

LEGISLATURE OF NEBRASKA

ONE HUNDRED FIRST LEGISLATURE

FIRST SESSION

LEGISLATIVE BILL 63

FINAL READING

Introduced by Friend, 10; Howard, 9; Rogert, 16; Mello, 5;
Nordquist, 7.

Read first time January 8, 2009

Committee: Judiciary

A BILL

1 FOR AN ACT relating to law; to amend sections 28-101, 28-111,
2 28-308, 28-309, 28-929, 28-930, 28-1201, 28-1202,
3 28-1204, 28-1204.01, 28-1204.04, 28-1205, 28-1206,
4 28-1207, 28-1208, 28-1212.02, 28-1212.03, 29-401,
5 29-901, 29-901.01, 29-1912, 29-2320, 29-2321, 43-245,
6 43-250, 43-276, 69-2407, and 83-183, Reissue Revised
7 Statutes of Nebraska, and sections 13-2610, 47-632,
8 60-497.01, 69-2404, 69-2410, and 69-2430, Revised
9 Statutes Cumulative Supplement, 2008; to permit the use
10 of the Convention Center Support Fund for the reduction
11 of street and gang violence; to change provisions
12 relating to penalty enhancements, assault, firearm and

1 handgun offenses, deadly weapon offenses, bail, handgun
2 certificates, and concealed handgun permits; to prohibit
3 the unauthorized application of graffiti, discharge of a
4 firearm while in or near a motor vehicle, and unlawful
5 membership recruitment for an organization; to change
6 provisions relating to the use of jailhouse witnesses and
7 appeals by the Attorney General; to change and provide
8 penalties; to change provisions relating to detention
9 of juveniles and the Nebraska Juvenile Code; to provide
10 for the transfer of community corrections administrative
11 funds to the Office of Violence Prevention; to require
12 abstracts of convictions to be transmitted to the
13 Director of Motor Vehicles; to create the Office of
14 Violence Prevention, an advisory council, and a fund;
15 to permit supervised employment of persons committed to
16 the Department of Correctional Services; to adopt the
17 Lindsay Ann Burke Act; to eliminate provisions relating
18 to the use of jailhouse informers and persons released on
19 probation, parole, or work release by law enforcement;
20 to harmonize provisions; to provide severability; to
21 repeal the original sections; to outright repeal sections
22 29-1928, 29-1929, and 29-2262.01, Reissue Revised
23 Statutes of Nebraska; and to declare an emergency.
24 Be it enacted by the people of the State of Nebraska,

1 Section 1. Section 13-2610, Revised Statutes Cumulative
2 Supplement, 2008, is amended to read:

3 13-2610 (1) Upon the annual certification under section
4 13-2609, the State Treasurer shall transfer after the audit
5 the amount certified to the Convention Center Support Fund. The
6 Convention Center Support Fund is created. Any money in the fund
7 available for investment shall be invested by the state investment
8 officer pursuant to the Nebraska Capital Expansion Act and the
9 Nebraska State Funds Investment Act.

10 (2) (a) It is the intent of the Legislature to appropriate
11 from the fund to any political subdivision for which an application
12 for state assistance under the Convention Center Facility Financing
13 Assistance Act has been approved an amount not to exceed (i)
14 seventy percent of the state sales tax revenue collected by
15 retailers and operators doing business at such facilities on sales
16 at such facilities, state sales tax revenue collected on primary
17 and secondary box office sales of admissions to such facilities,
18 and state sales tax revenue collected by associated hotels, (ii)
19 seventy-five million dollars for any one approved project, or (iii)
20 the total cost of acquiring, constructing, improving, or equipping
21 the eligible facility. State assistance shall not be used for an
22 operating subsidy or other ancillary facility.

23 (b) Ten percent of such funds appropriated to a city
24 of the metropolitan class under this subsection shall be equally
25 distributed to areas with a high concentration of poverty to (i)

1 showcase important historical aspects of such areas or (ii) assist
2 with the reduction of street and gang violence in such areas.

3 (c) Each area with a high concentration of poverty that
4 has been distributed funds under subdivision (b) of this subsection
5 shall establish a development fund and form a committee which
6 shall identify and research potential projects and make final
7 determinations on the use of state sales tax revenue received for
8 such projects.

9 (d) A committee formed in subdivision (c) of this
10 subsection shall include the following three members:

11 (i) The member of the city council whose district
12 includes a majority of the census tracts which each contain a
13 percentage of persons below the poverty line of greater than thirty
14 percent, as determined by the most recent federal decennial census,
15 within the area with a high concentration of poverty;

16 (ii) The commissioner of the county whose district
17 includes a majority of the census tracts which each contain a
18 percentage of persons below the poverty line of greater than thirty
19 percent, as determined by the most recent federal decennial census,
20 within the area with a high concentration of poverty; and

21 (iii) A resident of the area with a high concentration of
22 poverty, appointed by the other two members of the committee.

23 (e) A committee formed in subdivision (c) of this
24 subsection shall solicit project ideas from the public and shall
25 hold a public hearing in the area with a high concentration

1 of poverty. Notice of a proposed hearing shall be provided in
2 accordance with the procedures for notice of a public hearing
3 pursuant to section 18-2115. The committee shall research potential
4 projects in its area and make the final determination regarding the
5 annual distribution of funding to such projects.

6 (f) For purposes of this subsection, an area with a high
7 concentration of poverty means an area within the corporate limits
8 of a city of the metropolitan class consisting of one or more
9 contiguous census tracts, as determined by the most recent federal
10 decennial census, which contain a percentage of persons below the
11 poverty line of greater than thirty percent, and all census tracts
12 contiguous to such tract or tracts, as determined by the most
13 recent federal decennial census.

14 (3) State assistance to the political subdivision shall
15 no longer be available upon the retirement of the bonds issued
16 to acquire, construct, improve, or equip the facility or any
17 subsequent bonds that refunded the original issue or when state
18 assistance reaches the amount determined under subdivision (2)(a)
19 of this section, whichever comes first.

20 (4) The remaining thirty percent of state sales tax
21 revenue collected by retailers and operators doing business at such
22 facilities on sales at such facilities, state sales tax revenue
23 collected on primary and secondary box office sales of admissions
24 to such facilities, and state sales tax revenue collected by
25 associated hotels, shall be appropriated by the Legislature to the

1 Local Civic, Cultural, and Convention Center Financing Fund.

2 (5) Any municipality that has applied for and received a
3 grant of assistance under the Local Civic, Cultural, and Convention
4 Center Financing Act may not receive state assistance under the
5 Convention Center Facility Financing Assistance Act.

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

8 28-101 Sections 28-101 to 28-1350 and sections 6, 20, and
9 21 of this act shall be known and may be cited as the Nebraska
10 Criminal Code.

11 Sec. 3. Section 28-111, Reissue Revised Statutes of
12 Nebraska, is amended to read:

13 28-111 Any person who commits one or more of the
14 following criminal offenses against a person or a person's
15 property because of the person's race, color, religion, ancestry,
16 national origin, gender, sexual orientation, age, or disability
17 or because of the person's association with a person of a
18 certain race, color, religion, ancestry, national origin, gender,
19 sexual orientation, age, or disability shall be punished by the
20 imposition of the next higher penalty classification than the
21 penalty classification prescribed for the criminal offense, unless
22 such criminal offense is already punishable as a Class IB felony
23 or higher classification: Manslaughter, section 28-305; assault
24 in the first degree, section 28-308; assault in the second
25 degree, section 28-309; assault in the third degree, section

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1 28-310; terroristic threats, section 28-311.01; stalking, section
2 28-311.03; kidnapping, section 28-313; false imprisonment in the
3 first degree, section 28-314; false imprisonment in the second
4 degree, section 28-315; sexual assault in the first degree,
5 section 28-319; sexual assault in the second or third degree,
6 section 28-320; sexual assault of a child, sections 28-319.01 and
7 28-320.01; arson in the first degree, section 28-502; arson in the
8 second degree, section 28-503; arson in the third degree, section
9 28-504; criminal mischief, section 28-519; unauthorized application
10 of graffiti, section 6 of this act; criminal trespass in the first
11 degree, section 28-520; or criminal trespass in the second degree,
12 section 28-521.

13 Sec. 4. Section 28-308, Reissue Revised Statutes of
14 Nebraska, is amended to read:

15 28-308 (1) A person commits the offense of assault in the
16 first degree if he or she intentionally or knowingly causes serious
17 bodily injury to another person.

18 (2) Assault in the first degree shall be a Class ~~III~~ II
19 felony.

20 Sec. 5. Section 28-309, Reissue Revised Statutes of
21 Nebraska, is amended to read:

22 28-309 (1) A person commits the offense of assault in the
23 second degree if he or she:

24 (a) Intentionally or knowingly causes bodily injury to
25 another person with a dangerous instrument;

1 (b) Recklessly causes serious bodily injury to another
2 person with a dangerous instrument; or

3 (c) While during confinement or in legal custody of
4 the Department of Correctional Services or in any county jail,
5 unlawfully strikes or wounds another.

6 (2) Assault in the second degree shall be a Class IIIA
7 III felony.

