

LEGISLATURE OF NEBRASKA

ONE HUNDRED FIRST LEGISLATURE

SECOND SESSION

LEGISLATIVE BILL 889

Introduced by Christensen, 44.

Read first time January 11, 2010

Committee: Judiciary

A BILL

1 FOR AN ACT relating to crimes and offenses; to amend sections
2 28-1406, 28-1408, 28-1409, 28-1410, 28-1411, 28-1412,
3 28-1413, 28-1415, 28-1416, and 29-439, Reissue Revised
4 Statutes of Nebraska, and section 28-101, Revised
5 Statutes Supplement, 2009; to change and eliminate
6 provisions relating to the justification for the use of
7 force; to provide a presumption; to harmonize provisions;
8 to provide severability; to repeal the original sections;
9 and to outright repeal sections 28-1407 and 28-1414,
10 Reissue Revised Statutes of Nebraska.

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

1 Section 1. Section 28-101, Revised Statutes Supplement,
2 2009, is amended to read:

3 28-101 Sections 28-101 to 28-1356 and section 6 of this
4 act shall be known and may be cited as the Nebraska Criminal Code.

5 Sec. 2. Section 28-1406, Reissue Revised Statutes of
6 Nebraska, is amended to read:

7 28-1406 As used in sections 28-1406 to 28-1416 and
8 section 6 of this act, unless the context otherwise requires:

9 (1) Unlawful force ~~shall mean~~ means force, including
10 confinement, which is employed without the consent of the person
11 against whom it is directed and the employment of which constitutes
12 an offense or actionable tort or would constitute such offense
13 or tort except for a defense such as the absence of intent,
14 negligence, or mental capacity; duress; youth; or diplomatic
15 status; not amounting to a privilege to use the force;

16 (2) ~~Assent shall mean consent,~~ Consent means assent,
17 whether or not it otherwise is legally effective, except ~~assent~~
18 consent to the infliction of death or serious bodily harm;

19 (3) Deadly force ~~shall mean~~ means force which the actor
20 uses with the purpose of causing or which ~~he~~ the actor knows to
21 create a substantial risk of causing death or serious bodily harm.
22 Purposely firing a firearm in the direction of another person or
23 at a vehicle in which another person is believed to be constitutes
24 deadly force. A threat to cause death or serious bodily harm, by
25 the production of a weapon or otherwise, so long as the actor's

1 purpose is limited to creating an apprehension that he or she will
2 use deadly force if necessary, shall not constitute deadly force;

3 (4) Actor ~~shall mean~~ means any person who uses force in
4 such a manner as to attempt to invoke the privileges and immunities
5 afforded him or her by sections 28-1406 to 28-1416 and section 6 of
6 this act, except any duly authorized ~~law enforcement~~ peace officer
7 of the State of Nebraska or its political subdivisions;

8 (5) Dwelling ~~shall mean~~ means any building or structure,
9 though movable or temporary, or a portion thereof, which is for the
10 time being the actor's home or place of lodging; ~~and~~

11 (6) Public officer ~~shall mean~~ means any elected or
12 appointed officer or employee of the State of Nebraska or
13 its political subdivisions, except any duly authorized ~~law~~
14 ~~enforcement~~ peace officer of the State of Nebraska or its political
15 subdivisions; ~~and-~~

16 (7) Forcible felony means a felony the elements of which
17 include the use or threatened use of force or a deadly weapon
18 against the person of another.

19 Sec. 3. Section 28-1408, Reissue Revised Statutes of
20 Nebraska, is amended to read:

21 28-1408 (1) Except as provided in subsection (2) of this
22 section, conduct is justifiable when it is required or authorized
23 by:

24 (a) The law defining the duties or functions of a public
25 officer or the assistance to be rendered to such officer in the

1 performance of his or her duties;

2 (b) The law governing the execution of legal process;

3 (c) The judgment or order of a competent court or
4 tribunal;

5 (d) The law governing the armed services or the lawful
6 conduct of war; or

7 (e) Any other provision of law imposing a public duty.

8 (2) Sections 28-1409 to 28-1416 and section 6 of this act
9 ~~shall~~ apply to:

10 (a) The use of force upon or toward the person of another
11 for any of the purposes dealt with in such sections; and

12 (b) The use of deadly force for any purpose, unless the
13 use of ~~such~~ deadly force is otherwise expressly authorized by law
14 or occurs in the lawful conduct of war.

