

LEGISLATURE OF NEBRASKA

ONE HUNDRED FIRST LEGISLATURE

FIRST SESSION

LEGISLATIVE BILL 35

Introduced by Ashford, 20.

Read first time January 8, 2009

Committee: Judiciary

A BILL

1 FOR AN ACT relating to crimes and offenses; to amend sections
2 28-101, 28-1204.01, 28-1205, and 28-1206, Reissue Revised
3 Statutes of Nebraska; to prohibit certain gang activity;
4 to provide enhanced penalties; to change the penalty for
5 unlawful transfer of a firearm to a juvenile, use of a
6 firearm to commit a felony, and possession of a firearm
7 by a felon or a fugitive from justice; to adopt the
8 Violence Prevention Act; to provide powers and duties for
9 the Board of Regents of the University of Nebraska; to
10 create a fund; to harmonize provisions; to repeal the
11 original sections; and to declare an emergency.

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

1 Section 1. Section 28-101, Reissue Revised Statutes of
2 Nebraska, is amended to read:

3 28-101 Sections 28-101 to 28-1350 and sections 2 to 4
4 and 6 of this act shall be known and may be cited as the Nebraska
5 Criminal Code.

6 Sec. 2. For purposes of sections 2 to 4 of this act:

7 (1) Criminal street gang means any ongoing organization,
8 association, or group of three or more persons, whether formal or
9 informal, which has a common name or common identifying sign or
10 symbol, and whose criminal street gang members, either individually
11 or collectively, engage in or have engaged in a pattern of criminal
12 street gang activity;

13 (2) Criminal street gang member means a person who
14 actively promotes, furthers, or assists a criminal street gang, at
15 the criminal street gang's direction or for its benefit, in ways
16 involving a pattern of criminal street gang activity; and

17 (3) Pattern of criminal street gang activity means the
18 commission of, the attempted commission of, a conspiracy to commit,
19 the solicitation of, or the attempted solicitation of two or more
20 of the following criminal offenses by one or more criminal street
21 gang members if at least one of the criminal offenses occurred on
22 or after September 1, 2009, the criminal offenses occurred within
23 three years of each other, and the criminal offenses were committed
24 on separate occasions or by two or more criminal street gang
25 members:

- 1 (a) Assault in the first degree pursuant to section
2 28-308;
- 3 (b) Assault in the second degree pursuant to section
4 28-309;
- 5 (c) Assault in the third degree pursuant to section
6 28-310;
- 7 (d) Murder in the first degree pursuant to section
8 28-303;
- 9 (e) Murder in the second degree pursuant to section
10 28-304;
- 11 (f) Assault on an officer in the first degree pursuant to
12 section 28-929;
- 13 (g) Assault on an officer in the second degree pursuant
14 to section 28-930;
- 15 (h) Assault on an officer in the third degree pursuant to
16 section 28-931;
- 17 (i) Assault on an officer using a motor vehicle pursuant
18 to section 28-931.01;
- 19 (j) Assault by a confined person pursuant to section
20 28-932 or 28-933;
- 21 (k) Manslaughter pursuant to section 28-305;
- 22 (l) Motor vehicle homicide pursuant to section 28-306;
- 23 (m) Sexual assault in the first degree pursuant to
24 section 28-319;
- 25 (n) Sexual assault of a child in the first degree

- 1 pursuant to section 28-319.01;
- 2 (o) Sexual assault in the second or third degree pursuant
3 to section 28-320;
- 4 (p) Sexual assault of a child in the second or third
5 degree pursuant to section 28-320.01;
- 6 (q) Kidnapping pursuant to section 28-313;
- 7 (r) False imprisonment in the first degree pursuant to
8 section 28-314;
- 9 (s) False imprisonment in the second degree pursuant to
10 section 28-315;
- 11 (t) Arson in the first degree pursuant to section 28-502;
- 12 (u) Arson in the second degree pursuant to section
13 28-503;
- 14 (v) Arson in the third degree pursuant to section 28-504;
- 15 (w) Burglary pursuant to section 28-507;
- 16 (x) Robbery pursuant to section 28-324;
- 17 (y) Theft by unlawful taking or disposition pursuant to
18 section 28-511;
- 19 (z) Theft by shoplifting pursuant to section 28-511.01;
- 20 (aa) Theft of rented or leased motor vehicle pursuant to
21 section 28-511.02;
- 22 (bb) Theft by deception pursuant to section 28-512;
- 23 (cc) Theft by extortion pursuant to section 28-513;
- 24 (dd) Theft of property lost, mislaid, or delivered by
25 mistake pursuant to section 28-514;