8 Sec. 6. (1) Any person who knowingly and intentionally
9 applies graffiti of any type on any building, public or private,
10 or any other tangible property owned by any person, firm, or
11 corporation or any public entity or instrumentality, without the
12 express permission of the owner or operator of the property,
13 commits the offense of unauthorized application of graffiti.

14 (2) Unauthorized application of graffiti is a Class III
15 misdemeanor for a first offense and a Class IV felony for a second
16 or subsequent offense.

17 (3) Upon conviction of an offense under this section, the
18 court may, in addition to any other punishment imposed, order the
19 defendant to clean up, repair, or replace the damaged property,
20 keep the defaced property or another specified property in the
21 community free of graffiti or other inscribed materials for up to
22 one year, or order a combination of restitution and labor.

23 (4) Upon conviction of an offense under this section, the
24 court may, in addition to any other punishment imposed, order the
25 defendant to undergo counseling.

1 (5) Upon conviction of an offense under this section, the
2 court may, in addition to any other punishment imposed, order the
3 suspension of the defendant's motor vehicle operator's license for
4 up to one year. A copy of an abstract of the court's conviction,
5 including an adjudication of a juvenile, shall be transmitted to
6 the director pursuant to sections 60-497.01 to 60-497.04.

7 (6) For purposes of this section, graffiti means any
8 letter, word, name, number, symbol, slogan, message, drawing,
9 picture, writing, or other mark of any kind visible to the public
10 that is drawn, painted, chiseled, scratched, or etched on a rock,
11 tree, wall, bridge, fence, gate, building, or other structure.
12 Graffiti does not include advertising or any other letter, word,
13 name, number, symbol, slogan, message, drawing, picture, writing,
14 or other mark of any kind lawfully placed on property by an owner
15 of the property, a tenant of the property, or an authorized agent
16 for such owner or tenant.

17 Sec. 7. Section 28-929, Reissue Revised Statutes of
18 Nebraska, is amended to read:

19 28-929 (1) A person commits the offense of assault on an
20 officer in the first degree if he or she intentionally or knowingly
21 causes serious bodily injury to a peace officer, a probation
22 officer, or an employee of the Department of Correctional Services
23 while such officer or employee is engaged in the performance of his
24 or her official duties.

25 (2) Assault on an officer in the first degree shall be a

1 Class ~~II~~ III felony.

2 Sec. 8. Section 28-930, Reissue Revised Statutes of
3 Nebraska, is amended to read:

4 28-930 (1) A person commits the offense of assault on an
5 officer in the second degree if he or she:

6 (a) Intentionally or knowingly causes bodily injury with
7 a dangerous instrument to a peace officer, a probation officer, or
8 an employee of the Department of Correctional Services while such
9 officer or employee is engaged in the performance of his or her
10 official duties; or

11 (b) Recklessly causes bodily injury with a dangerous
12 instrument to a peace officer, a probation officer, or an employee
13 of the Department of Correctional Services while such officer or
14 employee is engaged in the performance of his or her official
15 duties.

16 (2) Assault on an officer in the second degree shall be
17 a Class ~~III~~ II felony.

18 Sec. 9. Section 28-1201, Reissue Revised Statutes of
19 Nebraska, is amended to read:

20 28-1201 For purposes of sections 28-1201 to ~~28-1212~~,
21 28-1212.03 and section 20 of this act, unless the context otherwise
22 requires:

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

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

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

7 (3) (4) Juvenile shall mean ~~means~~ any person under the
8 age of eighteen years;

9 (4) (5) Knife shall mean ~~means~~ any dagger, dirk, knife,
10 or stiletto with a blade over three and one-half inches in length
11 or any other dangerous instrument capable of inflicting cutting,
12 stabbing, or tearing wounds;

13 (5) (6) Knuckles and brass or iron knuckles shall mean
14 ~~means~~ any instrument that consists of finger rings or guards made
15 of a hard substance and that is designed, made, or adapted for the
16 purpose of inflicting serious bodily injury or death by striking a
17 person with a fist enclosed in the knuckles;

18 (6) (7) Machine gun shall mean ~~means~~ any firearm,
19 whatever its size and usual designation, that shoots automatically
20 more than one shot, without manual reloading, by a single function
21 of the trigger;

22 (7) (8) Short rifle shall mean ~~means~~ a rifle having a
23 barrel less than sixteen inches long or an overall length of less
24 than twenty-six inches; and

25 (8) (9) Short shotgun shall mean ~~means~~ a shotgun having

1 a barrel or barrels less than eighteen inches long or an overall
2 length of less than twenty-six inches.

3 Sec. 10. Section 28-1202, Reissue Revised Statutes of
4 Nebraska, is amended to read:

5 28-1202 (1)(a) Except as otherwise provided in this
6 section, any person who carries a weapon or weapons concealed on or
7 about his or her person, such as a revolver, pistol, bowie knife,
8 dirk or knife with a dirk blade attachment, handgun, a knife, brass
9 or iron knuckles, or any other deadly weapon, commits the offense
10 of carrying a concealed weapon.

11 (b) It is an affirmative defense that the defendant was
12 engaged in any lawful business, calling, or employment at the time
13 he or she was carrying any weapon or weapons and the circumstances
14 in which such person was placed at the time were such as to justify
15 a prudent person in carrying the weapon or weapons for the defense
16 of his or her person, property, or family.

17 (2) This section does not apply to a person who is the
18 holder of a valid permit issued under the Concealed Handgun Permit
19 Act if the concealed weapon the defendant is carrying is a handgun.
20 as defined in section 69-2429.

21 (3) Carrying a concealed weapon is a Class I misdemeanor.

22 (4) In the case of a second or subsequent conviction
23 under this section, carrying a concealed weapon is a Class IV
24 felony.

25 Sec. 11. Section 28-1204, Reissue Revised Statutes of

1 Nebraska, is amended to read:

2 28-1204 (1) Any person under the age of eighteen
3 years who possesses a pistol, revolver, or any other form of
4 short-barreled hand firearm handgun commits the offense of unlawful
5 possession of a revolver. handgun.

6 (2) The provisions of this This section shall does
7 not apply to the issuance of such firearms handguns to members
8 of the armed forces of the United States, active or reserve,
9 National Guard of this state, or Reserve Officers Training Corps,
10 when on duty or training, or to the temporary loan of pistols,
11 revolvers, or any other form of short-barreled firearms handguns
12 for instruction under the immediate supervision of a parent or
13 guardian or adult instructor.

14 (3) Unlawful possession of a revolver handgun is a Class
15 III I misdemeanor.

16 Sec. 12. Section 28-1204.01, Reissue Revised Statutes of
17 Nebraska, is amended to read:

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

25 (2) This section shall does not apply to the transfer

1 of a firearm, other than the types specified in section 28-1204 a
2 handgun, to a juvenile:

3 (a) From a person related to such juvenile within the
4 second degree of consanguinity or affinity if the transfer of
5 physical possession of such firearm does not occur until such time
6 as express permission has been obtained from the juvenile's parent
7 or guardian;

8 (b) For a legitimate and lawful sporting purpose; or
9 (c) Who is under direct adult supervision in an
10 appropriate educational program.

11 (3) This section shall apply applies to the transfer
12 of any firearm described in section 28-1204, a handgun except as
13 specifically provided in subsection (2) of section 28-1204.

14 (4) Unlawful transfer of a firearm to a juvenile is a
15 Class ~~IV~~ III felony.

16 Sec. 13. Section 28-1204.04, Reissue Revised Statutes of
17 Nebraska, is amended to read:

18 28-1204.04 (1) Any person who possesses a firearm in a
19 school, on school grounds, in a school-owned vehicle, or at a
20 school-sponsored activity or athletic event shall be guilty of the
21 offense of unlawful possession of a firearm on school grounds.
22 Unlawful possession of a firearm on school grounds is a Class ~~II~~
23 misdemeanor. IV felony. This subsection shall not apply to (a)
24 the issuance of firearms to or possession by members of the armed
25 forces of the United States, active or reserve, National Guard of

1 this state, or Reserve Officers Training Corps or peace officers
2 or other duly authorized law enforcement officers when on duty
3 or training, (b) firearms which may lawfully be possessed by the
4 person receiving instruction, for instruction under the immediate
5 supervision of an adult instructor, or (c) firearms contained
6 within a private vehicle operated by a nonstudent adult which are
7 not loaded and (i) are encased or (ii) are in a locked firearm
8 rack that is on a motor vehicle. For purposes of this subsection,
9 encased shall mean enclosed in a case that is expressly made for
10 the purpose of containing a firearm and that is completely zipped,
11 snapped, buckled, tied, or otherwise fastened with no part of the
12 firearm exposed.

13 (2) Any firearm possessed in violation of subsection (1)
14 of this section in a school, on school grounds, in a school-owned
15 vehicle, or at a school-sponsored activity or athletic event shall
16 be confiscated without warrant by a peace officer or may be
17 confiscated without warrant by school administrative or teaching
18 personnel. Any firearm confiscated by school administrative or
19 teaching personnel shall be delivered to a peace officer as soon as
20 practicable.

21 (3) Any firearm confiscated by or given to a peace
22 officer pursuant to subsection (2) of this section shall be
23 declared a common nuisance and shall be held by the peace officer
24 prior to his or her delivery of the firearm to the property
25 division of the law enforcement agency which employs the peace

1 officer. The property division of such law enforcement agency shall
2 hold such firearm for as long as the firearm is needed as evidence.
3 After the firearm is no longer needed as evidence, it shall be
4 destroyed in such manner as the court may direct.

