

LEGISLATIVE BILL 990

Approved by the Governor April 17, 2018

Introduced by Wayne, 13.

A BILL FOR AN ACT relating to firearms; to amend sections 28-1351 and 28-1354, Reissue Revised Statutes of Nebraska, and sections 28-101, 28-1201, and 43-2,129, Revised Statutes Supplement, 2017; to create the offense of possession of a firearm by a prohibited juvenile offender and provide a process to reinstate the right to possess a firearm by such an offender; to create a duty for the court under the Nebraska Juvenile Code; to harmonize provisions; and to repeal the original sections.

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

Section 1. Section 28-101, Revised Statutes Supplement, 2017, is amended to read:

28-101 Sections 28-101 to 28-1357 and 28-1601 to 28-1603 and section 3 of this act shall be known and may be cited as the Nebraska Criminal Code.

Sec. 2. Section 28-1201, Revised Statutes Supplement, 2017, is amended to read:

28-1201 For purposes of sections 28-1201 to 28-1212.04 and section 3 of this act, unless the context otherwise requires:

(1) Firearm means any weapon which is designed to or may readily be converted to expel any projectile by the action of an explosive or frame or receiver of any such weapon;

(2) Fugitive from justice means any person who has fled or is fleeing from any peace officer to avoid prosecution or incarceration for a felony;

(3) Handgun means any firearm with a barrel less than sixteen inches in length or any firearm designed to be held and fired by the use of a single hand;

(4) Juvenile means any person under the age of eighteen years;

(5) Knife means:

(a) Any dagger, dirk, knife, or stiletto with a blade over three and one-half inches in length and which, in the manner it is used or intended to be used, is capable of producing death or serious bodily injury; or

(b) Any other dangerous instrument which is capable of inflicting cutting, stabbing, or tearing wounds and which, in the manner it is used or intended to be used, is capable of producing death or serious bodily injury;

(6) Knuckles and brass or iron knuckles means any instrument that consists of finger rings or guards made of a hard substance and that is designed, made, or adapted for the purpose of inflicting serious bodily injury or death by striking a person with a fist enclosed in the knuckles;

(7) Machine gun means any firearm, whatever its size and usual designation, that shoots automatically more than one shot, without manual reloading, by a single function of the trigger;

(8) School means a public, private, denominational, or parochial elementary, vocational, or secondary school, a private postsecondary career school as defined in section 85-1603, a community college, a public or private college, a junior college, or a university;

(9) Short rifle means a rifle having a barrel less than sixteen inches long or an overall length of less than twenty-six inches; and

(10) Short shotgun means a shotgun having a barrel or barrels less than eighteen inches long or an overall length of less than twenty-six inches.

Sec. 3. (1) Except as provided in subsections (3) and (4) of this section, a person under the age of twenty-five years who knowingly possesses a firearm commits the offense of possession of a firearm by a prohibited juvenile offender if he or she has previously been adjudicated an offender in juvenile court for an act which would constitute a felony or an act which would constitute a misdemeanor crime of domestic violence.

(2) Possession of a firearm by a prohibited juvenile offender is a Class IV felony for a first offense and a Class IIIA felony for a second or subsequent offense.

(3) Subsection (1) of this section does not apply to the possession of firearms by members of the armed forces of the United States, active or reserve, National Guard of this state, or Reserve Officers Training Corps or peace officers or other duly authorized law enforcement officers when on duty or training.

(4)(a) Prior to reaching the age of twenty-five years, a person subject to the prohibition of subsection (1) of this section may file a petition for exemption from such prohibition and thereby have his or her right to possess a firearm reinstated. A petitioner who is younger than nineteen years of age shall petition the juvenile court in which he or she was adjudicated for the underlying offense. A petitioner who is nineteen years of age or older shall petition the district court in the county in which he or she resides.

(b) In determining whether to grant a petition filed under subdivision (4) (a) of this section, the court shall consider:

(i) The behavior of the person after the underlying adjudication;

(ii) The likelihood that the person will engage in further criminal

activity; and

(iii) Any other information the court considers relevant.

(c) The court may grant a petition filed under subdivision (4)(a) of this section and issue an order exempting the person from the prohibition of subsection (1) of this section when in the opinion of the court the order will be in the best interests of the person and consistent with the public welfare.

(5) The fact that a person subject to the prohibition under subsection (1) of this section has reached the age of twenty-five or that a court has granted a petition under subdivision (4)(a) of this section shall not be construed to mean that such adjudication has been set aside. Nothing in this section shall be construed to authorize the setting aside of such an adjudication or conviction except as otherwise provided by law.

(6) For purposes of this section, misdemeanor crime of domestic violence has the same meaning as in section 28-1206.

Sec. 4. Section 28-1351, Reissue Revised Statutes of Nebraska, is amended to read:

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

(a) Robbery under section 28-324;

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

(c) Burglary under section 28-507;

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

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

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

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

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

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

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

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

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

(m) Kidnapping under section 28-313;

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

(o) Criminal impersonation under section 28-638;

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

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

(r) Pandering under section 28-802;

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

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

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

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

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

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

Sec. 5. Section 28-1354, Reissue Revised Statutes of Nebraska, 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) Until January 1, 2017, 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. Beginning January 1, 2017, person means any

individual or entity, as defined in section 21-214, 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 written instrument 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 financial transaction 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, an emergency responder, a state correctional employee, a Department of Health and Human Services employee, or a health care professional in the first degree under section 28-929; assault on an officer, an emergency responder, a state correctional employee, a Department of Health and Human Services employee, or a health care professional in the second degree under section 28-930; assault on an officer, an emergency responder, a state correctional employee, a Department of Health and Human Services employee, or a health care professional in the third degree under section 28-931; and assault on an officer, an emergency responder, a state correctional employee, a Department of Health and Human Services employee, or a health care professional 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 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 prohibited person under section 28-1206; possession of a firearm by a prohibited juvenile offender under section 3 of this act; 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; labor trafficking, sex trafficking, labor trafficking of a minor, or sex trafficking of a minor 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. 6. (1) When the petition alleges the juvenile committed an act which would constitute a felony or an act which would constitute a misdemeanor crime of domestic violence, the court shall explain the specific legal consequences that an adjudication for such an act will have on the juvenile's right to possess a firearm. The court shall provide such explanation at the earlier of:

(a) The juvenile's first court appearance or, if the juvenile is not present in the court at the time of the first appearance, by written notice sent by regular mail to the juvenile's last-known address; or

(b) Prior to adjudication.

(2) For purposes of this section:

(a) Firearm has the same meaning as in section 28-1201; and

(b) Misdemeanor crime of domestic violence has the same meaning as in section 28-1206.

Sec. 7. Section 43-2,129, Revised Statutes Supplement, 2017, is amended to read:

43-2,129 Sections 43-245 to 43-2,129 and section 6 of this act shall be known and may be cited as the Nebraska Juvenile Code.

Sec. 8. Original sections 28-1351 and 28-1354, Reissue Revised Statutes of Nebraska, and sections 28-101, 28-1201, and 43-2,129, Revised Statutes Supplement, 2017, are repealed.