- 1 (ee) Theft of services pursuant to section 28-515;
- 2 (ff) Theft by receiving stolen property pursuant to
3 section 28-517;
- 4 (gg) Prohibited human trafficking, forced labor or
5 services, and sexual activity pursuant to section 28-831;
- 6 (hh) Stalking pursuant to section 28-311.03;
- 7 (ii) Carrying a concealed weapon pursuant to section
8 28-1202;
- 9 (jj) Transportation or possession of machine guns, short
10 rifles, or short shotguns pursuant to section 28-1203;
- 11 (kk) Unlawful possession of a revolver pursuant to
12 section 28-1204;
- 13 (ll) Unlawful transfer of a firearm to a juvenile
14 pursuant to section 28-1204.01;
- 15 (mm) Unlawful possession of a firearm on school grounds
16 pursuant to section 28-1204.04;
- 17 (nn) Using a deadly weapon to commit a felony pursuant to
18 section 28-1205;
- 19 (oo) Possession of a deadly weapon by a felon or a
20 fugitive from justice pursuant to section 28-1206;
- 21 (pp) Possession of a defaced firearm pursuant to section
22 28-1207;
- 23 (qq) Defacing a firearm pursuant to section 28-1208;
- 24 (rr) Failure to register tranquilizer guns pursuant to
25 section 28-1209;

- 1 (ss) Failure to notify the sheriff of the sale of
2 tranquilizer guns pursuant to section 28-1210;
- 3 (tt) Unlawful discharge of a firearm pursuant to section
4 28-1212.02;
- 5 (uu) Possession, receipt, retention, or disposal of a
6 stolen firearm pursuant to section 28-1212.03;
- 7 (vv) Unlawful possession of explosive materials in the
8 first degree pursuant to section 28-1215;
- 9 (ww) Unlawful possession of explosive materials in the
10 second degree pursuant to section 28-1216;
- 11 (xx) Unlawful sale of explosives pursuant to section
12 28-1217;
- 13 (yy) Use of explosives without a permit pursuant to
14 section 28-1218;
- 15 (zz) Obtaining an explosives permit through false
16 representation pursuant to section 28-1219;
- 17 (aaa) Possession of a destructive device pursuant to
18 section 28-1220;
- 19 (bbb) Threatening the use of explosives or placing a
20 false bomb pursuant to section 28-1221;
- 21 (ccc) Using explosives to commit a felony pursuant to
22 section 28-1222;
- 23 (ddd) Using explosives to damage or destroy property
24 pursuant to section 28-1223;
- 25 (eee) Using explosives to kill or injure any person

1 pursuant to section 28-1224;

2 (fff) Storing explosives in violation of safety
3 regulations pursuant to section 28-1225; or

4 (ggg) Violation of the Uniform Controlled Substances Act.

5 Sec. 3. A person who (1) is a criminal street gang
6 member, (2) actively participates with a criminal street gang and
7 knows that the gang is a criminal street gang, or (3) knowingly
8 promotes, furthers, or assists any criminal street gang in its
9 pattern of criminal street gang activity is guilty of illegal gang
10 participation. Illegal gang participation is a Class I misdemeanor.

11 Sec. 4. (1) A person who (a) is a criminal street gang
12 member, (b) actively participates with a criminal street gang and
13 knows that the gang is a criminal street gang, or (c) knowingly
14 promotes, furthers, or assists any criminal street gang in its
15 pattern of criminal street gang activity, shall, upon conviction of
16 a criminal offense listed in subdivision (3) of section 2 of this
17 act which is punishable as a Class IV felony, instead be punished
18 as if such criminal offense was a Class IIIA felony.

19 (2) A person who (a) is a criminal street gang member,
20 (b) actively participates with a criminal street gang and knows
21 that the gang is a criminal street gang, or (c) knowingly promotes,
22 furthers, or assists any criminal street gang in its pattern of
23 criminal street gang activity shall, upon conviction of a criminal
24 offense listed in subdivision (3) of section 2 of this act which is
25 punishable as a Class IIIA felony, instead be punished as if such

1 criminal offense was a Class III felony.

2 (3) A person who (a) is a criminal street gang member,
3 (b) actively participates with a criminal street gang and knows
4 that the gang is a criminal street gang, or (c) knowingly promotes,
5 further, or assists any criminal street gang in its pattern of
6 criminal street gang activity shall, upon conviction of a criminal
7 offense listed in subdivision (3) of section 2 of this act which is
8 punishable as a Class III felony, instead be punished as if such
9 criminal offense was a Class II felony.