5 (4) Whenever a firearm is confiscated and held pursuant
6 to this section or section 28-1204.02, the peace officer who
7 received such firearm shall cause to be filed within ten days after
8 the confiscation a petition for destruction of such firearm. The
9 petition shall be filed in the district court of the county in
10 which the confiscation is made. The petition shall describe the
11 firearm held, state the name of the owner, if known, allege the
12 essential elements of the violation which caused the confiscation,
13 and conclude with a prayer for disposition and destruction in
14 such manner as the court may direct. At any time after the
15 confiscation of the firearm and prior to court disposition, the
16 owner of the firearm seized may petition the district court of
17 the county in which the confiscation was made for possession of
18 the firearm. The court shall release the firearm to such owner
19 only if the claim of ownership can reasonably be shown to be
20 true and either (a) the owner of the firearm can show that the
21 firearm was taken from his or her property or place of business
22 unlawfully or without the knowledge and consent of the owner and
23 that such property or place of business is different from that of
24 the person from whom the firearm was confiscated or (b) the owner
25 of the firearm is acquitted of the charge of unlawful possession

1 of a ~~revolver~~ handgun in violation of section 28-1204, unlawful
2 transfer of a firearm to a juvenile, or unlawful possession of a
3 firearm on school grounds. No firearm having significant antique
4 value or historical significance as determined by the Nebraska
5 State Historical Society shall be destroyed. If a firearm has
6 significant antique value or historical significance, it shall be
7 sold at auction and the proceeds deposited in the permanent school
8 fund. shall be remitted to the State Treasurer for distribution
9 in accordance with Article VII, section 5, of the Constitution of
10 Nebraska.

11 Sec. 14. Section 28-1205, Reissue Revised Statutes of
12 Nebraska, is amended to read:

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

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

22 (b) Use of a deadly weapon, which is a firearm, to
23 commit a felony is a Class ~~II~~ IC felony.

24 (2) (a) Any person who possesses a firearm, a knife, brass
25 or iron knuckles, or a destructive device during the commission of

1 any felony which may be prosecuted in a court of this state commits
2 the offense of possession of a deadly weapon during the commission
3 of a felony.

4 (b) Possession of a deadly weapon, other than a firearm,
5 during the commission of a felony is a Class III felony.

6 (c) Possession of a deadly weapon, which is a firearm,
7 during the commission of a felony is a Class II felony.

8 (3) The crimes defined in this section shall be treated
9 as separate and distinct offenses from the felony being committed,
10 and sentences imposed under this section shall be consecutive to
11 any other sentence imposed.

12 (4) Possession of a deadly weapon may be proved through
13 evidence demonstrating either actual or constructive possession of
14 a firearm, a knife, brass or iron knuckles, or a destructive device
15 during, immediately prior to, or immediately after the commission
16 of a felony.

17 (5) For purposes of this section:

18 (a) Destructive device has the same meaning as in section
19 28-1213; and

20 (b) Use of a deadly weapon includes the discharge,
21 employment, or visible display of any part of a firearm, a knife,
22 brass or iron knuckles, any other deadly weapon, or a destructive
23 device during, immediately prior to, or immediately after the
24 commission of a felony or communication to another indicating the
25 presence of a firearm, a knife, brass or iron knuckles, any other

1 deadly weapon, or a destructive device during, immediately prior
2 to, or immediately after the commission of a felony, regardless
3 of whether such firearm, knife, brass or iron knuckles, deadly
4 weapon, or destructive device was discharged, actively employed, or
5 displayed.

6 Sec. 15. Section 28-1206, Reissue Revised Statutes of
7 Nebraska, is amended to read:

8 28-1206 ~~(1)~~ (1) (a) Any person who possesses any a
9 firearm, a knife, or brass or iron knuckles and who has previously
10 been convicted of a felony, or who is a fugitive from justice,
11 or who is the subject of a current and validly issued domestic
12 violence protection order and is knowingly violating such order,
13 or (b) any person who possesses any firearm or brass or iron
14 knuckles and who has been convicted within the past seven years
15 of a misdemeanor crime of domestic violence, commits the offense
16 of possession of a deadly weapon by a felon or a fugitive from
17 justice. prohibited person.

18 (2) Such The felony conviction may have been had in any
19 court in the United States, the several states, territories, or
20 possessions, or the District of Columbia.

21 (3) (a) Possession of a deadly weapon ~~ether than a firearm~~
22 ~~by a felon or a fugitive from justicee is a Class IV which is not a~~
23 ~~firearm by a prohibited person is a Class III felony.~~

24 (b) Possession of a deadly weapon which is a firearm by a
25 ~~felon or a fugitive from justicee is a Class III prohibited person~~

1 is a Class ID felony for a first offense and a Class IB felony for
2 a second or subsequent offense.

3 (4) (a) (i) For purposes of this section, misdemeanor crime
4 of domestic violence means:

5 (A) (I) A crime that is classified as a misdemeanor under
6 the laws of the United States or the District of Columbia or the
7 laws of any state, territory, possession, or tribe;

8 (II) A crime that has, as an element, the use or
9 attempted use of physical force or the threatened use of a deadly
10 weapon; and

11 (III) A crime that is committed by another against his
12 or her spouse, his or her former spouse, a person with whom he or
13 she has a child in common whether or not they have been married or
14 lived together at any time, or a person with whom he or she is or
15 was involved in a dating relationship as defined in section 28-323;

16 or

17 (B) (I) Assault in the third degree under section
18 28-310, stalking under subsection (1) of section 28-311.04, false
19 imprisonment in the second degree under section 28-315, or first
20 offense domestic assault in the third degree under subsection (1)
21 of section 28-323 or any attempt or conspiracy to commit one of
22 these offenses; and

23 (II) The crime is committed by another against his or her
24 spouse, his or her former spouse, a person with whom he or she has
25 a child in common whether or not they have been married or lived

1 together at any time, or a person with whom he or she is or was
2 involved in a dating relationship as defined in section 28-323.

3 (ii) A person shall not be considered to have been
4 convicted of a misdemeanor crime of domestic violence unless:

5 (A) The person was represented by counsel in the case
6 or knowingly and intelligently waived the right to counsel in the
7 case; and

8 (B) In the case of a prosecution for a misdemeanor crime
9 of domestic violence for which a person was entitled to a jury
10 trial in the jurisdiction in which the case was tried, either:

11 (I) The case was tried to a jury; or
12 (II) The person knowingly and intelligently waived the
13 right to have the case tried to a jury.

14 (b) For purposes of this section, subject of a current
15 and validly issued domestic violence protection order pertains to
16 a current court order that was validly issued pursuant to section
17 28-311.09 or 42-924 or that meets or exceeds the criteria set forth
18 in section 28-311.10 regarding protection orders issued by a court
19 in another state, territory, possession, or tribe.

20 Sec. 16. Section 28-1207, Reissue Revised Statutes of
21 Nebraska, is amended to read:

22 28-1207 (1) Any person who knowingly possesses, receives,
23 sells, or leases, other than by delivery to law enforcement
24 officials, any firearm from which the manufacturer's identification
25 mark or serial number has been removed, defaced, altered, or

1 destroyed, commits the offense of possession of a defaced firearm.

2 (2) Possession of a defaced firearm is a Class ~~IV~~ III
3 felony.

4 Sec. 17. Section 28-1208, Reissue Revised Statutes of
5 Nebraska, is amended to read:

6 28-1208 (1) Any person who intentionally removes,
7 defaces, covers, alters, or destroys the manufacturer's
8 identification mark or serial number or other distinguishing
9 numbers on any firearm commits the offense of defacing a firearm.

10 (2) Defacing a firearm is a Class ~~IV~~ III felony.

11 Sec. 18. Section 28-1212.02, Reissue Revised Statutes of
12 Nebraska, is amended to read:

13 28-1212.02 Any person who unlawfully and intentionally
14 discharges a firearm at an inhabited dwelling house, occupied
15 building, occupied motor vehicle, occupied aircraft, inhabited
16 motor home as defined in section 71-4603, or inhabited camper unit
17 as defined in section 60-1801 shall be guilty of a Class ~~III~~ ID
18 felony.

19 Sec. 19. Section 28-1212.03, Reissue Revised Statutes of
20 Nebraska, is amended to read:

21 28-1212.03 Any person who possesses, receives, retains,
22 or disposes of a stolen firearm knowing that it has been or
23 believing that it has been stolen shall be guilty of a Class ~~IV~~
24 III felony unless the firearm is possessed, received, retained, or
25 disposed of with intent to restore it to the owner.

1 Sec. 20. Any person, within the territorial boundaries
2 of any city, incorporated village, or county containing a city of
3 the metropolitan class or primary class, who unlawfully, knowingly,
4 and intentionally or recklessly discharges a firearm, while in or
5 in the proximity of any motor vehicle that such person has just
6 exited, at or in the general direction of any person, dwelling,
7 building, structure, occupied motor vehicle, occupied aircraft,
8 inhabited motor home as defined in section 71-4603, or inhabited
9 camper unit as defined in section 60-1801, is guilty of a Class IC
10 felony.

