Introduced by Blood, 3.

Read first time January 08, 2020

Committee: Judiciary

1 A BILL FOR AN ACT relating to crimes and offenses; to amend section 28-101, Revised Statutes Supplement, 2019; to adopt the Nebraska Anti-Terrorism Act; to prohibit poisoning as prescribed; to harmonize provisions; and to repeal the original section.

5 Be it enacted by the people of the State of Nebraska,
Section 1. Section 28-101, Revised Statutes Supplement, 2019, is amended to read:

28-101 Sections 28-101 to 28-1357 and 28-1601 to 28-1603 and sections 2 to 18 of this act shall be known and may be cited as the Nebraska Criminal Code.

Sec. 2. Sections 2 to 17 of this act shall be known and may be cited as the Nebraska Anti-Terrorism Act.

Sec. 3. For purposes of the Nebraska Anti-Terrorism Act, the definitions found in section 28-109 and sections 4 to 11 of this act apply.

Sec. 4. (1) Critical infrastructure facility means:

(a) A chemical manufacturing facility;

(b) A refinery;

(c) Energy equipment as defined in section 70-601;

(d) A water intake structure, water treatment facility, wastewater treatment plant, or pump station;

(e) A natural gas transmission compressor station;

(f) A liquid natural gas terminal or storage facility;

(g) A telecommunications central switching office;

(h) A railroad switching yard; or

(i) A gas processing plant, including a plant used in the processing, treatment, or fractionation of natural gas.

(2) Critical infrastructure facility also includes public or private systems or assets, whether physical or virtual, the incapacity or destruction of which would have a material, negative effect on the public health or safety or on the economic security of the public.

Sec. 5. Designated foreign terrorist organization means an organization designated as a terrorist organization under section 219 of the federal Immigration and Nationality Act, 8 U.S.C. 1189, as such section and designation existed on January 1, 2020.

Sec. 6. Destructive device means explosive materials and
destructive devices, as such terms are defined in section 28-1213.

Sec. 7. Firearm has the same meaning as in section 28-1201.

Sec. 8. Influencing government policy or affecting the conduct of government does not include improperly or unlawfully influencing the policies, decisions, or conduct, in a specific case, of a specific court, tribunal or other adjudicative board or agency. This includes, by way of example, but not exclusively:

(1) A violation of Chapter 28, article 9, not specifically listed in section 10 of this act;

(2) Threatening the Board of Parole, section 83-198; or

(3) Threatening the Board of Pardons, section 83-1,133.

Sec. 9. Military-type training means training:

(1) In means or methods that can:

(a) Cause the death of, or serious bodily injury to, another person;

(b) Destroy or damage property; or

(c) Cause damage to or disrupt the operations of a critical infrastructure facility; or

(2) On the use, storage, concealment, production, or assembly of a destructive device, firearm, or any other weapon.

Sec. 10. (1) Predicate offense means:

(a) Murder in the first degree, section 28-303;

(b) Murder in the second degree, section 28-304;

(c) Manslaughter, section 28-305;

(d) Assault in the first degree, section 28-308;

(e) Assault in the second degree, subdivision (1)(a) of section 28-309;

(f) Assault by strangulation or suffocation, section 28-310.01;

(g) Terroristic threats, section 28-311.01;

(h) Stalking, section 28-311.04, except for a misdemeanor violation;

(i) Violation of harassment protection order, section 28-311.09;

(j) Violation of sexual assault protection order, section 28-311.11;
(k) Kidnapping, section 28-313;
(l) False imprisonment in the first degree, section 28-314;
(m) False imprisonment in the second degree, section 28-315;
(n) Sexual assault in the first degree, section 28-319;
(o) Sexual assault of a child in the first degree, section 28-319.01;
(p) Sexual assault in the second or third degree, section 28-320;
(q) Sexual assault of a child in the second or third degree, section 28-320.01;
(r) Robbery, section 28-324;
(s) Any violation of the Homicide of the Unborn Child Act, sections 28-388 to 28-394, except for a misdemeanor violation of motor vehicle homicide of an unborn child under section 28-394;
(t) Any violation of the Assault of an Unborn Child Act, sections 28-395 to 28-3,101;
(u) Arson in the first degree, section 28-502;
(v) Arson in the second degree, section 28-503;
(w) Arson in the third degree, section 28-504;
(x) Burglary, section 28-507;
(y) Labor trafficking or sex trafficking or labor trafficking or sex trafficking of a minor under section 28-831;
(z) Assault on an officer, an emergency responder, a state correctional employee, a Department of Health and Human Services employee, or a health care professional in the first degree, section 28-929;
(aa) Assault on an officer, an emergency responder, a state correctional employee, a Department of Health and Human Services employee, or a health care professional in the second degree, section 28-930;
(bb) Assault on an officer, an emergency responder, a state correctional employee, a Department of Health and Human Services
employee, or a health care professional using a motor vehicle, section 28-931.01;

