

LEGISLATURE OF NEBRASKA

ONE HUNDRED FIRST LEGISLATURE

FIRST SESSION

**LEGISLATIVE BILL 672**

Introduced by Pirsch, 4.

Read first time January 21, 2009

Committee: Judiciary

A BILL

1 FOR AN ACT relating to crimes and offenses; to amend sections  
2 28-101, 28-1201, 28-1202, 28-1204, 28-1204.01,  
3 28-1204.04, 28-1205, 28-1206, 28-1207, 28-1208,  
4 28-1212.02, and 28-1212.03, Reissue Revised Statutes of  
5 Nebraska; to change provisions and penalties for certain  
6 firearms crimes; and to repeal the original sections.  
7 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 section 3 of this  
4 act shall be known and may be cited as the Nebraska Criminal Code.

5           Sec. 2. Section 28-1201, Reissue Revised Statutes of  
6 Nebraska, is amended to read:

7           28-1201 For purposes of sections 28-1201 to 28-1212 and  
8 section 3 of this act, unless the context otherwise requires:

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

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

15           (3) Juvenile shall mean any person under the age of  
16 eighteen years;

17           (4) Knife shall mean any dagger, dirk, knife, or stiletto  
18 with a blade over three and one-half inches in length or any other  
19 dangerous instrument capable of inflicting cutting, stabbing, or  
20 tearing wounds;

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

1           (6) Machine gun shall mean any firearm, whatever its  
2 size and usual designation, that shoots automatically more than  
3 one shot, without manual reloading, by a single function of the  
4 trigger;

5           (7) Short rifle shall mean a rifle having a barrel  
6 less than sixteen inches long or an overall length of less than  
7 twenty-six inches; and

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

11           Sec. 3. The Legislature finds that:

12           (1) Increased violence has become a national, state, and  
13 local problem;

14           (2) Increased violence and the threat of violence has a  
15 grave and detrimental impact on the enjoyment of life in Nebraska;

16           (3) Increased violence has caused fear and concern among  
17 not only the urban areas but the rural areas as well;

18           (4) Firearms have contributed greatly to the increase of  
19 fear and concern among our citizens;

20           (5) The state has a duty to protect its citizens and  
21 provide an environment which promotes and provides the enjoyment of  
22 life in a nonthreatening manner;

23           (6) The use of firearms by criminals is an immediate and  
24 inherently dangerous threat to the safety and well-being of the law  
25 abiding citizens of Nebraska; and

1           (7) The ability to provide swift and severe punishment  
2 to those individuals using firearms in a crime is a legitimate and  
3 necessary tool to protect the citizens of Nebraska.

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

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

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

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

24           (3) Carrying a concealed weapon is a Class I misdemeanor  
25 for a first offense.

1           (4) ~~In the case of a second or subsequent conviction~~  
2 ~~under this section, carrying~~ Carrying a concealed weapon is a Class  
3 IV felony for a second or subsequent offense. If the second or  
4 subsequent offense involves the carrying of a concealed firearm,  
5 the sentence shall include a minimum sentence of at least three  
6 years imprisonment.

7           Sec. 5. Section 28-1204, Reissue Revised Statutes of  
8 Nebraska, is amended to read:

9           28-1204 (1) Any person under the age of eighteen  
10 years who possesses a pistol, revolver, or any other form  
11 of short-barreled hand firearm commits the offense of unlawful  
12 possession of a revolver.

13           (2) The provisions of this section shall not apply to the  
14 issuance of such firearms to members of the armed forces of the  
15 United States, active or reserve, National Guard of this state,  
16 or Reserve Officers Training Corps, when on duty or training, or  
17 to the temporary loan of pistols, revolvers, or any other form  
18 of short-barreled firearms for instruction under the immediate  
19 supervision of a parent or guardian or adult instructor.

20           (3) Unlawful possession of a revolver is a Class III  
21 misdemeanor for a first offense.

22           (4) Unlawful possession of a revolver is a Class IV  
23 felony for a second or subsequent offense and the sentence shall  
24 include a minimum sentence of at least three years imprisonment.

25           Sec. 6. Section 28-1204.01, Reissue Revised Statutes of

1 Nebraska, is amended to read:

2           28-1204.01 (1) Any person who knowingly and intentionally  
3 does or attempts to sell, provide, loan, deliver, or in any other  
4 way transfer the possession of a firearm to a juvenile commits the  
5 offense of unlawful transfer of a firearm to a juvenile. The county  
6 attorney shall have a copy of the petition served upon the owner of  
7 the firearm, if known, in person or by registered or certified mail  
8 at his or her last-known address.