11 Sec. 21. (1) A person commits the offense of unlawful
12 membership recruitment into an organization or association when he
13 or she knowingly and intentionally coerces, intimidates, threatens,
14 or inflicts bodily harm upon another person in order to entice
15 that other person to join or prevent that other person from
16 leaving any organization, group, enterprise, or association whose
17 members, individually or collectively, engage in or have engaged
18 in any of the following criminal acts for the benefit of, at the
19 direction of, or on behalf of the organization, group, enterprise,
20 or association or any of its members:

- 21 (a) Robbery under section 28-324;
22 (b) Arson in the first, second, or third degree under
23 section 28-502, 28-503, or 28-504, respectively;
24 (c) Burglary under section 28-507;
25 (d) Murder in the first degree, murder in the second

1 degree, or manslaughter under section 28-303, 28-304, or 28-305,
2 respectively;

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

6 (f) Unlawful use, possession, or discharge of a firearm
7 or other deadly weapon under sections 28-1201 to 28-1212.03 and
8 section 20 of this act;

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

11 (h) Assault on an officer in the first, second, or
12 third degree under section 28-929, 28-930, or 28-931, respectively,
13 or assault on an officer using a motor vehicle under section
14 28-931.01;

15 (i) Theft by unlawful taking or disposition under section
16 28-511;

17 (j) Theft by receiving stolen property under section
18 28-517;

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

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

21 (m) Kidnapping under section 28-313;

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

23 (o) Criminal impersonation under section 28-608;

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

1 (q) Unauthorized use of a financial transaction device or
2 criminal possession of a financial transaction device under section
3 28-620 or 28-621, respectively;
4 (r) Pandering under section 28-802;
5 (s) Bribery, bribery of a witness, or bribery of a juror
6 under section 28-917, 28-918, or 28-920, respectively;
7 (t) Tampering with a witness or an informant or jury
8 tampering under section 28-919;
9 (u) Unauthorized application of graffiti under section 6
10 of this act;
11 (v) Dogfighting, cockfighting, bearbaiting, or pitting an
12 animal against another under section 28-1005; or
13 (w) Promoting gambling in the first degree under section
14 28-1102.

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

17 Sec. 22. Section 29-401, Reissue Revised Statutes of
18 Nebraska, is amended to read:

19 29-401 Every sheriff, deputy sheriff, marshal, deputy
20 marshal, security guard, police officer, or peace officer as
21 defined in subdivision (15) of section 49-801 shall arrest and
22 detain any person found violating any law of this state or any
23 legal ordinance of any city or incorporated village until a legal
24 warrant can be obtained, except that (1) any such law enforcement
25 officer taking a juvenile under the age of eighteen years into his

1 or her custody for any violation herein defined shall proceed as
2 set forth in sections 43-248, 43-248.01, 43-250, 43-251, 43-251.01,
3 and 43-253 and (2) the court in which the juvenile is to appear
4 shall not accept a plea from the juvenile until finding that the
5 parents of the juvenile have been notified or that reasonable
6 efforts to notify such parents have been made as provided in
7 section 43-253.

8 Sec. 23. Section 29-901, Reissue Revised Statutes of
9 Nebraska, is amended to read:

10 29-901 Any bailable defendant shall be ordered released
11 from custody pending judgment on his or her personal recognizance
12 unless the judge determines in the exercise of his or her
13 discretion that such a release will not reasonably assure the
14 appearance of the defendant as required or that such a release
15 could jeopardize the safety and maintenance of evidence or
16 victims, witnesses, or other persons in the community. When such
17 determination is made, the judge shall either in lieu of or in
18 addition to such a release impose the first of the following
19 conditions of release which will reasonably assure the appearance
20 of the person for trial or, if no single condition gives that
21 assurance, any combination of the following conditions:

22 (1) Place the defendant in the custody of a designated
23 person or organization agreeing to supervise the defendant;
24 (2) Place restrictions on the travel, association, or
25 place of abode of the defendant during the period of such release;

1 (3) Require, at the option of any bailable defendant,
2 either of the following:

3 (a) The execution of an appearance bond in a specified
4 amount and the deposit with the clerk of the court in cash of a
5 sum not to exceed ten percent of the amount of the bond, ninety
6 percent of such deposit to be returned to the defendant upon the
7 performance of the appearance or appearances and ten percent to be
8 retained by the clerk as appearance bond costs, except that when
9 no charge is subsequently filed against the defendant or if the
10 charge or charges which are filed are dropped before the appearance
11 of the defendant which the bond was to assure, the entire deposit
12 shall be returned to the defendant. If the bond is subsequently
13 reduced by the court after the original bond has been posted, no
14 additional appearance bond costs shall be retained by the clerk.
15 The difference in the appearance bond costs between the original
16 bond and the reduced bond shall be returned to the defendant.
17 In no event shall the deposit be less than twenty-five dollars.
18 Whenever jurisdiction is transferred from a court requiring an
19 appearance bond under this subdivision to another state court, the
20 transferring court shall transfer the ninety percent of the deposit
21 remaining after the appearance bond costs have been retained. No
22 further costs shall be levied or collected by the court acquiring
23 jurisdiction; or
24 (b) The execution of a bail bond with such surety or
25 sureties as shall seem proper to the judge or, in lieu of such

1 surety or sureties, at the option of such person, a cash deposit
2 of such sum so fixed, conditioned for his or her appearance before
3 the proper court, to answer the offense with which he or she may be
4 charged and to appear at such times thereafter as may be ordered
5 by the proper court. The cash deposit shall be returned to the
6 defendant upon the performance of all appearances.

7 If the amount of bail is deemed insufficient by the
8 court before which the offense is pending, the court may order
9 an increase of such bail and the defendant shall provide the
10 additional undertaking, written or cash, to secure his or her
11 release. All recognizances in criminal cases shall be in writing
12 and be continuous from term to term until final judgment of the
13 court in such cases and shall also extend, when the court has
14 suspended execution of sentence for a limited time, as provided
15 in section 29-2202, or, when the court has suspended execution of
16 sentence to enable the defendant to apply for a writ of error
17 to the Supreme Court or Court of Appeals, as provided in section
18 29-2301, until the period of suspension has expired. When two or
19 more indictments or informations are returned against the same
20 person at the same term of court, the recognizance given may be
21 made to include all offenses charged therein. Each surety on such
22 recognizance shall be required to justify under oath in a sum
23 twice the amount of such recognizance and give the description
24 of real estate owned by him or her of a value above encumbrance
25 equal to the amount of such justification and shall name all other

1 cases pending in which he or she is a surety. No one shall be
2 accepted as surety on recognizance aggregating a sum in excess of
3 his or her equity in the real estate, but such recognizance shall
4 not constitute a lien on the real estate described therein until
5 judgment is entered thereon against such surety; or

6 (4) Impose any other condition deemed reasonably
7 necessary to assure appearances as required, including a condition
8 requiring that the defendant return to custody after specified
9 hours.

10 Sec. 24. Section 29-901.01, Reissue Revised Statutes of
11 Nebraska, is amended to read:

12 29-901.01 In determining which condition or conditions of
13 release shall reasonably assure appearance and deter possible
14 threats to the safety and maintenance of evidence, victims,
15 witnesses, or other persons in the community, the judge shall,
16 on the basis of available information, take into account the
17 nature and circumstances of the offense charged, including any
18 information to indicate that the defendant might engage in
19 additional criminal activity or pose a threat to himself or
20 herself, yet to be collected evidence, alleged victims, potential
21 witnesses, or members of the general public, the defendant's
22 family ties, employment, financial resources, character and mental
23 condition, the length of his the defendant's residence in the
24 community, his the defendant's record of convictions, and his the
25 defendant's record of appearances at court proceedings or of flight

1 to avoid prosecution or of failure to appear at court proceedings.

2 Sec. 25. Section 29-1912, Reissue Revised Statutes of
3 Nebraska, is amended to read:

4 29-1912 (1) When a defendant is charged with a felony or
5 when a defendant is charged with a misdemeanor or a violation of
6 a city or village ordinance for which imprisonment is a possible
7 penalty, he or she may request the court where the case is to be
8 tried, at any time after the filing of the indictment, information,
9 or complaint, to order the prosecuting attorney to permit the
10 defendant to inspect and copy or photograph:

11 (a) The defendant's statement, if any. For purposes of
12 this subdivision, statement shall mean means a written statement
13 made by the defendant and signed or otherwise adopted or approved
14 by him or her, or a stenographic, mechanical, electrical, or other
15 recording, or a transcription thereof, which is a substantially
16 verbatim recital of an oral statement made by the defendant to
17 an agent of the prosecution, state, or political subdivision
18 thereof, and recorded contemporaneously with the making of such
19 oral statement;

20 (b) The defendant's prior criminal record, if any;

21 (c) The defendant's recorded testimony before a grand
22 jury;

23 (d) The names and addresses of witnesses on whose
24 evidence the charge is based;

25 (e) The results and reports of physical or mental

1 examinations, and of scientific tests, or experiments made in
2 connection with the particular case, or copies thereof; and

3 (f) Documents, papers, books, accounts, letters,
4 photographs, objects, or other tangible things of whatsoever kind
5 or nature which could be used as evidence by the prosecuting
6 authority:-

7 (g) The known criminal history of a jailhouse witness;

8 (h) Any deal, promise, inducement, or benefit that
9 the prosecuting attorney or any person acting on behalf of the
10 prosecuting attorney has knowingly made or may make in the future
11 to the jailhouse witness;

12 (i) The specific statements allegedly made by the
13 defendant against whom the jailhouse witness will testify and the
14 time, place, and manner of the defendant's disclosures;

15 (j) The case name and jurisdiction of any criminal cases
16 known to the prosecuting attorney in which a jailhouse witness
17 testified about statements made by another criminal defendant that
18 were disclosed to the jailhouse witness while he or she was a
19 jailhouse witness and whether the jailhouse witness received any
20 deal, promise, inducement, or benefit in exchange for or subsequent
21 to such testimony; and

22 (k) Any occasion known to the prosecuting attorney in
23 which the jailhouse witness recanted testimony about statements
24 made by another criminal defendant that were disclosed to the
25 jailhouse witness while he or she was a jailhouse witness and, if

1 any are known, a transcript or copy of such recantation.

