

ONE HUNDRED SECOND LEGISLATURE - FIRST SESSION - 2011
COMMITTEE STATEMENT
LB226

Hearing Date: Friday February 04, 2011
Committee On: Judiciary
Introducer: Gloor
One Liner: Create the offense of assault with a bodily fluid against a public safety officer

Roll Call Vote - Final Committee Action:
Advanced to General File with amendment(s)

Vote Results:
Aye: 7 Senators Ashford, Coash, Harr, Larson, Lathrop, McGill, Lautenbaugh
Nay:
Absent:
Present Not Voting: 1 Senator Council

Proponents:
SEN. MIKE GLOOR
COREY O'BRIEN
SHAWN EATHERTON
JERRY STILLMOCK
SHERIFF JEFFREY DAVIS
ROSS STEBBINS
JULIE DAKE ABEL

Representing:
INTRODUCER
ATTORNEY GENERAL'S OFFICE
NEBRASKA COUNTY ATTORNEY
NE STATE VOLUNTEER FIREFIGHTERS ASSOC
NEBRASKA SHERIFF'S ASSOCIATION
NAPE
NAPE

Opponents:
JORDAN DELMUNDO
AMY MILLER

Representing:
NEBRASKA AIDS PROJECT
ACLU NEBRASKA

Neutral:
MARY CAMPBELL
DOUG NABB

Representing:
LPS
FREMONT PUBLIC SCHOOLS

Summary of purpose and/or changes:

LB 226 would 28-101 which section is known as the Nebraska Criminal Code to provide for the new crime of "assault with a bodily fluid against a public safety officer." This new crime would be triggered by any person knowingly and intentionally striking a public safety officer with any bodily fluid or throwing or propelling any body fluid in the direction of a public safety officer.

A violation of this act is a Class I misdemeanor (1yr/\$1,000/ both) except that if the person assaulting the officer with the body fluid knew that the source of the fluid was infected with the "human immunodeficiency virus (HIV), acquired immunodeficiency syndrome virus (AIDS) and hepatitis b or hepatitis c, in which case it would be a Class IIIA felony (5yrs/\$10,000/both).

LB 226 provides that any sentence imposed under this act would be served consecutively to any other sentence imposed for an offense committed prior to a violation of this section.

LB 226 also provides upon "probable cause" the ability to grant an order or issue a search warrant for the collection of body fluids or medical records for purposes of identifying or prosecuting crimes under this act.

For purposes of this act, the following definitions are provided:

Bodily fluids- Any naturally produced secretion or waste product generated by the human body and shall include, but not be limited to any quantity of blood, urine, saliva, mucus, vomitus, seminal fluid or feces; and

Public Safety Officer-Includes these officers who were engaged in their official duties at the time of the offense: A peace officer; probation officer; an employee of a county, city, or village jail; an employee of the Department of Correctional Services; an employee of the secure youth confinement facility operated by the Department of Correctional Services, a state, county, or local employee of a youth rehabilitation and treatment center, or an employee of the office of Juvenile Services if the person committing the offense is committed to such a facility, center, or office; or an employee of the Dept. of Health and Human Services if the person committing the offense is committed as a dangerous sex offender under the Sex Offender Commitment Act.

Explanation of amendments:

AM1068 would make the following changes to LB 226:

* In section 2, clarifies that in order for a violation to occur under this act, the bodily fluid must have struck a public safety officer and that the mere throwing of a bodily fluid in the direction of a public safety officer would not suffice for a conviction under the act.

* Amends section 2 (3) and (5) to use more medically accurate terminology by striking "acquired immunodeficiency syndrome virus" and also by striking the word "virus" when it follows "hepatitis B" or "hepatitis C" in this section.

* Section 2(3) is also amended to provide that in order for the felony provision contained in this subsection to be violated, offender must "strike with a bodily the eyes, mouth, or skin of a public safety officer and knew the source of the bodily fluid was infected with HIV or hepatitis B or hepatitis C at the time of the offense.

* Strikes in its entirety Section 2 (4) which required consecutive sentencing for violations arising from this act.

* Strikes from the definition of public safety officer "a state, county, or local employee of a youth rehabilitation and treatment center", or "an employee of the Office of Juvenile Services."

Brad Ashford, Chairperson