10 Sec. 5. Section 28-1204.01, Reissue Revised Statutes of
11 Nebraska, is amended to read:

12 28-1204.01 (1) Any person who knowingly and intentionally
13 does or attempts to sell, provide, loan, deliver, or in any other
14 way transfer the possession of a firearm to a juvenile commits the
15 offense of unlawful transfer of a firearm to a juvenile. The county
16 attorney shall have a copy of the petition served upon the owner of
17 the firearm, if known, in person or by registered or certified mail
18 at his or her last-known address.

19 (2) This section shall not apply to the transfer of a
20 firearm other than the types specified in section 28-1204 to a
21 juvenile:

22 (a) From a person related to such juvenile within the
23 second degree of consanguinity or affinity if the transfer of
24 physical possession of such firearm does not occur until such time
25 as express permission has been obtained from the juvenile's parent

1 or guardian;

2 (b) For a legitimate and lawful sporting purpose; or

3 (c) Who is under direct adult supervision in an
4 appropriate educational program.

5 (3) This section shall apply to the transfer of any
6 firearm described in section 28-1204, except as specifically
7 provided in subsection (2) of section 28-1204.

8 (4) Unlawful transfer of a firearm to a juvenile is a
9 Class IV felony with a mandatory minimum sentence of two years in
10 prison.

11 Sec. 6. Section 28-1205, Reissue Revised Statutes of
12 Nebraska, is amended to read:

13 28-1205 (1) Any person who uses a firearm, a knife, brass
14 or iron knuckles, or any other deadly weapon to commit any felony
15 which may be prosecuted in a court of this state or who unlawfully
16 possesses a firearm, a knife, brass or iron knuckles, or any other
17 deadly weapon during the commission of any felony which may be
18 prosecuted in a court of this state commits the offense of using a
19 deadly weapon to commit a felony.

20 (2)(a) Use of a deadly weapon other than a firearm to
21 commit a felony is a Class III felony.

22 (b) Use of a deadly weapon which is a firearm to commit
23 a felony is a Class II felony with a mandatory minimum sentence of
24 five years in prison.

25 (3) The crimes defined in this section shall be treated

1 as separate and distinct offenses from the felony being committed,
2 and sentences imposed under this section shall be consecutive to
3 any other sentence imposed.

4 Sec. 7. Section 28-1206, Reissue Revised Statutes of
5 Nebraska, is amended to read:

6 28-1206 (1) Any person who possesses any firearm or brass
7 or iron knuckles and who has previously been convicted of a felony
8 or who is a fugitive from justice commits the offense of possession
9 of a deadly weapon by a felon or a fugitive from justice.

10 (2) Such felony conviction may have been had in any
11 court in the United States, the several states, territories, or
12 possessions, or the District of Columbia.

13 (3) (a) Possession of a deadly weapon other than a firearm
14 by a felon or a fugitive from justice is a Class IV felony.

15 (b) Possession of a deadly weapon which is a firearm by
16 a felon or a fugitive from justice is a Class III felony with a
17 mandatory minimum sentence of five years in prison.

18 Sec. 8. Sections 8 to 15 of this act shall be known and
19 may be cited as the Violence Prevention Act.

20 Sec. 9. The purposes of the Violence Prevention Act are
21 (1) the reduction of violent crime committed by juveniles and young
22 adults, (2) the reduction of the rate of recidivism of persons
23 convicted of violent crimes, and (3) the reduction of violence
24 through the use of violence prevention plans and programs including
25 mediation and negotiation by peers or mentors of individuals

1 identified by the Office of Violence Prevention as most likely to
2 commit a violent crime.

3 Sec. 10. (1) The Legislature finds and declares that
4 there is a vital need for a coordinated effort in the field of
5 violence prevention and that this coordinated effort can best be
6 achieved by utilizing the resources of an institution of higher
7 education. The Legislature further finds that there is a crucial
8 need for focused attention on violent crime committed by juveniles
9 and young adults and an immediate need to interrupt the cycle of
10 violent crimes committed by these juveniles and young adults.

11 (2) Based upon these legislative findings and
12 declarations, the Legislature encourages the establishment and
13 administration of an Office of Violence Prevention at the
14 University of Nebraska at Omaha.

15 Sec. 11. (1) The Board of Regents of the University of
16 Nebraska may establish an Office of Violence Prevention at the
17 University of Nebraska at Omaha.