15 (3) The justification afforded by subsection (1) of this
16 section ~~shall apply+~~ applies:

17 (a) When the actor reasonably believes his or her conduct
18 to be required or authorized by the judgment or direction of a
19 competent court or tribunal or in the lawful execution of legal
20 process, notwithstanding lack of jurisdiction of the court or
21 defect in the legal process; and

22 (b) When the actor reasonably believes his or her conduct
23 to be required or authorized to assist a public officer in the
24 performance of his or her duties, notwithstanding that the officer
25 exceeded his or her legal authority.

1 Sec. 4. Section 28-1409, Reissue Revised Statutes of
2 Nebraska, is amended to read:

3 28-1409 (1) Subject to the ~~provisions of~~ limitations
4 provided in this section, ~~and of section 28-1414,~~ the use of
5 force upon or toward ~~another~~ the person of another is justifiable
6 when the actor reasonably believes that such force is immediately
7 necessary for the purpose of protecting ~~himself~~ the actor against
8 the imminent use of unlawful force by such other person, ~~on the~~
9 ~~present occasion.~~

10 (2) The use of such force is not justifiable under this
11 section to resist an arrest which the actor knows is being made by
12 a peace officer, although the arrest is unlawful.

13 (3) The use of ~~such~~ force by the actor is not justifiable
14 under this section to resist force used by ~~the~~ an occupier or
15 possessor of property or by another person on ~~his~~ the occupier's
16 or possessor's behalf, ~~where~~ when the actor knows that the ~~person~~
17 occupier, possessor, or other person acting on behalf of such
18 occupier or possessor using the force is doing so under a claim of
19 right to protect the property. This, ~~except that this~~ limitation
20 shall not apply if:

21 (a) The actor is a public officer acting in the
22 performance of his or her duties or a person lawfully assisting him
23 or her therein or a person making or assisting in a lawful arrest;

24 (b) The actor has been unlawfully dispossessed of the
25 property and is making a reentry or recapture justified by section

1 28-1411; or

2 (c) The actor reasonably believes that such force is
3 necessary to protect himself or herself against death or serious
4 bodily harm.

5 (4) The use of deadly force ~~shall not be~~ is not
6 justifiable under this section unless the actor reasonably believes
7 that ~~such~~ deadly force is necessary to protect himself or
8 herself against death, serious bodily harm, ~~kidnapping or sexual~~
9 ~~intercourse compelled by force or threat,~~ or the commission of a
10 forcible felony, nor is ~~it~~ deadly force justifiable if: ~~(a) The~~ the
11 actor, with the purpose of causing death or serious bodily harm or
12 of committing a forcible felony, provoked the use of force against
13 himself or herself in the same encounter. ~~+~~ ~~or~~

14 ~~(b) The actor knows that he can avoid the necessity~~
15 ~~of using such force with complete safety by retreating or by~~
16 ~~surrendering possession of a thing to a person asserting a claim of~~
17 ~~right thereto or by complying with a demand that he abstain from~~
18 ~~any action which he has no duty to take, except that:~~

19 ~~(i) The actor shall not be obliged to retreat from his~~
20 ~~dwelling or place of work, unless he was the initial aggressor or~~
21 ~~is assailed in his place of work by another person whose place of~~
22 ~~work the actor knows it to be; and~~

23 ~~(ii) A public officer justified in using force in the~~
24 ~~performance of his duties or a person justified in using force~~
25 ~~in his assistance or a person justified in using force in making~~

1 an arrest or preventing an escape shall not be obliged to desist
 2 from efforts to perform such duty, effect such arrest or prevent
 3 such escape because of resistance or threatened resistance by or on
 4 behalf of the person against whom such action is directed.

5 (5) Except as required by subsections (3) and (4) of
 6 this section, a person employing protective force may reasonably
 7 estimate the necessity thereof under the circumstances as he or she
 8 reasonably believes them to be when the protective force is used,
 9 without retreating, surrendering possession, doing any other act
 10 which he or she has no legal duty to do, or abstaining from any
 11 lawful action.

12 (6) The justification afforded by this section extends to
 13 the use of confinement as protective force only if the actor takes
 14 all reasonable measures to terminate the confinement as soon as he
 15 or she knows that he or she safely can do so, unless the person
 16 confined has been arrested on a charge of crime.