2 (2) The court may issue such an order pursuant to
3 the provisions of this section. In the exercise of its judicial
4 discretion, the court shall consider among other things whether:

5 (a) The request is material to the preparation of the
6 defense;

7 (b) The request is not made primarily for the purpose of
8 harassing the prosecution or its witnesses;

9 (c) The request, if granted, would not unreasonably delay
10 the trial of the offense and an earlier request by the defendant
11 could not have reasonably been made;

12 (d) There is no substantial likelihood that the request,
13 if granted, would preclude a just determination of the issues at
14 the trial of the offense; or

15 (e) The request, if granted, would not result in the
16 possibility of bodily harm to, or coercion of, witnesses.

17 (3) Whenever the court refuses to grant an order pursuant
18 to the provisions of this section, it shall render its findings in
19 writing together with the facts upon which the findings are based.

20 (4) Whenever the prosecuting attorney believes that the
21 granting of an order under the provisions of this section will
22 result in the possibility of bodily harm to witnesses or that
23 witnesses will be coerced, the court may permit him or her to make
24 such a showing in the form of a written statement to be inspected
25 by the court alone. The statement shall be sealed and preserved

1 in the records of the court to be made available to the appellate
2 court in the event of an appeal by the defendant.

3 (5) For purposes of subdivisions (1) (g) through (k) of
4 this section, jailhouse witness means a person in the physical
5 custody of any jail or correctional institution as (a) an accused
6 defendant, (b) a convicted defendant awaiting sentencing, or (c)
7 a convicted defendant serving a jail sentence, at the time the
8 statements the jailhouse witness will testify about were disclosed.

9 Sec. 26. Section 29-2320, Reissue Revised Statutes of
10 Nebraska, is amended to read:

11 29-2320 Whenever a defendant is found guilty of a felony
12 following a trial or the entry of a plea of guilty or tendering a
13 plea of nolo contendere, the prosecuting attorney charged with the
14 prosecution of such defendant or the Attorney General may appeal
15 the sentence imposed if such attorney reasonably believes, there is
16 a reasonable belief, based on all of the facts and circumstances of
17 the particular case, that the sentence is excessively lenient.

18 Sec. 27. Section 29-2321, Reissue Revised Statutes of
19 Nebraska, is amended to read:

20 29-2321 (1) Appeals under section 29-2320 sections
21 29-2320 to 29-2325 shall be taken, by either the Attorney General
22 or the prosecuting attorney, as follows:

23 (a) If the appeal is filed by the Attorney General, a
24 notice of appeal shall be filed in the district court within twenty
25 days after imposition of the sentence. A copy of the notice of

1 appeal shall be sent to either the defendant or counsel for the
2 defendant; or

3 (1) Within ten days of the (b) If the prosecuting
4 attorney wishes to file the appeal, he or she, within ten days
5 after imposition of the sentence, the prosecuting attorney shall
6 request the approval of from the Attorney General to proceed with
7 such the appeal. A copy of such the request for approval shall be
8 sent to the defendant or counsel for the defendant.+

9 (2) If the Attorney General approves the request
10 described in subdivision (1) (b) of this section, the
11 prosecuting attorney shall file a notice of appeal indicating such
12 approval in the district court. Such notice of appeal must be filed
13 within twenty days of the imposition of sentence. A copy of the
14 notice of appeal shall be sent to the defendant or counsel for the
15 defendant.+

16 (3) If the Attorney General does not approve the request
17 described in subdivision (1) (b) of this section, an appeal
18 under sections 29-2320 to 29-2325 shall not be permitted. and

19 (4) In addition to such notice of appeal, the docket fee
20 required by section 33-103 shall be deposited with the clerk of the
21 district court.

22 (5) Upon compliance with the requirements of this
23 section, the appeal shall proceed as provided by law for appeals to
24 the Court of Appeals.

25 Sec. 28. Section 43-245, Reissue Revised Statutes of

1 Nebraska, is amended to read:

2 43-245 For purposes of the Nebraska Juvenile Code, unless
3 the context otherwise requires:

4 (1) Age of majority means nineteen years of age;

5 (2) Approved center means a center that has applied for
6 and received approval from the Director of the Office of Dispute
7 Resolution under section 25-2909;

8 (3) Cost or costs means (a) the sum or equivalent
9 expended, paid, or charged for goods or services, or expenses
10 incurred, or (b) the contracted or negotiated price;

11 (4) Criminal street gang means a group of three or more
12 people with a common identifying name, sign, or symbol whose group
13 identity or purposes include engaging in illegal activities;

14 (5) Criminal street gang member means a person who
15 willingly or voluntarily becomes and remains a member of a criminal
16 street gang;

17 (4) (6) Juvenile means any person under the age of
18 eighteen;

19 (5) (7) Juvenile court means the separate juvenile court
20 where it has been established pursuant to sections 43-2,111 to
21 43-2,127 and the county court sitting as a juvenile court in all
22 other counties. Nothing in the Nebraska Juvenile Code shall be
23 construed to deprive the district courts of their habeas corpus,
24 common-law, or chancery jurisdiction or the county courts and
25 district courts of jurisdiction of domestic relations matters as

1 defined in section 25-2740;

2 (6) (8) Juvenile detention facility has the same meaning
3 as in section 83-4,125;

4 (7) (9) Mediator for juvenile offender and victim
5 mediation means a person who (a) has completed at least thirty
6 hours of training in conflict resolution techniques, neutrality,
7 agreement writing, and ethics set forth in section 25-2913, (b) has
8 an additional eight hours of juvenile offender and victim mediation
9 training, and (c) meets the apprenticeship requirements set forth
10 in section 25-2913;

11 (8) (10) Mental health facility means a treatment
12 facility as defined in section 71-914 or a government, private, or
13 state hospital which treats mental illness;

14 (9) (11) Nonoffender means a juvenile who is subject
15 to the jurisdiction of the juvenile court for reasons other
16 than legally prohibited conduct, including, but not limited to,
17 juveniles described in subdivision (3)(a) of section 43-247;

18 (10) (12) Nonsecure detention means detention
19 characterized by the absence of restrictive hardware, construction,
20 and procedure. Nonsecure detention services may include a range
21 of placement and supervision options, such as home detention,
22 electronic monitoring, day reporting, drug court, tracking and
23 monitoring supervision, staff secure and temporary holdover
24 facilities, and group homes;

25 (11) (13) Parent means one or both parents or a

1 stepparent when such stepparent is married to the custodial parent
2 as of the filing of the petition;

3 (12) (14) Parties means the juvenile as described in
4 section 43-247 and his or her parent, guardian, or custodian;

5 (13) (15) Except in proceedings under the Nebraska Indian
6 Child Welfare Act, relative means father, mother, grandfather,
7 grandmother, brother, sister, stepfather, stepmother, stepbrother,
8 stepsister, uncle, aunt, first cousin, nephew, or niece;

9 (14) (16) Secure detention means detention in a highly
10 structured, residential, hardware-secured facility designed to
11 restrict a juvenile's movement;

12 (15) (17) Status offender means a juvenile who has been
13 charged with or adjudicated for conduct which would not be a crime
14 if committed by an adult, including, but not limited to, juveniles
15 charged under subdivision (3)(b) of section 43-247 and sections
16 53-180.01 and 53-180.02; and

17 (16) (18) Traffic offense means any nonfelonious act in
18 violation of a law or ordinance regulating vehicular or pedestrian
19 travel, whether designated a misdemeanor or a traffic infraction.

