under section 28-1218; obtaining an
11 explosives permit through false representations under section 28-1219;
12 possession of a destructive device under section 28-1220; threatening the
13 use of explosives or placing a false bomb under section 28-1221; using
14 explosives to commit a felony under section 28-1222; using explosives to
15 damage or destroy property under section 28-1223; and using explosives to
16 kill or injure any person under section 28-1224;

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

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

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

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

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

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

1 dollars:

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

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

10 Sec. 10. Original sections 28-111, 28-115, 28-929, 28-929.01,
11 28-930, 28-931, 28-931.01, 28-1351, and 28-1354, Reissue Revised Statutes
12 of Nebraska, are repealed.