17 Sec. 5. Section 28-1410, Reissue Revised Statutes of
 18 Nebraska, is amended to read:

19 28-1410 ~~(1)~~ Subject to the ~~provisions of~~ limitations
 20 provided in this section, and ~~of section 28-1414,~~ the use of force
 21 upon or toward the person of another is justifiable to protect a
 22 third person when:

23 ~~(a)~~ (1) The actor would be justified under section
 24 28-1409 in using such force to protect ~~himself~~ the actor against
 25 the injury he or she reasonably believes to be threatened to the

1 third person whom he the actor seeks to protect; or

2 ~~(b) (2) Under the circumstances as the actor reasonably~~
3 ~~believes them to be, the third person whom he the actor seeks to~~
4 ~~protect would be justified in using such protective force. and~~

5 ~~(c) The actor believes that his intervention is necessary~~
6 ~~for the protection of such other person.~~

7 ~~(2) Notwithstanding subsection (1) of this section:~~

8 ~~(a) When the actor would be obliged under section 28-1409~~
9 ~~to retreat, to surrender the possession of a thing or to comply~~
10 ~~with a demand before using force in self-protection, he shall not~~
11 ~~be obliged to do so before using force for the protection of~~
12 ~~another person, unless he knows that he can thereby secure the~~
13 ~~complete safety of such other person;~~

14 ~~(b) When the person whom the actor seeks to protect~~
15 ~~would be obliged under section 28-1409 to retreat, to surrender the~~
16 ~~possession of a thing or to comply with a demand if he knew that he~~
17 ~~could obtain complete safety by so doing, the actor is obliged to~~
18 ~~try to cause him to do so before using force in his protection if~~
19 ~~the actor knows that he can obtain complete safety in that way; and~~

20 ~~(c) Neither the actor nor the person whom he seeks to~~
21 ~~protect is obliged to retreat when in the other's dwelling or place~~
22 ~~of work to any greater extent than in his own.~~

23 Sec. 6. (1) For the purposes of sections 28-1409 and
24 28-1410, an actor is presumed to reasonably believe that the use of
25 deadly force is immediately necessary for the purpose of protecting

1 the actor or a third person against imminent death or serious
2 bodily harm or against the commission of a forcible felony if:

3 (a) The person against whom the deadly force is used was
4 unlawfully and forcibly entering, or had unlawfully and forcibly
5 entered, the actor's dwelling, place of work, or occupied vehicle
6 or had removed or was attempting to remove the actor or a third
7 person against that person's will from the actor's dwelling, place
8 of work, or occupied vehicle; and

9 (b) The actor knew or had reason to believe that the
10 unlawful and forcible entry or attempted unlawful entry or unlawful
11 and forcible removal or attempted unlawful removal was occurring or
12 had occurred.

13 (2) The presumption set forth in subsection (1) of this
14 section does not apply if:

15 (a) The person against whom the deadly force is used
16 has the right to be in or is a lawful resident of the dwelling,
17 place of work, or occupied vehicle, such as an owner, lessee, or
18 titleholder, and there is not an injunction for protection from
19 domestic violence or a written order of no contact against that
20 person;

21 (b) The person against whom the deadly force is used is
22 removing or attempting to remove such person's child, grandchild,
23 or another person who is otherwise in the lawful custody or under
24 the lawful guardianship of the person against whom the deadly force
25 is used;

1 (c) The actor who uses deadly force is engaged in or
2 attempting to escape after committing a crime or is using the
3 actor's dwelling, place of work, or occupied vehicle to further a
4 crime; or

5 (d) The person against whom the deadly force is used is a
6 peace officer who enters or attempts to enter a dwelling, place of
7 work, or occupied vehicle in the performance of his or her official
8 duties and the actor using deadly force knew or reasonably should
9 have known that the person entering or attempting to enter was a
10 peace officer.

11 (3) If the presumption set forth in subsection (1) of
12 this section does not apply pursuant to subsection (2) of this
13 section, the justification for the use of deadly force is governed
14 under the general provisions of sections 28-1406 to 28-1416.