(cc) Transportation or possession of machine guns, short rifles, or short shotguns under section 28-1203;

(dd) Unlawful possession of a firearm at a school, section 28-1204.04;

(ee) Using a deadly weapon to commit a felony or possession of a deadly weapon during the commission of a felony under section 28-1205;

(ff) Unlawful discharge of a firearm under section 28-1212.02;

(gg) Discharge of a firearm in certain cities and counties, section 28-1212.04;

(hh) Unlawful possession of explosive materials in the first degree, section 28-1215;

(ii) Unlawful possession of explosive materials in the second degree, section 28-1216;

(jj) Unlawful sale of explosives, section 28-1217;

(kk) Use of explosives without a permit, section 28-1218;

(ll) Obtaining a permit through false representation, section 28-1219;

(mm) Possession of a destructive device, section 28-1220;

(nn) Threatening the use of explosives or placing a false bomb, section 28-1221;

(oo) Using explosives to commit a felony, section 28-1222;

(pp) Using explosives to damage or destroy property, section 28-1223;

(qq) Using explosives to kill or injure any person, section 28-1224;

(rr) Storing explosives in violation of safety regulations, section 28-1225;

(ss) Miscellaneous violations of explosives and destructive device laws, section 28-1227;

(tt) Unlawful transportation of anhydrous ammonia, section 28-1240;
(uu) Interfering with a public service company, section 28-1311;  
(vv) Interfering with the police radio system, section 28-1312;  
(ww) Any violation of the Computer Crimes Act, sections 28-1341 to 28-1348;  
(xx) Unlawful paramilitary activities, section 28-1481;  
(yy) Violation of domestic abuse protection order, section 42-924;  
(zz) Unlawful interference, section 76-2325.01;  
(aaa) Unauthorized access to electronic communication service, section 86-2,104; or  
(bbb) Poisoning, section 18 of this act.  
(2) Predicate offense also includes any other offense involving as an element of the offense:  
(a) Sexual contact or sexual penetration, as those terms are defined in section 28-318, of a person; or  
(b) Knowing or intentionally causing serious bodily injury to or the death of another person.  

Sec. 11. Terrorist activity means any activity that:  
(1) Involves:  
(a) A violent act or an act dangerous to human life which is a violation of the criminal laws of this state or of the United States; or  
(b) A violation of the Computer Crimes Act; and  
(2) Is intended to:  
(a) Intimidate, injure, or coerce a civilian population;  
(b) Influence government policy by intimidation or coercion; or  
(c) Affect the conduct of government through mass destruction, assassination, murder, kidnapping, or aircraft piracy.  

Sec. 12. (1) A person commits the offense of terrorism if such person commits a predicate offense in furtherance of:  
(a) Intimidating, injuring, or coercing a civilian population;  
(b) Influencing government policy by intimidation or coercion; or  
(c) Affecting the conduct of government through mass destruction.
assassination, murder, kidnapping, or aircraft piracy.

(2) Except as provided in subsection (3) of this section, a violation of this section is a Class II felony.

(3) A violation of this section is a Class IB felony if the violation proximately results in the death of, or serious bodily injury to, another person.

Sec. 13. (1) A person who has received military-type training from a designated foreign terrorist organization shall not use, attempt to use, or conspire to use such military-type training with the intent to harm another person or cause damage to or disrupt the operations of a critical infrastructure facility.

(2) Except as provided in subsection (3) of this section, a violation of this section is a Class IIA felony.

(3) A violation of this section is a Class II felony if the violation proximately results in the death of, or serious bodily injury to, another person.

Sec. 14. (1) For purposes of this section:

(a) Material support or resources has the same meaning as in 18 U.S.C. 2339A, as such section existed on January 1, 2020;

(b) Party means the person alleged to have violated this section; and

(c) Terrorist entity means:

(i) A designated terrorist organization; or

(ii) A person or organization that has engaged, engages in, or intends to engage in terrorist activity or in a violation of section 12 or 16 of this act.

(2) A party shall not provide material support or resources or conceal or disguise the nature, location, source, or ownership of material support or resources, knowing or intending that the material support or resources are to be used in preparation for or in carrying out:
(a) Terrorist activity;

(b) A violation of section 12 or 16 of this act; or

(c) The concealment of an escape from the commission of conduct described in subdivision (2)(a) or (2)(b) of this section.