18 (2) The Board of Regents of the University of Nebraska
19 may (a) employ a director of the Office of Violence Prevention
20 that will be located in the Juvenile Justice Institute at the
21 University of Nebraska at Omaha's School of Criminology and
22 Criminal Justice and whose qualifications and salary shall be
23 established by the board and (b) employ or assign to the office
24 other professors, instructors, tutors, demonstrators, and personnel
25 as may be considered necessary for the administration of the

1 office.

2 Sec. 12. (1) The Board of Regents of the University
3 of Nebraska may accept and administer, in accordance with proper
4 financial procedures at the University of Nebraska at Omaha, gifts,
5 grants, tuition, and private funds to assist in the operation of
6 the Office of Violence Prevention.

7 (2) The Board of Regents of the University of Nebraska
8 may request an appropriation of such money from the General Fund as
9 may be necessary to permit the office to operate efficiently and to
10 promote the purposes of the Violence Prevention Act.

11 Sec. 13. (1) The Office of Violence Prevention shall
12 effectuate the purposes and intent of the Violence Prevention Act
13 as set out in sections 8 to 10 of this act by (1) providing
14 (a) juvenile and young adult offender case screening and needs
15 assessment using a nationally certified assessment tool and (b)
16 referring potentially violent juvenile and young adult offenders
17 to needed services, such as help in finding employment, help with
18 education and substance abuse and mental health treatment, and
19 help in finding housing and (2) utilizing outcome-based evaluations
20 of the services used under subdivision (1) of this section. The
21 criteria for the identification by the office of individuals who
22 will receive services shall be established by the office.

23 (2) The office shall compile information on violence
24 prevention plans or programs used in other localities and use such
25 information to develop and implement additional violence prevention

1 plans and programs. The office shall evaluate its own violence
2 prevention plans, programs, and services utilizing outcome-based
3 evaluations.

4 (3) The office shall hire the number of employees needed
5 to comply with the duties required under the Violence Prevention
6 Act and may contract with an outside entity for the provision of
7 services required under the act.

8 (4) The office shall submit an annual report to the
9 Governor and Legislature no later than June 30 of each year
10 detailing its activities for the year.

11 Sec. 14. A political subdivision or law enforcement
12 division or department of a political subdivision developing a
13 violence prevention plan may contract with the Office of Violence
14 Prevention for assistance in the development of such a plan.
15 The plan shall be subject to the approval of the governing
16 body of the political subdivision and, if one exists, the law
17 enforcement division or department of the political subdivision.
18 If the plan includes the use of a former juvenile or young adult
19 offender to make contact with potentially violent juvenile and
20 young adult offenders through mediation or negotiation or other
21 plan or program, such individual shall be screened and approved
22 by the law enforcement division or department of the political
23 subdivision. If no law enforcement division or department exists,
24 such screening and approval shall be performed by the governing
25 body of the political subdivision.

1 Sec. 15. Whenever requested or deemed appropriate by
2 the Office of Violence Prevention, the University of Nebraska,
3 the Department of Health and Human Services, the Department of
4 Correctional Services, the Board of Parole, the Office of Juvenile
5 Services, the Office of Probation Administration, the Nebraska
6 Commission on Law Enforcement and Criminal Justice, the Community
7 Corrections Council, any agency providing services through city
8 or other local governments, and any other agency involved in
9 activities related to juvenile justice shall cooperate with and
10 offer expertise to the office to assist it in carrying out its
11 purposes and functions.

12 Sec. 16. (1) The Violence Prevention Cash Fund is
13 created. The Office of Violence Prevention shall administer the
14 fund. The fund shall be used to support and develop programs to
15 help communities and law enforcement agencies reduce violent crime
16 committed by juveniles and young adults. Any money in the fund
17 available for investment shall be invested by the state investment
18 officer pursuant to the Nebraska Capital Expansion Act and the
19 Nebraska State Funds Investment Act.

20 (2) In addition to all other court costs assessed
21 according to law, a violence prevention fee of one dollar shall
22 be taxed as costs for each case filed in each county court,
23 separate juvenile court, and district court, including appeals to
24 such courts, and for each appeal and original action filed in the
25 Court of Appeals and the Supreme Court. The fees shall be remitted

1 to the State Treasurer on forms prescribed by the State Treasurer
2 within ten days after the end of each month. The State Treasurer
3 shall credit the fees to the Violence Prevention Cash Fund.

4 Sec. 17. Original sections 28-101, 28-1204.01, 28-1205,
5 and 28-1206, Reissue Revised Statutes of Nebraska, are repealed.

6 Sec. 18. Since an emergency exists, this act takes effect
7 when passed and approved according to law.