15 Sec. 7. Section 28-1411, Reissue Revised Statutes of
16 Nebraska, is amended to read:

17 28-1411 (1) ~~Subject to the provisions of this section and~~
18 ~~of section 28-1414, the~~ The use of force upon or toward the person
19 of another is justifiable when the actor reasonably believes that
20 such force is immediately necessary:

21 (a) To prevent or terminate an unlawful entry or other
22 trespass upon land or a trespass against or the unlawful carrying
23 away of tangible, movable property; ~~PROVIDED, that~~ if such land
24 or movable property is, or is reasonably believed by the actor to
25 be, in ~~his~~ the actor's possession or in the possession of another

1 person for whose protection ~~he~~ the actor acts; or

2 (b) To effect an entry or reentry upon land or to retake
3 tangible movable property, ~~PROVIDED, that if~~ the actor reasonably
4 believes that ~~he~~ the actor or the person by whose authority ~~he~~ the
5 actor acts or a person from whom ~~he~~ the actor or such other person
6 derives title was unlawfully dispossessed of such land or movable
7 property and is entitled to possession; ~~AND PROVIDED FURTHER, that:~~
8 and:

9 (i) The force is used immediately or on fresh pursuit
10 after such dispossession; or

11 (ii) The actor reasonably believes that the person
12 against whom ~~he~~ the actor uses force has no claim of right to
13 the possession of the property and, in the case of land, the
14 circumstances, as the actor reasonably believes them to be, are of
15 such urgency that it would be an exceptional hardship to postpone
16 the entry or reentry until a court order is obtained.

17 (2) For the purposes of subsection (1) of this section:

18 (a) A person who has parted with the custody of property
19 to another who refuses to restore it ~~to him~~ is no longer in
20 possession, unless such property is movable and was and still is
21 located on land in ~~his~~ such person's possession;

22 (b) A person who has been dispossessed of land does not
23 regain possession thereof merely by setting foot thereon; and

24 (c) A person who has a license to use or occupy real
25 property is deemed to be in possession thereof except against the

1 licenser acting under claim of right.

2 (3) The use of force is justifiable under this section
3 only if the actor first requests the person against whom such force
4 is used to desist from ~~his~~ interference with the property, unless
5 the actor reasonably believes that:

6 (a) Such request would be useless;

7 (b) It would be dangerous to ~~himself~~ the actor or another
8 person to make the request; or

9 (c) Substantial harm will be done to the physical
10 condition of the property which is sought to be protected before
11 the request can effectively be made.

12 ~~(4) The use of force to prevent or terminate a trespass~~
13 ~~is not justifiable under this section if the actor knows that the~~
14 ~~exclusion of the trespasser will expose him to substantial danger~~
15 ~~of serious bodily harm.~~

16 ~~(5) (4)~~ (4) The use of force to prevent an entry or reentry
17 upon land or the recapture of movable property is not justifiable
18 under this section, although the actor reasonably believes that
19 such reentry or recapture is unlawful, if:

20 (a) The reentry or recapture is made by or on behalf of a
21 person who was actually dispossessed of the property; and

22 (b) It is otherwise justifiable under subdivision (1)(b)
23 of this section.

24 ~~(6) (5)~~ (5) The use of deadly force is not justifiable under
25 this section unless:

1 ~~(a) The~~ the actor believes that:~~(a) The~~ reasonably
 2 believes that the person against whom the deadly force is used
 3 is attempting to dispossess ~~him~~ the actor of ~~his~~ the actor's
 4 dwelling otherwise than under a claim of right to its possession;
 5 or

6 ~~(b) The~~ person against whom the force is used is
 7 attempting to commit or consummate arson, burglary, robbery or
 8 other felonious theft or property destruction and either:

9 ~~(i) Has~~ employed or threatened deadly force against or in
 10 the presence of the actor, or

11 ~~(ii) The~~ use of force other than deadly force to prevent
 12 the commission or the consummation of the crime would expose the
 13 actor or another in his presence to substantial danger of serious
 14 bodily harm.

15 (b) Subsection (1) of section 6 of this act applies.

16 ~~(7) (6)~~ The justification afforded by this section
 17 extends to the use of confinement as protective force only if the
 18 actor takes all reasonable measures to terminate the confinement as
 19 soon as he ~~the actor~~ knows that he can do so the confinement can be
 20 terminated with safety to the property, unless the person confined
 21 has been arrested on a charge of crime.

