

LEGISLATIVE BILL 226

Approved by the Governor May 24, 2011

Introduced by Gloor, 35; Bloomfield, 17; Carlson, 38; Coash, 27; Dubas, 34; Hadley, 37; Lautenbaugh, 18; McCoy, 39; Utter, 33; Wallman, 30.

FOR AN ACT relating to crimes and offenses; to amend section 28-101, Revised Statutes Cumulative Supplement, 2010; to create the offense of assault with a bodily fluid against a public safety officer; to provide penalties; to harmonize provisions; and to repeal the original section.

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

Section 1. Section 28-101, Revised Statutes Cumulative Supplement, 2010, is amended to read:

28-101 Sections 28-101 to 28-1356 and section 2 of this act shall be known and may be cited as the Nebraska Criminal Code.

Sec. 2. (1) Any person who knowingly and intentionally strikes any public safety officer with any bodily fluid is guilty of assault with a bodily fluid against a public safety officer.

(2) Except as provided in subsection (3) of this section, assault with a bodily fluid against a public safety officer is a Class I misdemeanor.

(3) Assault with a bodily fluid against a public safety officer is a Class IIIA felony if the person committing the offense strikes with a bodily fluid the eyes, mouth, or skin of a public safety officer and knew the source of the bodily fluid was infected with the human immunodeficiency virus, hepatitis B, or hepatitis C at the time the offense was committed.

(4) Upon a showing of probable cause by affidavit to a judge of this state that an offense as defined in subsection (1) of this section has been committed and that identifies the probable source of the bodily fluid or bodily fluids used to commit the offense, the judge shall grant an order or issue a search warrant authorizing the collection of any evidence, including any bodily fluid or medical records or the performance of any medical or scientific testing or analysis, that may assist with the determination of whether or not the person committing the offense or the person from whom the person committing the offense obtained the bodily fluid or bodily fluids is infected with the human immunodeficiency virus, hepatitis B, or hepatitis C.

(5) As used in this section:

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

(b) Public safety officer includes any of the following persons who are engaged in the performance of their official duties at the time of the offense: A peace officer; a 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, if the person committing the offense is committed to such facility; an employee of the Youth Rehabilitation and Treatment Center-Geneva or the Youth Rehabilitation and Treatment Center-Kearney; or an employee of the Department of Health and Human Services if the person committing the offense is committed as a dangerous sex offender under the Sex Offender Commitment Act.

Sec. 3. Original section 28-101, Revised Statutes Cumulative Supplement, 2010, is repealed.