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

12           (a) From a person related to such juvenile within the  
13 second degree of consanguinity or affinity if the transfer of  
14 physical possession of such firearm does not occur until such time  
15 as express permission has been obtained from the juvenile's parent  
16 or guardian;

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

18           (c) Who is under direct adult supervision in an  
19 appropriate educational program.

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

23           (4) Unlawful transfer of a firearm to a juvenile is a  
24 Class IV felony and the sentence shall include a minimum sentence  
25 of at least three years imprisonment.

1           Sec. 7. Section 28-1204.04, Reissue Revised Statutes of  
2 Nebraska, is amended to read:

3           28-1204.04 (1) Any person who possesses a firearm in a  
4 school, on school grounds, in a school-owned vehicle, or at a  
5 school-sponsored activity or athletic event shall be guilty of the  
6 offense of unlawful possession of a firearm on school grounds.  
7 Unlawful possession of a firearm on school grounds is a Class II  
8 misdemeanor for a first offense. Unlawful possession of a firearm  
9 on school grounds is a Class IV felony for a second or subsequent  
10 offense and the sentence shall include a minimum sentence of at  
11 least three years imprisonment. This subsection shall not apply  
12 to (a) the issuance of firearms to or possession by members of  
13 the armed forces of the United States, active or reserve, National  
14 Guard of this state, or Reserve Officers Training Corps or peace  
15 officers or other duly authorized law enforcement officers when  
16 on duty or training, (b) firearms which may lawfully be possessed  
17 by the person receiving instruction, for instruction under the  
18 immediate supervision of an adult instructor, or (c) firearms  
19 contained within a private vehicle operated by a nonstudent adult  
20 which are not loaded and (i) are encased or (ii) are in a locked  
21 firearm rack that is on a motor vehicle. For purposes of this  
22 subsection, encased shall mean enclosed in a case that is expressly  
23 made for the purpose of containing a firearm and that is completely  
24 zipped, snapped, buckled, tied, or otherwise fastened with no part  
25 of the firearm exposed.

1           (2) Any firearm possessed in violation of subsection (1)  
2 of this section in a school, on school grounds, in a school-owned  
3 vehicle, or at a school-sponsored activity or athletic event shall  
4 be confiscated without warrant by a peace officer or may be  
5 confiscated without warrant by school administrative or teaching  
6 personnel. Any firearm confiscated by school administrative or  
7 teaching personnel shall be delivered to a peace officer as soon as  
8 practicable.

9           (3) Any firearm confiscated by or given to a peace  
10 officer pursuant to subsection (2) of this section shall be  
11 declared a common nuisance and shall be held by the peace officer  
12 prior to his or her delivery of the firearm to the property  
13 division of the law enforcement agency which employs the peace  
14 officer. The property division of such law enforcement agency shall  
15 hold such firearm for as long as the firearm is needed as evidence.  
16 After the firearm is no longer needed as evidence it shall be  
17 destroyed in such manner as the court may direct.

18           (4) Whenever a firearm is confiscated and held pursuant  
19 to this section or section 28-1204.02, the peace officer who  
20 received such firearm shall cause to be filed within ten days after  
21 the confiscation a petition for destruction of such firearm. The  
22 petition shall be filed in the district court of the county in  
23 which the confiscation is made. The petition shall describe the  
24 firearm held, state the name of the owner, if known, allege the  
25 essential elements of the violation which caused the confiscation,

1 and conclude with a prayer for disposition and destruction in such  
2 manner as the court may direct. At any time after the confiscation  
3 of the firearm and prior to court disposition, the owner of the  
4 firearm seized may petition the district court of the county in  
5 which the confiscation was made for possession of the firearm. The  
6 court shall release the firearm to such owner only if the claim  
7 of ownership can reasonably be shown to be true and either (a)  
8 the owner of the firearm can show that the firearm was taken from  
9 his or her property or place of business unlawfully or without  
10 the knowledge and consent of the owner and that such property  
11 or place of business is different from that of the person from  
12 whom the firearm was confiscated or (b) the owner of the firearm  
13 is acquitted of the charge of unlawful possession of a revolver  
14 in violation of section 28-1204, unlawful transfer of a firearm  
15 to a juvenile, or unlawful possession of a firearm on school  
16 grounds. No firearm having significant antique value or historical  
17 significance as determined by the Nebraska State Historical Society  
18 shall be destroyed. If a firearm has significant antique value  
19 or historical significance, it shall be sold at auction and the  
20 proceeds deposited in the permanent school fund, shall be remitted  
21 to the State Treasurer for distribution in accordance with Article  
22 VII, section 5, of the Constitution of Nebraska.