22 ~~(8) (7)~~ The justification afforded by this section
 23 extends to the use of a device for the purpose of protecting
 24 property only if:

25 (a) Such device is not designed to cause or known to

1 create a substantial risk of causing death or serious bodily harm;

2 (b) Such use of the particular device to protect
3 such property from entry or trespass is reasonable under the
4 circumstances, as the actor believes them to be; and

5 (c) Such device is one customarily used for such a
6 purpose or reasonable care is taken to make known to probable
7 intruders the fact that it is used.

8 ~~(9)~~ (8) The use of force to pass a person whom the actor
9 reasonably believes to be purposely or knowingly and unjustifiably
10 obstructing the actor from going to a place to which ~~he~~ the actor
11 may lawfully go is justifiable if:

12 (a) The actor reasonably believes that the person against
13 whom ~~he~~ the actor uses force has no claim of right to obstruct the
14 actor;

15 (b) The actor is not being obstructed from entry or
16 movement on land which ~~he~~ the actor knows to be in the possession
17 or custody of the person obstructing him or her, or in the
18 possession or custody of another person by whose authority the
19 obstructor acts, unless the circumstances, as the actor reasonably
20 believes them to be, are of such urgency that it would not be
21 reasonable to postpone the entry or movement on such land until a
22 court order is obtained; and

23 (c) The force used is not greater than would be
24 justifiable if the person obstructing the actor were using force
25 against ~~him~~ the actor to prevent ~~his~~ the actor's passage.

1 Sec. 8. Section 28-1412, Reissue Revised Statutes of
2 Nebraska, is amended to read:

3 28-1412 (1) ~~Subject to the provisions of this section and~~
4 ~~of section 28-1414, the~~ The use of force upon or toward the person
5 of another is justifiable when the actor is making or assisting in
6 making an arrest and the actor reasonably believes that such force
7 is immediately necessary to effect a lawful arrest.

8 (2) The use of force is not justifiable under this
9 section unless:

10 (a) The actor makes known the purpose of the arrest
11 or reasonably believes that it is otherwise known by or cannot
12 reasonably be made known to the person to be arrested; and

13 (b) When the arrest is made under a warrant, the warrant
14 is valid or reasonably believed by the actor to be valid.

15 (3) The use of deadly force is not justifiable under this
16 section unless:

17 (a) The arrest is for a felony;

18 (b) Such person effecting the arrest is authorized to
19 act as a peace officer or is assisting a person whom ~~he~~ the actor
20 reasonably believes to be authorized to act as a peace officer;

21 (c) The actor reasonably believes that the force employed
22 creates no substantial risk of injury to innocent persons; and

23 (d) The actor reasonably believes that:

24 (i) The crime for which the arrest is made involved
25 conduct including the use or threatened use of deadly force; or

1 (ii) There is a substantial risk that the person to
2 be arrested will cause death or serious bodily harm if his
3 apprehension is delayed.

4 (4) The use of force to prevent the escape of an arrested
5 person from custody is justifiable when the force could justifiably
6 have been employed to effect the arrest under which the person
7 is in custody, except that a guard or other person authorized to
8 act as a peace officer is justified in using any force, including
9 deadly force, which ~~he~~ such guard or other person reasonably
10 believes to be immediately necessary to prevent the escape of a
11 person from a jail, prison, or other institution for the detention
12 of persons charged with or convicted of a crime.

13 (5) A private person who is summoned by a peace officer
14 to assist in effecting an unlawful arrest is justified in using any
15 force which ~~he~~ the peace officer would be justified in using if
16 the arrest were lawful, ~~PROVIDED,~~ that he does not believe if such
17 private person reasonably believes the arrest is ~~unlawful.~~ lawful.

18 (6) A private person who assists another private person
19 in effecting an unlawful arrest, or who, not being summoned,
20 assists a peace officer in effecting an unlawful arrest, is
21 justified in using any force which ~~he~~ a peace officer would be
22 justified in using if the arrest were lawful, ~~if-(a)~~ ~~He~~ such
23 private person reasonably believes the arrest is lawful. ~~and~~

24 ~~(b) The arrest would be lawful if the facts were as he~~
25 ~~believes them to be.~~

1 (7) The use of force upon or toward the person of
2 another is justifiable when the actor reasonably believes that such
3 force is immediately necessary to prevent such other person from
4 committing suicide, inflicting serious bodily harm upon ~~himself,~~
5 such other person, committing or consummating the commission of a
6 crime involving or threatening bodily harm, damage to or loss of
7 property, or a breach of the peace, except that:

