

LEGISLATURE OF NEBRASKA
ONE HUNDRED THIRD LEGISLATURE
SECOND SESSION
LEGISLATIVE BILL 752

Introduced by Lathrop, 12.

Read first time January 09, 2014

Committee:

A BILL

1 FOR AN ACT relating to crimes and offenses; to amend sections 28-115,
2 28-929, 28-929.01, 28-930, 28-931, 28-931.01, 28-934, and
3 28-1351, Revised Statutes Cumulative Supplement, 2012,
4 and section 28-1354, Revised Statutes Supplement, 2013;
5 to change provisions relating to assault on an officer or
6 health care professional and assault with a bodily fluid
7 against a public safety officer; to define a term; to
8 harmonize provisions; and to repeal the original
9 sections.
10 Be it enacted by the people of the State of Nebraska,

1 Section 1. Section 28-115, Revised Statutes Cumulative
2 Supplement, 2012, is amended to read:

3 28-115 (1) Any person who commits any of the following
4 criminal offenses against a pregnant woman shall be punished by the
5 imposition of the next higher penalty classification than the penalty
6 classification prescribed for the criminal offense, unless such
7 criminal offense is already punishable as a Class IB felony or higher
8 classification: Assault in the first degree, section 28-308; assault
9 in the second degree, section 28-309; assault in the third degree,
10 section 28-310; sexual assault in the first degree, section 28-319;
11 sexual assault in the second or third degree, section 28-320; sexual
12 assault of a child in the second or third degree, section 28-320.01;
13 sexual abuse of an inmate or parolee in the first degree, section
14 28-322.02; sexual abuse of an inmate or parolee in the second degree,
15 section 28-322.03; sexual abuse of a protected individual in the
16 first or second degree, section 28-322.04; domestic assault in the
17 first, second, or third degree, section 28-323; assault on an
18 officer, an emergency responder, a state correctional employee, a
19 Department of Health and Human Services employee, or a health care
20 professional in the first degree, section 28-929; assault on an
21 officer, an emergency responder, a state correctional employee, a
22 Department of Health and Human Services employee, or a health care
23 professional in the second degree, section 28-930; assault on an
24 officer, an emergency responder, a state correctional employee, a
25 Department of Health and Human Services employee, or a health care

1 professional in the third degree, section 28-931; assault on an
2 officer, an emergency responder, a state correctional employee, a
3 Department of Health and Human Services employee, or a health care
4 professional using a motor vehicle, section 28-931.01; assault by a
5 confined person, section 28-932; confined person committing offenses
6 against another person, section 28-933; proximately causing serious
7 bodily injury while operating a motor vehicle, section 60-6,198; and
8 sexual assault of a child in the first degree, section 28-319.01.

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

12 Sec. 2. Section 28-929, Revised Statutes Cumulative
13 Supplement, 2012, is amended to read:

14 28-929 (1) A person commits the offense of assault on an
15 officer, an emergency responder, a state correctional employee, a
16 Department of Health and Human Services employee, or a health care
17 professional in the first degree if:

18 (a) He or she intentionally or knowingly causes serious
19 bodily injury:

20 (i) To a peace officer, a probation officer, a
21 firefighter, an out-of-hospital emergency care provider, or an
22 employee of the Department of Correctional Services;

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

1 (iii) To a health care professional; and

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

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

10 Sec. 3. Section 28-929.01, Revised Statutes Cumulative
11 Supplement, 2012, is amended to read:

12 28-929.01 For purposes of sections 28-929, 28-929.02,
13 28-930, ~~and~~ 28-931, and 28-931.01:

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

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

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

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

1 Services Practice Act.

2 Sec. 4. Section 28-930, Revised Statutes Cumulative
3 Supplement, 2012, is amended to read:

4 28-930 (1) A person commits the offense of assault on an
5 officer, an emergency responder, a state correctional employee, a
6 Department of Health and Human Services employee, or a health care
7 professional in the second degree if:

8 (a) He or she:

9 (i) Intentionally or knowingly causes bodily injury with
10 a dangerous instrument:

11 (A) To a peace officer, a probation officer, a
12 firefighter, an out-of-hospital emergency care provider, or an
13 employee of the Department of Correctional Services;

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

17 (C) To a health care professional; or

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

20 (A) To a peace officer, a probation officer, a
21 firefighter, an out-of-hospital emergency care provider, or an
22 employee of the Department of Correctional Services;

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

1 (C) To a health care professional; and

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

6 (2) Assault on an officer or a health care professional
7 in the second degree shall be a Class II felony.