23           Sec. 8. Section 28-1205, Reissue Revised Statutes of  
24 Nebraska, is amended to read:

25           28-1205 (1) Any person who uses a firearm, a knife, brass

1 or iron knuckles, or any other deadly weapon to commit any felony  
2 which may be prosecuted in a court of this state or who unlawfully  
3 possesses a firearm, a knife, brass or iron knuckles, or any other  
4 deadly weapon during the commission of any felony which may be  
5 prosecuted in a court of this state commits the offense of using a  
6 deadly weapon to commit a felony.

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

9 (b) Use of a deadly weapon which is a firearm to commit  
10 a felony is a Class II felony and the sentence shall include a  
11 minimum sentence of at least seven years imprisonment.

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

16 Sec. 9. Section 28-1206, Reissue Revised Statutes of  
17 Nebraska, is amended to read:

18 28-1206 (1) Any person who possesses any firearm or brass  
19 or iron knuckles and who has previously been convicted of a felony  
20 or who is a fugitive from justice commits the offense of possession  
21 of a deadly weapon by a felon or a fugitive from justice.

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

25 (3) (a) Possession of a deadly weapon other than a firearm

1 by a felon or a fugitive from justice is a Class IV felony.

2 (b) Possession of a deadly weapon which is a firearm by  
3 a felon or a fugitive from justice is a Class III felony and the  
4 sentence shall include a minimum sentence of at least five years  
5 imprisonment.

6 Sec. 10. Section 28-1207, Reissue Revised Statutes of  
7 Nebraska, is amended to read:

8 28-1207 (1) Any person who knowingly possesses, receives,  
9 sells, or leases, other than by delivery to law enforcement  
10 officials, any firearm from which the manufacturer's identification  
11 mark or serial number has been removed, defaced, altered, or  
12 destroyed, commits the offense of possession of a defaced firearm.

13 (2) Possession of a defaced firearm is a Class IV felony  
14 and the sentence shall include a minimum sentence of at least three  
15 years imprisonment.

16 Sec. 11. Section 28-1208, Reissue Revised Statutes of  
17 Nebraska, is amended to read:

18 28-1208 (1) Any person who intentionally removes,  
19 defaces, covers, alters, or destroys the manufacturer's  
20 identification mark or serial number or other distinguishing  
21 numbers on any firearm commits the offense of defacing a firearm.

22 (2) Defacing a firearm is a Class IV felony and the  
23 sentence shall include a minimum sentence of at least three years  
24 imprisonment.

25 Sec. 12. Section 28-1212.02, Reissue Revised Statutes of

1 Nebraska, is amended to read:

2           28-1212.02 Any person who intentionally discharges a  
3 firearm at an inhabited dwelling house, occupied building, occupied  
4 motor vehicle, occupied aircraft, inhabited motor home as defined  
5 in section 71-4603, or inhabited camper unit as defined in  
6 section 60-1801 shall be guilty of a Class III felony and the  
7 sentence shall include a minimum sentence of at least five years  
8 imprisonment.

9           Sec. 13. Section 28-1212.03, Reissue Revised Statutes of  
10 Nebraska, is amended to read:

11           28-1212.03 Any person who possesses, receives, retains,  
12 or disposes of a stolen firearm knowing that it has been or  
13 believing that it has been stolen shall be guilty of a Class  
14 IV felony and the sentence shall include a minimum sentence of  
15 at least three years imprisonment. The section does not apply if  
16 ~~unless~~ the firearm is possessed, received, retained, or disposed of  
17 with intent to restore it to the owner.

18           Sec. 14. Original sections 28-101, 28-1201, 28-1202,  
19 28-1204, 28-1204.01, 28-1204.04, 28-1205, 28-1206, 28-1207,  
20 28-1208, 28-1212.02, and 28-1212.03, Reissue Revised Statutes of  
21 Nebraska, are repealed.