20 Sec. 29. Section 43-250, Reissue Revised Statutes of
21 Nebraska, is amended to read:

22 43-250 A peace officer who takes a juvenile into
23 temporary custody under section 29-401 or 43-248 or pursuant
24 to a legal warrant of arrest shall immediately take reasonable
25 measures to notify the juvenile's parent, guardian, custodian, or

1 relative and shall proceed as follows:

2 (1) The peace officer shall release such juvenile;

3 (2) The peace officer shall prepare in triplicate a
4 written notice requiring the juvenile to appear before the juvenile
5 court of the county in which such juvenile was taken into custody
6 at a time and place specified in the notice or at the call of the
7 court. The notice shall also contain a concise statement of the
8 reasons such juvenile was taken into custody. The peace officer
9 shall deliver one copy of the notice to such juvenile and require
10 such juvenile or his or her parent, guardian, other custodian,
11 or relative, or both, to sign a written promise that such signer
12 will appear at the time and place designated in the notice. Upon
13 the execution of the promise to appear, the peace officer shall
14 immediately release such juvenile. The peace officer shall, as
15 soon as practicable, file one copy of the notice with the county
16 attorney and, when required by the juvenile court, also file a copy
17 of the notice with the juvenile court or the officer appointed by
18 the court for such purpose;

19 (3) While retaining temporary custody, the peace officer
20 shall communicate all relevant available information regarding such
21 juvenile to the probation officer and shall deliver the juvenile,
22 if necessary, to the probation officer. The probation officer shall
23 determine the need for detention of the juvenile as provided in
24 section 43-260.01. Upon determining that the juvenile should be
25 placed in a secure or nonsecure placement and securing placement

1 in such secure or nonsecure setting by the probation officer, the
2 peace officer shall implement the probation officer's decision to
3 release or to detain and place the juvenile. When secure detention
4 of a juvenile is necessary, such detention shall occur within a
5 juvenile detention facility except:

6 (a) When a juvenile described in subdivision (1) or
7 (2) of section 43-247, except for a status offender, is taken
8 into temporary custody within a metropolitan statistical area and
9 where no juvenile detention facility is reasonably available, the
10 juvenile may be delivered, for temporary custody not to exceed
11 six hours, to a secure area of a jail or other facility intended
12 or used for the detention of adults solely for the purposes of
13 identifying the juvenile and ascertaining his or her health and
14 well-being and for safekeeping while awaiting transport to an
15 appropriate juvenile placement or release to a responsible party;

16 (b) When a juvenile described in subdivision (1) or (2)
17 of section 43-247, except for a status offender, is taken into
18 temporary custody outside of a metropolitan statistical area and
19 where no juvenile detention facility is reasonably available, the
20 juvenile may be delivered, for temporary custody not to exceed
21 twenty-four hours excluding nonjudicial days and while awaiting an
22 initial court appearance, to a secure area of a jail or other
23 facility intended or used for the detention of adults solely for
24 the purposes of identifying the juvenile and ascertaining his
25 or her health and well-being and for safekeeping while awaiting

1 transport to an appropriate juvenile placement or release to a
2 responsible party;

3 (c) Whenever a juvenile is held in a secure area of
4 any jail or other facility intended or used for the detention
5 of adults, there shall be no verbal, visual, or physical contact
6 between the juvenile and any incarcerated adult and there shall be
7 adequate staff to supervise and monitor the juvenile's activities
8 at all times. This subdivision shall not apply to a juvenile
9 charged with a felony as an adult in county or district court if he
10 or she is sixteen years of age or older;

11 (d) If a juvenile is under sixteen years of age or is a
12 juvenile as described in subdivision (3) of section 43-247, he or
13 she shall not be placed within a secure area of a jail or other
14 facility intended or used for the detention of adults;

15 (e) If, within the time limits specified in subdivision
16 (3)(a) or (3)(b) of this section, a felony charge is filed against
17 the juvenile as an adult in county or district court, he or she may
18 be securely held in a jail or other facility intended or used for
19 the detention of adults beyond the specified time limits;

20 (f) A status offender or nonoffender taken into temporary
21 custody shall not be held in a secure area of a jail or other
22 facility intended or used for the detention of adults. A status
23 offender accused of violating a valid court order may be securely
24 detained in a juvenile detention facility longer than twenty-four
25 hours if he or she is afforded a detention hearing before a

1 court within twenty-four hours, excluding nonjudicial days, and if,
2 prior to a dispositional commitment to secure placement, a public
3 agency, other than a court or law enforcement agency, is afforded
4 an opportunity to review the juvenile's behavior and possible
5 alternatives to secure placement and has submitted a written report
6 to the court; and

7 (g) A juvenile described in subdivision (1) or (2) of
8 section 43-247, except for a status offender, may be held in a
9 secure area of a jail or other facility intended or used for the
10 detention of adults for up to six hours before and six hours after
11 any court appearance;

12 (4) When a juvenile is taken into temporary custody
13 pursuant to subdivision (3) of section 43-248, the peace officer
14 shall deliver the custody of such juvenile to the Department of
15 Health and Human Services which shall make a temporary placement of
16 the juvenile in the least restrictive environment consistent with
17 the best interests of the juvenile as determined by the department.
18 The department shall supervise such placement and, if necessary,
19 consent to any necessary emergency medical, psychological, or
20 psychiatric treatment for such juvenile. The department shall have
21 no other authority with regard to such temporary custody until or
22 unless there is an order by the court placing the juvenile in the
23 custody of the department. If the peace officer delivers temporary
24 custody of the juvenile pursuant to this subdivision, the peace
25 officer shall make a full written report to the county attorney

1 within twenty-four hours of taking such juvenile into temporary
2 custody. If a court order of temporary custody is not issued
3 within forty-eight hours of taking the juvenile into custody,
4 the temporary custody by the department shall terminate and the
5 juvenile shall be returned to the custody of his or her parent,
6 guardian, custodian, or relative; or

7 (5) If the peace officer takes the juvenile into
8 temporary custody pursuant to subdivision (4) of section 43-248,
9 the peace officer may place the juvenile at a mental health
10 facility for evaluation and emergency treatment or may deliver
11 the juvenile to the Department of Health and Human Services as
12 provided in subdivision (4) of this section. At the time of the
13 admission or turning the juvenile over to the department, the
14 peace officer responsible for taking the juvenile into custody
15 shall execute a written certificate as prescribed by the Department
16 of Health and Human Services which will indicate that the peace
17 officer believes the juvenile to be mentally ill and dangerous,
18 a summary of the subject's behavior supporting such allegations,
19 and that the harm described in section 71-908 is likely to occur
20 before proceedings before a juvenile court may be invoked to
21 obtain custody of the juvenile. A copy of the certificate shall be
22 forwarded to the county attorney. The peace officer shall notify
23 the juvenile's parents, guardian, custodian, or relative of the
24 juvenile's placement; or-

25 (6) Beginning July 1, 2010, a juvenile taken into custody

1 pursuant to a legal warrant of arrest shall be delivered to the
2 probation officer who shall determine the need for detention of
3 the juvenile as provided in section 43-260.01. If detention is
4 not required, the juvenile may be released without bond if such
5 release is in the best interests of the juvenile, the safety of the
6 community is not at risk, and the court that issued the warrant is
7 notified that the juvenile has been taken into custody.

8 In determining the appropriate temporary placement of a
9 juvenile under this section, the peace officer shall select the
10 placement which is least restrictive of the juvenile's freedom so
11 long as such placement is compatible with the best interests of the
12 juvenile and the safety of the community.

13 Sec. 30. Section 43-276, Reissue Revised Statutes of
14 Nebraska, is amended to read:

15 43-276 In cases coming within subdivision (1) of section
16 43-247, when there is concurrent jurisdiction, or subdivision
17 (2) or (4) of section 43-247, when the juvenile is under the
18 age of sixteen years, the county attorney shall, in making
19 the determination whether to file a criminal charge, file a
20 juvenile court petition, offer juvenile pretrial diversion, or
21 offer mediation, consider: (1) The type of treatment such juvenile
22 would most likely be amenable to; (2) whether there is evidence
23 that the alleged offense included violence or was committed in
24 an aggressive and premeditated manner; (3) the motivation for the
25 commission of the offense; (4) the age of the juvenile and the ages

1 and circumstances of any others involved in the offense; (5) the
2 previous history of the juvenile, including whether he or she had
3 been convicted of any previous offenses or adjudicated in juvenile
4 court, and, if so, whether such offenses were crimes against the
5 person or relating to property, and other previous history of
6 antisocial behavior, if any, including any patterns of physical
7 violence; (6) the sophistication and maturity of the juvenile as
8 determined by consideration of his or her home, school activities,
9 emotional attitude and desire to be treated as an adult, pattern
10 of living, and whether he or she has had previous contact with law
11 enforcement agencies and courts and the nature thereof; (7) whether
12 there are facilities particularly available to the juvenile court
13 for treatment and rehabilitation of the juvenile; (8) whether the
14 best interests of the juvenile and the security of the public may
15 require that the juvenile continue in secure detention or under
16 supervision for a period extending beyond his or her minority and,
17 if so, the available alternatives best suited to this purpose;
18 (9) whether the victim agrees to participate in mediation; (10)
19 whether there is a juvenile pretrial diversion program established
20 pursuant to sections 43-260.02 to 43-260.07; (11) whether the
21 juvenile has been convicted of or has acknowledged unauthorized use
22 or possession of a firearm; (12) whether a juvenile court order has
23 been issued for the juvenile pursuant to section 43-2,106.03; (13)
24 whether the juvenile is a criminal street gang member; and (13)
25 (14) such other matters as the county attorney deems relevant to

1 his or her decision.