8 (a) Any ~~limitations~~ other limitation imposed by ~~the other~~
9 ~~provisions of~~ sections 28-1406 to 28-1416 and section 6 of this
10 act on the justifiable use of force in self-protection, for the
11 protection of others, the protection of property, the effectuation
12 of an arrest, or the prevention of an escape from custody shall
13 apply notwithstanding the criminality of the conduct against which
14 such force is used; and

15 (b) The use of deadly force is not ~~in any event~~
16 justifiable under this subsection unless:

17 (i) The actor reasonably believes that there is a
18 substantial risk that the person whom ~~he~~ the actor seeks to
19 prevent from committing a crime will cause death or serious bodily
20 harm to another unless the commission or the consummation of the
21 crime is prevented and that the use of such force presents no
22 substantial risk of injury to innocent persons; or

23 (ii) The actor reasonably believes that the use of ~~such~~
24 deadly force is necessary to suppress a riot or mutiny after the
25 rioters or mutineers have been ordered to disperse and warned, in

1 any particular manner that the law may require, that ~~such~~ deadly
 2 force will be used if ~~they~~ the rioters or mutineers do not obey.

3 (8) The justification afforded by subsection (7) of this
 4 section extends to the use of confinement as ~~preventive~~ protective
 5 force only if the actor takes all reasonable measures to terminate
 6 the confinement as soon as ~~he~~ the actor knows that ~~he~~ safely can
 7 ~~do so,~~ the confinement can be terminated safely, unless the person
 8 confined has been arrested on a charge of crime.

9 Sec. 9. Section 28-1413, Reissue Revised Statutes of
 10 Nebraska, is amended to read:

11 28-1413 The use of force upon or toward the person of
 12 another is justifiable if:

13 (1) The actor is the parent or guardian or other person
 14 similarly responsible for the general care and supervision of
 15 a minor or is a person acting at the request of such parent,
 16 guardian, or other responsible person and:

17 (a) Such force is used for the purpose of safeguarding
 18 or promoting the welfare of the minor, including the prevention or
 19 punishment of ~~his or her~~ the minor's misconduct; and

20 (b) Such force used is not designed to cause or known to
 21 create a substantial risk of causing death, serious bodily harm,
 22 disfigurement, extreme pain or extreme mental distress, or gross
 23 degradation;

24 (2) The actor is the guardian or other person similarly
 25 responsible for the general care and supervision of an incompetent

1 person and:

2 (a) Such force is used for the purpose of safeguarding
3 or promoting the welfare of the incompetent person, including the
4 prevention of ~~his or her~~ the incompetent person's misconduct, or,
5 when such incompetent person is in a hospital or other institution
6 for ~~his or her~~ care and custody, for the maintenance of reasonable
7 discipline in such institution; and

8 (b) Such force used is not designed to cause or known to
9 create a substantial risk of causing death, serious bodily harm,
10 disfigurement, extreme or unnecessary pain, extreme or unnecessary
11 mental distress, or humiliation;

12 (3) The actor is a doctor or other therapist or a person
13 assisting ~~him or her~~ a doctor or other therapist at ~~his or her~~ such
14 doctor's or therapist's direction and:

15 (a) Such force is used for the purpose of administering
16 a recognized form of treatment which the actor reasonably believes
17 to be adapted to promoting the physical or mental health of the
18 patient; and

19 (b) Such treatment is administered with the informed
20 consent of the patient or, if the patient is a minor or an
21 incompetent person, with the consent of ~~his or her~~ the minor's
22 or incompetent person's parent or guardian or other person legally
23 competent to consent in ~~his or her~~ the minor's or incompetent
24 person's behalf or the treatment is administered in an emergency
25 when the actor reasonably believes that no one competent to consent

1 can be consulted and that a reasonable person, wishing to safeguard
2 the welfare of the patient, would consent;

3 (4) The actor is a warden or other authorized official of
4 a correctional institution and:

5 (a) ~~He or she~~ Reasonably believes that the force used
6 is necessary for the purpose of enforcing the lawful rules or
7 procedures of the institution, unless ~~his or her~~ the actor's belief
8 in the lawfulness of the rule or procedure sought to be enforced
9 is erroneous and ~~his or her~~ such error is the result of ignorance
10 or mistake as to the provisions of sections 28-1406 to 28-1416 and
11 section 6 of this act, any other provision of the criminal law, or
12 the law governing the administration of the institution;