8 Sec. 5. Section 28-931, Revised Statutes Cumulative
9 Supplement, 2012, is amended to read:

10 28-931 (1) A person commits the offense of assault on an
11 officer, an emergency responder, a state correctional employee, a
12 Department of Health and Human Services employee, or a health care
13 professional in the third degree if:

14 (a) He or she intentionally, knowingly, or recklessly
15 causes bodily injury:

16 (i) To a peace officer, a probation officer, a
17 firefighter, an out-of-hospital emergency care provider, or an
18 employee of the Department of Correctional Services;

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

22 (iii) To a health care professional; and

23 (b) The offense is committed while such officer or
24 employee is engaged in the performance of his or her official duties
25 or while the health care professional is on duty at a hospital or a

1 health clinic.

2 (2) Assault on an officer or a health care professional
3 in the third degree shall be a Class IIIA felony.

4 Sec. 6. Section 28-931.01, Revised Statutes Cumulative
5 Supplement, 2012, is amended to read:

6 28-931.01 (1) A person commits the offense of assault on
7 an officer, an emergency responder, a state correctional employee, a
8 Department of Health and Human Services employee, or health care
9 professional using a motor vehicle if:

10 (a) By using a motor vehicle to run over or to strike an
11 officer, an emergency responder, a state correctional employee, a
12 Department of Health and Human Services employee, or health care
13 professional ~~or employee~~ or by using a motor vehicle to collide with
14 an officer's, an emergency responder's, a state correctional
15 employee's, a Department of Health and Human Services employee's, or
16 health care professional's ~~or employee's~~ motor vehicle, he or she
17 intentionally and knowingly causes bodily injury:

18 (i) To a peace officer, a probation officer, a
19 firefighter, an out-of-hospital emergency care provider, or an
20 employee of the Department of Correctional Services; or

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

24 (iii) To a health care professional; and

25 (b) The offense is committed while such officer,

1 firefighter, out-of-hospital emergency care provider, or employee is
2 engaged in the performance of his or her official duties or while the
3 health care professional is on duty at a hospital or a health clinic.

4 (2) Assault on an officer, an emergency responder, a
5 state correctional employee, a Department of Health and Human
6 Services employee, or health care professional using a motor vehicle
7 shall be a Class IIIA felony.

8 Sec. 7. Section 28-934, Revised Statutes Cumulative
9 Supplement, 2012, is amended to read:

10 28-934 (1) Any person who knowingly and intentionally
11 strikes any public safety officer with any bodily fluid is guilty of
12 assault with a bodily fluid against a public safety officer.

13 (2) Except as provided in subsection (3) of this section,
14 assault with a bodily fluid against a public safety officer is a
15 Class I misdemeanor.

16 (3) Assault with a bodily fluid against a public safety
17 officer is a Class IIIA felony if the person committing the offense
18 strikes with a bodily fluid the eyes, mouth, or skin of a public
19 safety officer and knew the source of the bodily fluid was infected
20 with the human immunodeficiency virus, hepatitis B, or hepatitis C at
21 the time the offense was committed.

22 (4) Upon a showing of probable cause by affidavit to a
23 judge of this state that an offense as defined in subsection (1) of
24 this section has been committed and that identifies the probable
25 source of the bodily fluid or bodily fluids used to commit the

1 offense, the judge shall grant an order or issue a search warrant
2 authorizing the collection of any evidence, including any bodily
3 fluid or medical records or the performance of any medical or
4 scientific testing or analysis, that may assist with the
5 determination of whether or not the person committing the offense or
6 the person from whom the person committing the offense obtained the
7 bodily fluid or bodily fluids is infected with the human
8 immunodeficiency virus, hepatitis B, or hepatitis C.

