LEGISLATIVE BILL 504

Introduced by Hunt, 8; Cavanaugh, 6; DeBoer, 10; Howard, 9; Pansing Brooks, 28; Vargas, 7; Wayne, 13.

Read first time January 22, 2019

Committee: Judiciary

A BILL FOR AN ACT relating to crimes and offenses; to amend sections 28-109, 28-110, 28-111, 28-112, 28-113, and 28-114, Reissue Revised Statutes of Nebraska; to define a term; to provide for enhanced penalties for commission of a crime because of a victim's gender identity or association with a person of a certain gender identity; to include strangulation in the offenses to which enhanced penalties apply; to change provisions relating to legislative intent, civil actions, and duties of the Nebraska Commission on Law Enforcement and Criminal Justice; and to repeal the original sections.

Be it enacted by the people of the State of Nebraska,
Section 1. Section 28-109, Reissue Revised Statutes of Nebraska, is amended to read:

28-109 For purposes of the Nebraska Criminal Code, unless the context otherwise requires:

(1) Act shall mean a bodily movement, and includes words and possession of property;

(2) Aid or assist shall mean knowingly to give or lend money or credit to be used for, or to make possible or available, or to further activity thus aided or assisted;

(3) Benefit shall mean any gain or advantage to the beneficiary including any gain or advantage to another person pursuant to the desire or consent of the beneficiary;

(4) Bodily injury shall mean physical pain, illness, or any impairment of physical condition;

(5) Conduct shall mean an action or omission and its accompanying state of mind, or, where relevant, a series of acts and omissions;

(6) Conveyance shall mean a mode of transportation that includes any vehicle, aircraft, or watercraft;

(7) Deadly physical force shall mean force, the intended, natural, and probable consequence of which is to produce death, or which does, in fact, produce death;

(8) Deadly weapon shall mean any firearm, knife, bludgeon, or other device, instrument, material, or substance, whether animate or inanimate, which in the manner it is used or intended to be used is capable of producing death or serious bodily injury;

(9) Deface shall mean to alter the appearance of something by removing, distorting, adding to, or covering all or a part of the thing;

(10) Dwelling shall mean a building or other thing which is used, intended to be used, or usually used by a person for habitation;

(11) Gender identity means a person's internal sense of their own gender, regardless of the sex the person was assigned at birth;
Government shall mean the United States, any state, county, municipality, or other political unit, any branch, department, agency, or subdivision of any of the foregoing, and any corporation or other entity established by law to carry out any governmental function;

Governmental function shall mean any activity which a public servant is legally authorized to undertake on behalf of government;

Motor vehicle shall mean every self-propelled land vehicle, not operated upon rails, except self-propelled chairs used by persons who are disabled, electric personal assistive mobility devices as defined in section 60-618.02, and bicycles as defined in section 60-611;

Omission shall mean a failure to perform an act as to which a duty of performance is imposed by law;

Peace officer shall mean any officer or employee of the state or a political subdivision authorized by law to make arrests, and shall include members of the National Guard on active service by direction of the Governor during periods of emergency or civil disorder;

Pecuniary benefit shall mean benefit in the form of money, property, commercial interest, or anything else, the primary significance of which is economic gain;

Person shall mean any natural person and where relevant a corporation or an unincorporated association;

Public place shall mean a place to which the public or a substantial number of the public has access, and includes but is not limited to highways, transportation facilities, schools, places of amusement, parks, playgrounds, and the common areas of public and private buildings and facilities;

Public servant shall mean any officer or employee of government, whether elected or appointed, and any person participating as an advisor, consultant, process server, or otherwise in performing a governmental function, but the term does not include witnesses;
(21) Recklessly shall mean acting with respect to a material element of an offense when any person disregards a substantial and unjustifiable risk that the material element exists or will result from his or her conduct. The risk must be of such a nature and degree that, considering the nature and purpose of the actor's conduct and the circumstances known to the actor, its disregard involves a gross deviation from the standard of conduct that a law-abiding person would observe in the actor's situation;

(22) Serious bodily injury shall mean bodily injury which involves a substantial risk of death, or which involves substantial risk of serious permanent disfigurement, or protracted loss or impairment of the function of any part or organ of the body;

(23) Tamper shall mean to interfere with something improperly or to make unwarranted alterations in its condition;

(24) Thing of value shall mean real property, tangible and intangible personal property, contract rights, choses in action, services, and any rights of use or enjoyment connected therewith; and

(25) Voluntary act shall mean an act performed as a result of effort or determination, and includes the possession of property if the actor was aware of his or her physical possession or control thereof for a sufficient period to have been able to terminate it.