2 Sec. 31. Section 47-632, Revised Statutes Cumulative
3 Supplement, 2008, is amended to read:

4 47-632 (1) The Community Corrections Uniform Data
5 Analysis Cash Fund is created. The Except as provided in
6 subsection (2) of this section, the fund shall be established for
7 administrative purposes only within the Nebraska Commission on Law
8 Enforcement and Criminal Justice, and shall be administered by
9 the executive director of the Community Corrections Council, and
10 - The fund shall consist of money collected pursuant to section
11 47-633. The fund shall only be used to support operations costs
12 and analysis relating to the implementation and coordination of
13 the uniform analysis of crime data pursuant to the Community
14 Corrections Act, including associated information technology
15 projects, as specifically approved by the executive director of
16 the Community Corrections Council. The fund shall consist of money
17 collected pursuant to section 47-633.

18 (2) On the effective date of this act, the State
19 Treasurer shall transfer three hundred fifty thousand dollars
20 from the Community Corrections Uniform Data Analysis Cash Fund to
21 the Violence Prevention Cash Fund.

22 (3) Any money in the fund Community Corrections Uniform
23 Data Analysis Cash Fund available for investment shall be invested
24 by the state investment officer pursuant to the Nebraska Capital
25 Expansion Act and the Nebraska State Funds Investment Act.

1 Sec. 32. Section 60-497.01, Revised Statutes Cumulative
2 Supplement, 2008, is amended to read:

3 60-497.01 (1) An abstract of the court record of every
4 case in which a person is convicted of violating any provision of
5 the Motor Vehicle Operator's License Act, the Motor Vehicle Safety
6 Responsibility Act, or the Nebraska Rules of the Road, or section
7 6 of this act, as from time to time amended by the Legislature,
8 or any traffic regulations in city or village ordinances shall be
9 transmitted within thirty days of sentencing or other disposition
10 by the court to the director. Any abstract received by the director
11 more than thirty days after the date of sentencing or other
12 disposition shall be reported by the director to the State Court
13 Administrator.

14 (2) Any person violating section 28-306, 60-696, 60-697,
15 60-6,196, 60-6,197, 60-6,213, or 60-6,214 who is placed on
16 probation shall be assessed the same points under section 60-4,182
17 as if such person were not placed on probation unless a court has
18 ordered that such person must obtain an ignition interlock permit
19 in order to operate a motor vehicle with an ignition interlock
20 device pursuant to section 60-6,211.05 and sufficient evidence is
21 presented to the department that such a device is installed. For
22 any other violation, the director shall not assess such person
23 with any points under section 60-4,182 for such violation when
24 the person is placed on probation until the director is advised
25 by the court that such person previously placed on probation has

1 violated the terms of his or her probation and such probation has
2 been revoked. Upon receiving notice of revocation of probation,
3 the director shall assess to such person the points which such
4 person would have been assessed had the person not been placed on
5 probation. When a person fails to successfully complete probation,
6 the court shall notify the director immediately.

7 Sec. 33. Section 69-2404, Revised Statutes Cumulative
8 Supplement, 2008, is amended to read:

9 69-2404 Any person desiring to purchase, lease, rent,
10 or receive transfer of a handgun shall apply with the chief of
11 police or sheriff of the applicant's place of residence for a
12 certificate. The application may be made in person or by mail.
13 The application form and certificate shall be made on forms
14 approved by the Superintendent of Law Enforcement and Public
15 Safety. The application shall include the applicant's full name,
16 ~~social security number~~, address, date of birth, and country of
17 citizenship. If the applicant is not a United States citizen, the
18 application shall include the applicant's place of birth and his
19 or her alien or admission number. If the application is made in
20 person, the applicant shall also present a current Nebraska motor
21 vehicle operator's license, state identification card, or military
22 identification card, or if the application is made by mail, the
23 application form shall describe the license or card used for
24 identification and be notarized by a notary public who has verified
25 the identification of the applicant through such a license or card.

1 An applicant shall receive a certificate if he or she is twenty-one
2 years of age or older and is not prohibited from purchasing or
3 possessing a handgun by 18 U.S.C. 922. A fee of five dollars shall
4 be charged for each application for a certificate to cover the cost
5 of a criminal history record check.

6 Sec. 34. Section 69-2407, Revised Statutes of
7 Nebraska, is amended to read:

8 69-2407 A certificate issued in accordance with section
9 69-2404 shall contain the holder's name, ~~social security number~~,
10 address, and date of birth and the effective date of the
11 certificate. A certificate shall authorize the holder to acquire
12 any number of handguns during the period that the certificate
13 is valid. The certificate shall be valid throughout the state
14 and shall become invalid three years after its effective date.
15 If the chief of police or sheriff who issued the certificate
16 determines that the applicant has become disqualified for the
17 certificate under section 69-2404, he or she may immediately
18 revoke the certificate and require the holder to surrender the
19 certificate immediately. Revocation may be appealed pursuant to
20 section 69-2406.

21 Sec. 35. Section 69-2410, Revised Statutes Cumulative
22 Supplement, 2008, is amended to read:

23 69-2410 No importer, manufacturer, or dealer licensed
24 pursuant to 18 U.S.C. 923 shall sell or deliver any handgun
25 to another person other than a licensed importer, manufacturer,

1 dealer, or collector until he or she has:

2 (1) (a) Inspected a valid certificate issued to such
3 person pursuant to sections 69-2401, 69-2403 to 69-2408, and
4 69-2409.01; and

5 (b) Inspected a valid identification containing a
6 photograph of such person which appropriately and completely
7 identifies such person; or

8 (2) (a) Obtained a completed consent form from the
9 potential buyer or transferee, which form shall be established by
10 the Nebraska State Patrol and provided by the licensed importer,
11 manufacturer, or dealer. The form shall include the name, address,
12 date of birth, gender, race, social security number or other
13 identification number, and country of citizenship of such potential
14 buyer or transferee. If the potential buyer or transferee is not a
15 United States citizen, the completed consent form shall contain the
16 potential buyer's or transferee's place of birth and his or her
17 alien or admission number;

18 (b) Inspected a valid identification containing a
19 photograph of the potential buyer or transferee which appropriately
20 and completely identifies such person;

21 (c) Requested by toll-free telephone call or other
22 electromagnetic communication that the Nebraska State Patrol
23 conduct a criminal history record check; and

24 (d) Received a unique approval number for such inquiry
25 from the Nebraska State Patrol indicating the date and number on

1 the consent form.

2 Sec. 36. Section 69-2430, Revised Statutes Cumulative
3 Supplement, 2008, is amended to read:

4 69-2430 (1) Application for a permit to carry a concealed
5 handgun shall be made in person at any Nebraska State Patrol
6 Troop Headquarters or office provided by the patrol for purposes
7 of accepting such an application. The applicant shall present a
8 current Nebraska motor vehicle operator's license, Nebraska-issued
9 state identification card, or military identification card
10 and shall submit two legible sets of fingerprints for a
11 criminal history record information check pursuant to section
12 69-2431. The application shall be made on a form prescribed
13 by the Superintendent of Law Enforcement and Public Safety.
14 The application shall state the applicant's full name, ~~social~~
15 ~~security number~~, motor vehicle operator's license number or
16 state identification card number, address, and date of birth and
17 contain the applicant's signature and shall include space for the
18 applicant to affirm that he or she meets each and every one of
19 the requirements set forth in section 69-2433. The applicant shall
20 attach to the application proof of training and proof of vision as
21 required in subdivision (3) of section 69-2433.

22 (2) A person applying for a permit to carry a concealed
23 handgun who gives false information or offers false evidence of his
24 or her identity is guilty of a Class IV felony.

25 (3) The permit to carry a concealed handgun shall be

1 issued by the Nebraska State Patrol within five business days after
2 completion of the applicant's criminal history record information
3 check, if the applicant has complied with this section and has met
4 all the requirements of section 69-2433.

5 (4) An applicant denied a permit to carry a concealed
6 handgun may appeal to the district court of the judicial district
7 of the county in which he or she resides or the county in which
8 he or she applied for the permit pursuant to the Administrative
9 Procedure Act.

10 Sec. 37. There is established within the Nebraska
11 Commission on Law Enforcement and Criminal Justice the Office
12 of Violence Prevention. The office shall consist of a director
13 appointed by the Governor. There also is established an advisory
14 council to the Office of Violence Prevention. The members of the
15 advisory council shall be appointed by the Governor and serve
16 at his or her discretion. The advisory council shall consist of
17 six members and, of those members, each congressional district,
18 as such districts existed on the effective date of this act,
19 shall have at least one member on the council. The Governor shall
20 consider appointing members representing the following areas, if
21 practicable: Two members representing local government; two members
22 representing law enforcement; one member representing community
23 advocacy; and one member representing education with some expertise
24 in law enforcement and juvenile crime. Members of the advisory
25 council shall serve for terms of four years. A member may be

1 reappointed at the expiration of his or her term. Any vacancy
2 occurring other than by expiration of a term shall be filled for
3 the remainder of the unexpired term in the same manner as the
4 original appointment.

5 Sec. 38. Notwithstanding any other provision of law,
6 membership on the advisory council to the Office of Violence
7 Prevention shall not disqualify any member from holding his or her
8 office or position or cause the forfeiture thereof.

9 Sec. 39. Members of the advisory council to the Office
10 of Violence Prevention shall serve without compensation but may
11 be reimbursed for their actual and necessary expenses incurred in
12 the performance of their duties as provided in sections 81-1174 to
13 81-1177.