9 (5) As used in this section:

10 (a) Bodily fluid means any naturally produced secretion
11 or waste product generated by the human body and shall include, but
12 not be limited to, any quantity of human blood, urine, saliva, mucus,
13 vomitus, seminal fluid, or feces; and

14 (b) Public safety officer includes any of the following
15 persons who are engaged in the performance of their official duties
16 at the time of the offense: A peace officer; a probation officer; a
17 firefighter; an out-of-hospital emergency care provider as defined in
18 section 28-929.01; an employee of a county, city, or village jail; an
19 employee of the Department of Correctional Services; an employee of
20 the secure youth confinement facility operated by the Department of
21 Correctional Services, if the person committing the offense is
22 committed to such facility; an employee of the Youth Rehabilitation
23 and Treatment Center-Geneva or the Youth Rehabilitation and Treatment
24 Center-Kearney; or an employee of the Department of Health and Human
25 Services if the person committing the offense is committed as a

1 dangerous sex offender under the Sex Offender Commitment Act.

2 Sec. 8. Section 28-1351, Revised Statutes Cumulative
3 Supplement, 2012, is amended to read:

4 28-1351 (1) A person commits the offense of unlawful
5 membership recruitment into an organization or association when he or
6 she knowingly and intentionally coerces, intimidates, threatens, or
7 inflicts bodily harm upon another person in order to entice that
8 other person to join or prevent that other person from leaving any
9 organization, group, enterprise, or association whose members,
10 individually or collectively, engage in or have engaged in any of the
11 following criminal acts for the benefit of, at the direction of, or
12 on behalf of the organization, group, enterprise, or association or
13 any of its members:

14 (a) Robbery under section 28-324;

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

17 (c) Burglary under section 28-507;

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

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

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

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

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

9 (i) Theft by unlawful taking or disposition under section
10 28-511;

11 (j) Theft by receiving stolen property under section
12 28-517;

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

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

15 (m) Kidnapping under section 28-313;

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

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

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

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

23 (r) Pandering under section 28-802;

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

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

3 (u) Unauthorized application of graffiti under section
4 28-524;

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

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

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

11 Sec. 9. Section 28-1354, Revised Statutes Supplement,
12 2013, is 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,
16 union, or group of individuals associated in fact although not a
17 legal entity, and shall include illicit as well as licit enterprises
18 as well as other entities;

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

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

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

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

15 (a) Offenses against the person which include: Murder in
16 the first degree under section 28-303; murder in the second degree
17 under section 28-304; manslaughter under section 28-305; assault in
18 the first degree under section 28-308; assault in the second degree
19 under section 28-309; assault in the third degree under section
20 28-310; terroristic threats under section 28-311.01; kidnapping under
21 section 28-313; false imprisonment in the first degree under section
22 28-314; false imprisonment in the second degree under section 28-315;
23 sexual assault in the first degree under section 28-319; and robbery
24 under section 28-324;

25 (b) Offenses relating to controlled substances which

1 include: To unlawfully manufacture, distribute, deliver, dispense, or
2 possess with intent to manufacture, distribute, deliver, or dispense
3 a controlled substance under subsection (1) of section 28-416;
4 possession of marijuana weighing more than one pound under subsection
5 (12) of section 28-416; possession of money used or intended to be
6 used to facilitate a violation of subsection (1) of section 28-416
7 prohibited under subsection (17) of section 28-416; any violation of
8 section 28-418; to unlawfully manufacture, distribute, deliver, or
9 possess with intent to distribute or deliver an imitation controlled
10 substance under section 28-445; possession of anhydrous ammonia with
11 the intent to manufacture methamphetamine under section 28-451; and
12 possession of ephedrine, pseudoephedrine, or phenylpropanolamine with
13 the intent to manufacture methamphetamine under section 28-452;

14 (c) Offenses against property which include: Arson in the
15 first degree under section 28-502; arson in the second degree under
16 section 28-503; arson in the third degree under section 28-504;
17 burglary under section 28-507; theft by unlawful taking or
18 disposition under section 28-511; theft by shoplifting under section
19 28-511.01; theft by deception under section 28-512; theft by
20 extortion under section 28-513; theft of services under section
21 28-515; theft by receiving stolen property under section 28-517;
22 criminal mischief under section 28-519; and unlawfully depriving or
23 obtaining property or services using a computer under section
24 28-1344;