Sec. 2. Section 28-110, Reissue Revised Statutes of Nebraska, is amended to read:

28-110 A person in the State of Nebraska has the right to live free from violence, or intimidation by threat of violence, committed against his or her person or the destruction or vandalism of, or intimidation by threat of destruction or vandalism of, his or her property regardless of his or her race, color, religion, ancestry, national origin, gender, sexual orientation, gender identity, age, or disability.

Sec. 3. Section 28-111, Reissue Revised Statutes of Nebraska, is amended to read:
28-111 Any person who commits one or more of the following criminal offenses against a person or a person's property because of the person's race, color, religion, ancestry, national origin, gender, sexual orientation, gender identity, age, or disability or because of the person's association with a person of a certain race, color, religion, ancestry, national origin, gender, sexual orientation, gender identity, age, or disability shall be punished by the imposition of the next higher penalty classification than the penalty classification prescribed for the criminal offense, unless such criminal offense is already punishable as a Class IB felony or higher classification: Manslaughter, section 28-305; assault in the first degree, section 28-308; assault in the second degree, section 28-309; assault in the third degree, section 28-310; strangulation, section 28-310.01; terroristic threats, section 28-311.01; stalking, section 28-311.03; kidnapping, section 28-313; false imprisonment in the first degree, section 28-314; false imprisonment in the second degree, section 28-315; sexual assault in the first degree, section 28-319; sexual assault in the second or third degree, section 28-320; sexual assault of a child, sections 28-319.01 and 28-320.01; arson in the first degree, section 28-502; arson in the second degree, section 28-503; arson in the third degree, section 28-504; criminal mischief, section 28-519; unauthorized application of graffiti, section 28-524; criminal trespass in the first degree, section 28-520; or criminal trespass in the second degree, section 28-521.

Sec. 4. Section 28-112, Reissue Revised Statutes of Nebraska, is amended to read:

28-112 The allegations stating that the underlying offense was committed because of the person's race, color, religion, ancestry, national origin, gender, sexual orientation, gender identity, age, or disability or because of the person's association with a person of a certain race, color, religion, ancestry, national origin, gender, sexual orientation, gender identity, age, or disability shall be set forth in
the indictment or information. It is the burden of the prosecuting
attorney to prove such allegations beyond a reasonable doubt to the judge
or jury in the state's case in chief.

Sec. 5. Section 28-113, Reissue Revised Statutes of Nebraska, is
amended to read:

28-113 (1) A person against whom a violation of section 28-111 has
been committed may bring a civil action for equitable relief, general and
special damages, reasonable attorney's fees, and costs.

(2) A civil action brought pursuant to this section must be brought
within four years after the date of the violation of section 28-111.

(3) In a civil action brought pursuant to this section, the
plaintiff shall establish by a preponderance of the evidence that the
defendant committed the criminal offense against the plaintiff or the
plaintiff's property because of the plaintiff's race, color, religion,
ancestry, national origin, gender, sexual orientation, gender identity,
age, or disability or because of the plaintiff's association with a
person of a certain race, color, religion, ancestry, national origin,
gender, sexual orientation, gender identity, age, or disability.

Sec. 6. Section 28-114, Reissue Revised Statutes of Nebraska, is
amended to read:

28-114 The Nebraska Commission on Law Enforcement and Criminal
Justice shall establish and maintain a central repository for the
collection and analysis of information regarding criminal offenses
committed against a person because of the person's race, color, religion,
ancestry, national origin, gender, sexual orientation, gender identity,
age, or disability or because of the person's association with a person
of a certain race, color, religion, ancestry, national origin, gender,
sexual orientation, gender identity, age, or disability. Upon
establishing such a repository, the commission shall develop a procedure
to monitor, record, classify, and analyze information relating to
criminal offenses apparently directed against individuals or groups, or
their property, because of their race, color, religion, ancestry, national origin, gender, sexual orientation, \textit{gender identity}, age, or disability or because of their association with a person of a certain race, color, religion, ancestry, national origin, gender, sexual orientation, \textit{gender identity}, age, or disability.

Sec. 7. Original sections 28-109, 28-110, 28-111, 28-112, 28-113, and 28-114, Reissue Revised Statutes of Nebraska, are repealed.