13 (b) The nature or degree of force used is not forbidden
14 by section 28-1408 or 28-1409; and

15 (c) If deadly force is used, its use is otherwise
16 justifiable under sections 28-1406 to 28-1416 and section 6 of this
17 act;

18 (5) The actor is a person responsible for the safety of
19 a vessel or an aircraft or a person acting at ~~his or her~~ such
20 person's direction and:

21 (a) ~~He or she~~ Reasonably believes that the force used is
22 necessary to prevent interference with the operation of the vessel
23 or aircraft or obstruction of the execution of a lawful order
24 unless such belief in the lawfulness of the order is erroneous and
25 such error is the result of ignorance or mistake as to the law

1 defining such authority; and

2 (b) If deadly force is used, its use is otherwise
3 justifiable under sections 28-1406 to 28-1416 and section 6 of this
4 act; and

5 (6) The actor is a person who is authorized or required
6 by law to maintain order or decorum in a vehicle, train, or other
7 carrier or in a place where others are assembled, and:

8 (a) ~~He or she~~ Reasonably believes that the force used is
9 necessary for such purpose; and

10 (b) Such force used is not designed to cause or known to
11 create a substantial risk of causing death, bodily harm, or extreme
12 mental distress.

13 Sec. 10. Section 28-1415, Reissue Revised Statutes of
14 Nebraska, is amended to read:

15 28-1415 Conduct involving the appropriation, seizure, or
16 destruction of, damage to, intrusion on, or interference with
17 property is justifiable under circumstances which would establish a
18 defense of privilege in a civil action based thereon, unless:

19 (1) Sections 28-1406 to 28-1416 and section 6 of this act
20 or the law defining the offense deals with the specific situation
21 involved; or

22 (2) A legislative purpose to exclude the justification
23 claimed otherwise plainly appears.

24 Sec. 11. Section 28-1416, Reissue Revised Statutes of
25 Nebraska, is amended to read:

1 28-1416 ~~(1)~~ (1)(a) In any prosecution based on
2 conduct which is justifiable under sections 28-1406 to 28-1416,
3 justification is an affirmative defense.

4 (b) In any prosecution based in whole or in part on
5 conduct which is presumed reasonable under section 6 of this act,
6 the prosecution has the burden of proving the nonexistence of the
7 presumed fact.

8 (2) The fact that conduct is justifiable under sections
9 28-1406 to 28-1416 ~~does not abolish or impair or presumed~~
10 reasonable under section 6 of this act abolishes any remedy
11 for such conduct which is available in any civil action.

12 Sec. 12. Section 29-439, Reissue Revised Statutes of
13 Nebraska, is amended to read:

14 29-439 (1) If a peace officer receives complaints under
15 section 28-323 from two or more opposing persons, the officer
16 shall evaluate each complaint separately to determine who was the
17 predominant aggressor. If the officer determines that one person
18 was the predominant aggressor, the officer need not arrest the
19 other person believed to have committed an offense. In determining
20 whether a person is the predominant aggressor, the officer shall
21 consider, among other things:

22 (a) Prior complaints under section 28-323;

23 (b) The relative severity of the injuries inflicted on
24 each person;

25 (c) The likelihood of future injury to each person; and

1 (d) Whether one of the persons acted with a justified use
2 of force under sections 28-1406 to 28-1416 or the use of force was
3 presumed reasonable under section 6 of this act.

4 (2) In addition to any other report required, a peace
5 officer who arrests two or more persons with respect to such a
6 complaint shall submit a detailed, written report setting forth the
7 grounds for arresting multiple parties.

8 Sec. 13. If any section in this act or any part of any
9 section is declared invalid or unconstitutional, the declaration
10 shall not affect the validity or constitutionality of the remaining
11 portions.

12 Sec. 14. Original sections 28-1406, 28-1408, 28-1409,
13 28-1410, 28-1411, 28-1412, 28-1413, 28-1415, 28-1416, and 29-439,
14 Reissue Revised Statutes of Nebraska, and section 28-101, Revised
15 Statutes Supplement, 2009, are repealed.

16 Sec. 15. The following sections are outright repealed:
17 Sections 28-1407 and 28-1414, Reissue Revised Statutes of Nebraska.