25 (d) Offenses involving fraud which include: Burning to

1 defraud an insurer under section 28-505; forgery in the first degree
2 under section 28-602; forgery in the second degree under section
3 28-603; criminal possession of a forged instrument under section
4 28-604; criminal possession of forgery devices under section 28-605;
5 criminal impersonation under section 28-638; identity theft under
6 section 28-639; identity fraud under section 28-640; false statement
7 or book entry under section 28-612; tampering with a publicly
8 exhibited contest under section 28-614; issuing a false financial
9 statement for purposes of obtaining a financial transaction device
10 under section 28-619; unauthorized use of a financial transaction
11 device under section 28-620; criminal possession of a financial
12 transaction device under section 28-621; unlawful circulation of a
13 financial transaction device in the first degree under section
14 28-622; unlawful circulation of a financial transaction device in the
15 second degree under section 28-623; criminal possession of a blank
16 financial transaction device under section 28-624; criminal sale of a
17 blank financial transaction device under section 28-625; criminal
18 possession of a forgery device under section 28-626; unlawful
19 manufacture of a financial transaction device under section 28-627;
20 laundering of sales forms under section 28-628; unlawful acquisition
21 of sales form processing services under section 28-629; unlawful
22 factoring of a financial transaction device under section 28-630; and
23 fraudulent insurance acts under section 28-631;

24 (e) Offenses involving governmental operations which
25 include: Abuse of public records under section 28-911; perjury or

1 subornation of perjury under section 28-915; bribery under section
2 28-917; bribery of a witness under section 28-918; tampering with a
3 witness or informant or jury tampering under section 28-919; bribery
4 of a juror under section 28-920; assault on an officer, an emergency
5 responder, a state correctional employee, a Department of Health and
6 Human Services employee, or a health care professional in the first
7 degree under section 28-929; assault on an officer, an emergency
8 responder, a state correctional employee, a Department of Health and
9 Human Services employee, or a health care professional in the second
10 degree under section 28-930; assault on an officer, an emergency
11 responder, a state correctional employee, a Department of Health and
12 Human Services employee, or a health care professional in the third
13 degree under section 28-931; and assault on an officer, an emergency
14 responder, a state correctional employee, a Department of Health and
15 Human Services employee, or a health care professional using a motor
16 vehicle under section 28-931.01;

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

22 (g) Offenses relating to firearms, weapons, and
23 explosives which include: Carrying a concealed weapon under section
24 28-1202; transportation or possession of machine guns, short rifles,
25 or short shotguns under section 28-1203; unlawful possession of a

1 handgun under section 28-1204; unlawful transfer of a firearm to a
2 juvenile under section 28-1204.01; using a deadly weapon to commit a
3 felony or possession of a deadly weapon during the commission of a
4 felony under section 28-1205; possession of a deadly weapon by a
5 prohibited person under section 28-1206; possession of a defaced
6 firearm under section 28-1207; defacing a firearm under section
7 28-1208; unlawful discharge of a firearm under section 28-1212.02;
8 possession, receipt, retention, or disposition of a stolen firearm
9 under section 28-1212.03; unlawful possession of explosive materials
10 in the first degree under section 28-1215; unlawful possession of
11 explosive materials in the second degree under section 28-1216;
12 unlawful sale of explosives under section 28-1217; use of explosives
13 without a permit under section 28-1218; obtaining an explosives
14 permit through false representations under section 28-1219;
15 possession of a destructive device under section 28-1220; threatening
16 the use of explosives or placing a false bomb under section 28-1221;
17 using explosives to commit a felony under section 28-1222; using
18 explosives to damage or destroy property under section 28-1223; and
19 using explosives to kill or injure any person under section 28-1224;

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

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

24 (j) Offenses relating to public health and morals which
25 include: Prostitution under section 28-801; pandering under section

1 28-802; keeping a place of prostitution under section 28-804; labor
2 trafficking, sex trafficking, labor trafficking of a minor, or sex
3 trafficking of a minor under section 28-831; a violation of section
4 28-1005; and any act relating to the visual depiction of sexually
5 explicit conduct prohibited in the Child Pornography Prevention Act;
6 and

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

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

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

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

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

22 Sec. 10. Original sections 28-115, 28-929, 28-929.01,
23 28-930, 28-931, 28-931.01, 28-934, and 28-1351, Revised Statutes
24 Cumulative Supplement, 2012, and section 28-1354, Revised Statutes
25 Supplement, 2013, are repealed.