14 Sec. 40. (1) The Office of Violence Prevention and its
15 director shall be administered and supervised, respectively, by
16 the Nebraska Commission on Law Enforcement and Criminal Justice.
17 Among its responsibilities, the Office of Violence Prevention
18 and its director shall be responsible for developing, fostering,
19 promoting, and assessing violence prevention programs. To
20 accomplish this mission, the duties of the director shall include,
21 but not be limited to, program fundraising, program evaluation,
22 coordination of programs, and assistance with the administration
23 and distribution of funds to violence prevention programs.

24 (2) The advisory council to the Office of
25 Violence Prevention shall meet at least quarterly. Among its

1 responsibilities, the advisory council shall recommend to the
2 commission rules and regulations regarding program fundraising,
3 program evaluation, coordination of programs, and the criteria used
4 to assess and award funds to violence prevention programs. Priority
5 for funding shall be given to communities and organizations
6 seeking to implement violence prevention programs which appear
7 to have the greatest benefit to the state and which have, as
8 goals, the reduction of street and gang violence and the reduction
9 of homicides and injuries caused by firearms. The duties of
10 the advisory council shall include, but not be limited to,
11 receiving applications for violence prevention funds, evaluating
12 such applications, and making recommendations to the commission
13 regarding the merits of each application and the amount of
14 any funds that should be awarded. If any funds are awarded
15 to a violence prevention program, the advisory council shall
16 continuously monitor how such funds are being used by the
17 program, conduct periodic evaluations of such programs, assess the
18 progress and success regarding the stated goals of each program
19 awarded funds, and recommend to the commission any modification,
20 continuation, or discontinuation of funding.

21 Sec. 41. The Violence Prevention Cash Fund is created.
22 The fund shall be administered by the Nebraska Commission on Law
23 Enforcement and Criminal Justice. The State Treasurer shall credit
24 to the fund such money as is transferred to the fund by the
25 Legislature, donated as gifts, bequests, or other contributions

1 to such fund from public or private entities, and made available
2 by any department or agency of the United States if so directed
3 by such department or agency. Any money in the fund available
4 for investment shall be invested by the state investment officer
5 pursuant to the Nebraska Capital Expansion Act and the Nebraska
6 State Funds Investment Act.

7 Sec. 42. Section 83-183, Reissue Revised Statutes of
8 Nebraska, is amended to read:

9 83-183 (1) To establish good habits of work and
10 responsibility, to foster vocational training, and to reduce
11 the cost of operating the facilities, persons committed to
12 the department shall be employed, eight hours per day, so far
13 as possible in constructive and diversified activities in the
14 production of goods, services, and foodstuffs to maintain the
15 facilities, for state use, and for other purposes authorized by
16 law. To accomplish these purposes, the director may establish and
17 maintain industries and farms in appropriate facilities and may
18 enter into arrangements with any other board or agency of the
19 state, any natural resources district, or any other political
20 subdivision, except for that any arrangements entered into with
21 school districts, educational service units, community colleges,
22 state colleges, or universities shall include supervision provided
23 by the department, for the employment of persons committed to the
24 department for state or governmental purposes. Nothing in this
25 subsection shall be construed to effect a reduction in the number

1 of work release positions.

2 (2) The director shall make rules and regulations
3 governing the hours, conditions of labor, and the rates of
4 compensation of persons committed to the department. In determining
5 the rates of compensation, such regulations may take into
6 consideration the quantity and quality of the work performed by
7 such person, whether or not such work was performed during regular
8 working hours, the skill required for its performance, and the
9 economic value of similar work outside of correctional facilities.

10 (3) Except as provided in section 83-183.01, wage
11 payments to a person committed to the department shall be set aside
12 by the chief executive officer of the facility in a separate fund.
13 The fund shall enable such person committed to the department to
14 contribute to the support of his or her dependents, if any, to make
15 necessary purchases from the commissary, and to set aside sums to
16 be paid to him or her at the time of his or her release from the
17 facility.

18 (4) The director may authorize the chief executive
19 officer to invest the earnings of a person committed to the
20 department. Any accrued interest thereon shall be credited to such
21 person's fund.

22 (5) The director may authorize the chief executive
23 officer to reimburse the state from the wage fund of a person
24 committed to the department for:

25 (a) The actual value of property belonging to the state

1 or any other person intentionally or recklessly destroyed by such
2 person committed to the department during his or her commitment;

3 (b) The actual value of the damage or loss incurred as a
4 result of unauthorized use of property belonging to the state or
5 any other person by such person committed to the department;

6 (c) The actual cost to the state for injuries or other
7 damages caused by intentional acts of such person committed to the
8 department; and

9 (d) The reasonable costs incurred in returning such
10 person committed to the department to the facility to which he or
11 she is committed in the event of his or her escape.

12 (6) No person committed to the department shall be
13 required to engage in excessive labor, and no such person shall be
14 required to perform any work for which he or she is declared unfit
15 by a physician designated by the director. No person who performs
16 labor or work pursuant to this section shall be required to wear
17 manacles, shackles, or other restraints.

18 (7) The director may authorize that a portion of the
19 earnings of a person committed to the department be retained by
20 that person for personal use.

21 Sec. 43. Sections 43 to 47 of this act shall be known and
22 may be cited as the Lindsay Ann Burke Act.

23 Sec. 44. The Legislature finds and declares that all
24 students have a right to work and study in a safe, supportive
25 environment that is free from harassment, intimidation, and

1 violence. The Legislature further finds that when a student is a
2 victim of dating violence, his or her academic life suffers and his
3 or her safety at school is jeopardized. The Legislature therefor
4 finds and declares that a policy to create a better understanding
5 and awareness of dating violence shall be adopted by each school
6 district. It is the intent of the Legislature to require each
7 school district to establish a policy for educating staff and
8 students about dating violence.

9 Sec. 45. For purposes of the Lindsay Ann Burke Act,
10 unless the context otherwise requires:

11 (1) Dating partner means any person, regardless of
12 gender, involved in an intimate relationship with another person
13 primarily characterized by the expectation of affectionate
14 involvement whether casual, serious, or long-term;

15 (2) Dating violence means a pattern of behavior where one
16 person uses threats of, or actually uses, physical, sexual, verbal,
17 or emotional abuse, to control his or her dating partner;

18 (3) Department means the State Department of Education;
19 and

20 (4) School district has the same meaning as in section
21 79-101.

22 Sec. 46. (1) On or before March 1, 2010, the department
23 shall develop and adopt a model dating violence policy to assist
24 school districts in developing policies for dating violence.

25 (2) On or before July 1, 2010, each school district shall

1 develop and adopt a specific policy to address incidents of dating
2 violence involving students at school, which shall be made a part
3 of the requirements for accreditation in accordance with section
4 79-703. Such policy shall include a statement that dating violence
5 will not be tolerated.

6 (3) To ensure notice of a school district's dating
7 violence policy, the policy shall be published in any school
8 district handbook, manual, or similar publication that sets forth
9 the comprehensive rules, procedures, and standards of conduct for
10 students at school.

11 (4) Each school district shall provide dating violence
12 training to staff deemed appropriate by a school district's
13 administration. The dating violence training shall include, but
14 not be limited to, basic awareness of dating violence, warning
15 signs of dating violence, and the school district's dating violence
16 policy. The dating violence training may be provided by any school
17 district or combination of school districts, an educational service
18 unit, or any combination of educational service units.

19 (5) Each school district shall inform the students'
20 parents or legal guardians of the school district's dating violence
21 policy. If requested, the school district shall provide the parents
22 or legal guardians a copy of the school district's dating violence
23 policy and relevant information.

24 (6) This section does not prevent a victim of dating
25 violence from seeking redress under any other available law, either

1 civil or criminal, and does not create or alter any existing tort
2 liability.

3 Sec. 47. Each school district shall incorporate dating
4 violence education that is age-appropriate into the school
5 program. Dating violence education shall include, but not be
6 limited to, defining dating violence, recognizing dating violence
7 warning signs, and identifying characteristics of healthy dating
8 relationships.

9 Sec. 48. If any section in this act or any part of any
10 section is declared invalid or unconstitutional, the declaration
11 shall not affect the validity or constitutionality of the remaining
12 portions.

13 Sec. 49. Original sections 28-101, 28-111, 28-308,
14 28-309, 28-929, 28-930, 28-1201, 28-1202, 28-1204, 28-1204.01,
15 28-1204.04, 28-1205, 28-1206, 28-1207, 28-1208, 28-1212.02,
16 28-1212.03, 29-401, 29-901, 29-901.01, 29-1912, 29-2320, 29-2321,
17 43-245, 43-250, 43-276, 69-2407, and 83-183, Reissue Revised
18 Statutes of Nebraska, and sections 13-2610, 47-632, 60-497.01,
19 69-2404, 69-2410, and 69-2430, Revised Statutes Cumulative
20 Supplement, 2008, are repealed.

21 Sec. 50. The following sections are outright repealed:
22 Sections 29-1928, 29-1929, and 29-2262.01, Reissue Revised Statutes
23 of Nebraska.

24 Sec. 51. Since an emergency exists, this act takes effect
25 when passed and approved according to law.