(3) A party shall not knowingly provide material support or resources to a terrorist entity. To prove a violation of this subsection, the government must prove that the party had knowledge that the organization was a terrorist entity.

(4) Except as provided in subsection (5) of this section, a violation of this section is a Class IIA felony.

(5) A violation of this section is a Class II felony if the violation proximately results in the death of, or serious bodily injury to, another person.

(6)(a) For purposes of prosecution under this section, the provision of personnel constitutes the provision of material support or resources if the party knowingly provides, attempts to provide, or conspires to provide one or more persons, which may include the party, to:

(i) Work under the direction and control of a terrorist entity; or

(ii) Organize, manage, supervise, or otherwise direct the operations of a terrorist entity.

(b) A party or third person who acts entirely independently of the terrorist entity to advance the goals of such terrorist entity is not working under the direction and control of the terrorist entity.

(7) Nothing in this section shall be construed or applied so as to abridge the exercise of rights guaranteed under the First Amendment to the Constitution of the United States or Article I, sections 4 and 5, of the Constitution of Nebraska.

(8) This section shall be interpreted in a manner consistent with federal case law interpreting 18 U.S.C. 2339A and 2339B and related sections of federal law.
(9) A party shall not be prosecuted under this section if such party's activity was authorized by a governmental or law enforcement agency of this state or of the United States in the agency's official capacity and pursuant to a lawful purpose.

(10) The Nebraska Commission on Law Enforcement and Criminal Justice, in consultation with the Attorney General, shall create guidelines for law enforcement investigations conducted pursuant to this section to ensure the protection of privacy rights, civil rights, and civil liberties.

Sec. 15. A person who knowingly and intentionally becomes a member of a designated foreign terrorist organization and serves under the direction or control of that organization with the intent to further the illegal acts of the designated foreign terrorist organization commits a Class IIA felony.

Sec. 16. (1) A person shall not, with the intent to intimidate, injure, or coerce a civilian population or to influence government policy by intimidation or coercion, add or cause to be spread any poison, bacterium, radioactive material, virus, or harmful chemical compound to farm plants or animals.

(2) This section does not apply to activity that is:
(a) Performed by the owner of the farm plants or animals or on such owner's behalf or request and is:
(i) Consistent with a recognized veterinary procedure; or
(ii) Consistent with farming or animal husbandry practices; or
(b) Done in the course of legitimate scientific research.

(3) Except as provided in subsection (4) of this section, a violation of this section is a Class IIA felony.

(4) A violation of this section is a Class II felony if the violation proximately results in the death of, or serious bodily injury to, another person.

(5) For purposes of this section, farm plants or animals means
plants and animals cultivated, grown, or raised by humans. This includes,
but is not limited to: Forages and sod crops, grains and feed crops,  
dairy animals, poultry, livestock, equines, fish or other aquacultural  
animals, bees, fruits, vegetables, flowers, seeds, grasses, and trees.

Sec. 17. (1) Except as provided in subsections (2) and (3) of this  
section, if a person is convicted of committing a felony or misdemeanor  
and such felony or misdemeanor intentionally and materially facilitated  
or furthered terrorist activity or a violation of section 12 or 16 of  
this act, such person shall be punished by the imposition of the next  
higher penalty classification than the penalty classification prescribed  
for the criminal offense.

(2)(a) The enhancement in subsection (1) of this section does not  
apply to any offense that is already punishable as a Class I, IA, or IB  
felony.

(b) If an offense is punishable as a Class I misdemeanor, the  
enhanced penalty under this section is a Class IIIA felony.

(3) This section does not apply to a violation of sections 12, 13,  
14, 15, or 16 of this act.

(4) The prosecution shall allege and prove beyond a reasonable doubt  
that the felony or misdemeanor intentionally and materially facilitated  
or furthered terrorist activity or a violation of section 12 or 16 of  
this act.

Sec. 18. (1) A person shall not, with the intent to kill another  
person or cause serious bodily injury to another person, add any poison,  
bacterium, radioactive material, virus, or harmful chemical compound to:

(a) The waters of the state;

(b) Any food, drink, or medicine; or

(c) Any product designed to be ingested, consumed, or applied to the  
body.

(2) A violation of this section is a Class ID felony, except that a  
violation involving the waters of the state is a Class IB felony.
(3) For purposes of this section, waters of the state has the same meaning as in section 81-1502.

Sec. 19. Original section 28-101, Revised Statutes Supplement, 2019, is repealed.