

LEGISLATURE OF NEBRASKA

ONE HUNDREDTH LEGISLATURE

FIRST SESSION

LEGISLATIVE BILL 242

Introduced By: Flood, 19; Cornett, 45

Read first time: January 10, 2007

Committee: Judiciary

A BILL

1 FOR AN ACT relating to crimes and offenses; to amend sections
2 28-101, 28-115, 28-201, and 28-932, Revised Statutes
3 Cumulative Supplement, 2006; to change penalty provisions
4 relating to assault by a confined person; to create the
5 offense of assault on an officer using bodily fluids; to
6 provide penalties; to harmonize provisions; and to repeal
7 the original sections.

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

1 Section 1. Section 28-101, Revised Statutes Cumulative
2 Supplement, 2006, is amended to read:

3 28-101. Sections 28-101 to 28-1350 and section 4 of this
4 act shall be known and may be cited as the Nebraska Criminal Code.

5 Sec. 2. Section 28-115, Revised Statutes Cumulative
6 Supplement, 2006, is amended to read:

7 28-115. (1) Any person who commits any of the following
8 criminal offenses against a pregnant woman shall be punished by the
9 imposition of the next higher penalty classification than the penalty
10 classification prescribed for the criminal offense, unless such
11 criminal offense is already punishable as a Class IB felony or higher
12 classification: Assault in the first degree, section 28-308; assault
13 in the second degree, section 28-309; assault in the third degree,
14 section 28-310; sexual assault in the first degree, section 28-319;
15 sexual assault in the second or third degree, section 28-320; sexual
16 assault of a child in the second or third degree, section 28-320.01;
17 sexual abuse of an inmate or parolee in the first degree, section
18 28-322.01; sexual abuse of an inmate or parolee in the second degree,
19 section 28-322.03; sexual abuse of a protected individual in the first
20 or second degree, section 28-322.04; domestic assault in the first,
21 second, or third degree, section 28-323; assault on an officer in the
22 first degree, section 28-929; assault on an officer in the second
23 degree, section 28-930; assault on an officer in the third degree,
24 section 28-931; assault on an officer using a motor vehicle, section
25 28-931.01; assault by a confined person, section 28-932; assault by
26 a confined person, section 28-933; proximately causing serious bodily
27 injury while operating a motor vehicle, section 60-6,198; and sexual

1 assault of a child in the first degree, section 28-319.01.

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

5 Sec. 3. Section 28-201, Revised Statutes Cumulative
6 Supplement, 2006, is amended to read:

7 28-201. (1) A person shall be guilty of an attempt to commit
8 a crime if he or she:

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

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

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

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

26 (4) Criminal attempt is:

27 (a) A Class II felony when the crime attempted is a Class I,

1 Class IA, or Class IB felony;

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

4 (c) A Class IIIA felony when the crime attempted is assault
5 in the first degree under section 28-308, sexual assault in the second
6 degree under section 28-320, manufacturing, distributing, delivering,
7 dispensing, or possessing with intent to manufacture, distribute,
8 deliver, or dispense controlled substances listed in Schedule I, II,
9 or III of section 28-405 under section 28-416 except for an
10 exceptionally hazardous drug, incest under section 28-703, child abuse
11 under subsection (5) of section 28-707, assault on an officer in the
12 second degree under section 28-930, or assault by a confined person
13 with a deadly or dangerous weapon under subsection (1) of section
14 28-932;

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

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

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

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

23 Sec. 4. (1) A person commits the offense of assault on an
24 officer using bodily fluids if he or she intentionally and knowingly
25 causes a bodily fluid to contact a peace officer, probation officer,
26 parole officer, or crime scene personnel while such officer or
27 personnel is engaged in the performance of his or her duties.

1 (2) Assault on an officer using bodily fluids is a Class I
2 misdemeanor.

3 Sec. 5. Section 28-932, Revised Statutes Cumulative
4 Supplement, 2006, is amended to read:

5 28-932. (1) Any person who is legally confined in a jail or
6 correctional or penal institution or any such person who is being
7 transported to or from a jail or correctional or penal institution
8 and who intentionally, knowingly, or recklessly causes bodily
9 injury to another person shall be guilty of a Class IIIA felony,
10 except that if a deadly or dangerous weapon is used to commit such
11 assault he or she shall be guilty of a Class III felony.

12 (2) Any person who is legally confined in a jail or
13 correctional or penal institution or any such person who is being
14 transported to or from a jail or correctional or penal institution
15 and who recklessly causes another person to come into contact with a
16 dangerous substance by any means, including, but not limited to,
17 throwing, tossing, expelling, spitting, or smearing, is guilty of a
18 Class IV felony.

19 (3) Any person who is legally confined in a jail or
20 correctional or penal institution or any such person who is being
21 transported to or from a jail or correctional or penal institution
22 and who intentionally causes another person to come into contact with
23 a dangerous substance by any means, including, but not limited to,
24 throwing, tossing, expelling, spitting, or smearing, is guilty of a
25 Class IIIA felony.

26 (4) Any person who commits a violation under subsection (2)
27 or (3) of this section and knew, should have known, or had reason to

1 believe that such dangerous substance was obtained from an
2 individual, including himself or herself, who was infected by a
3 life-threatening or debilitating infectious disease or condition,
4 including, but not limited to, hepatitis, meningococcal meningitis,
5 active pulmonary tuberculosis, human immunodeficiency virus,
6 diphtheria, plague, hemorrhagic fevers, or rabies, is guilty of a
7 Class IIIA felony for a violation of subsection (2) of this section
8 or a Class III felony for a violation of subsection (3) of this
9 section.

10 (5) Any person who commits a violation under subsection (2)
11 or (3) of this section and causes the actual transmission of a
12 life-threatening or debilitating infectious disease or condition,
13 including, but not limited to, hepatitis, meningococcal meningitis,
14 active pulmonary tuberculosis, human immunodeficiency virus,
15 diphtheria, plague, hemorrhagic fevers, or rabies, is guilty of a
16 Class IIIA felony for a violation of subsection (2) of this section
17 or a Class III felony for a violation of subsection (3) of this
18 section.

19 (6) Actual transmission of a life-threatening or
20 debilitating infectious disease or condition is not required for a
21 violation of subsections (2) through (4) of this section to occur.

22 (7) For purposes of this section, dangerous substance
23 includes, but is not limited to, blood, seminal fluid, urine, feces,
24 saliva, mucus, excrement, vomit, or any other bodily secretion or
25 fluid.

26 ~~(2)~~ (8) Sentences imposed under ~~subsection (1)~~ of this
27 section shall be consecutive to any sentence or sentences imposed for

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

6 (9) A victim who comes into contact with a dangerous
7 substance as described in this section may have testing performed
8 under the same conditions as a public safety official pursuant to
9 section 71-510.

10 Sec. 6. Original sections 28-101, 28-115, 28-201, and
11 28-932, Revised Statutes Cumulative Supplement, 2006, are repealed.