

LEGISLATURE OF NEBRASKA
ONE HUNDRED FIFTH LEGISLATURE
SECOND SESSION

LEGISLATIVE BILL 990

FINAL READING

Introduced by Wayne, 13.

Read first time January 11, 2018

Committee: Judiciary

1 A BILL FOR AN ACT relating to firearms; to amend sections 28-1351 and
2 28-1354, Reissue Revised Statutes of Nebraska, and sections 28-101,
3 28-1201, and 43-2,129, Revised Statutes Supplement, 2017; to create
4 the offense of possession of a firearm by a prohibited juvenile
5 offender and provide a process to reinstate the right to possess a
6 firearm by such an offender; to create a duty for the court under
7 the Nebraska Juvenile Code; to harmonize provisions; and to repeal
8 the original sections.

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

1 Section 1. Section 28-101, Revised Statutes Supplement, 2017, is
2 amended to read:

3 28-101 Sections 28-101 to 28-1357 and 28-1601 to 28-1603 and section
4 3 of this act shall be known and may be cited as the Nebraska Criminal
5 Code.

6 Sec. 2. Section 28-1201, Revised Statutes Supplement, 2017, is
7 amended to read:

8 28-1201 For purposes of sections 28-1201 to 28-1212.04 and section 3
9 of this act, unless the context otherwise requires:

10 (1) Firearm means any weapon which is designed to or may readily be
11 converted to expel any projectile by the action of an explosive or frame
12 or receiver of any such weapon;

13 (2) Fugitive from justice means any person who has fled or is
14 fleeing from any peace officer to avoid prosecution or incarceration for
15 a felony;

16 (3) Handgun means any firearm with a barrel less than sixteen inches
17 in length or any firearm designed to be held and fired by the use of a
18 single hand;

19 (4) Juvenile means any person under the age of eighteen years;

20 (5) Knife means:

21 (a) Any dagger, dirk, knife, or stiletto with a blade over three and
22 one-half inches in length and which, in the manner it is used or intended
23 to be used, is capable of producing death or serious bodily injury; or

24 (b) Any other dangerous instrument which is capable of inflicting
25 cutting, stabbing, or tearing wounds and which, in the manner it is used
26 or intended to be used, is capable of producing death or serious bodily
27 injury;

28 (6) Knuckles and brass or iron knuckles means any instrument that
29 consists of finger rings or guards made of a hard substance and that is
30 designed, made, or adapted for the purpose of inflicting serious bodily
31 injury or death by striking a person with a fist enclosed in the

1 knuckles;

2 (7) Machine gun means any firearm, whatever its size and usual
3 designation, that shoots automatically more than one shot, without manual
4 reloading, by a single function of the trigger;

5 (8) School means a public, private, denominational, or parochial
6 elementary, vocational, or secondary school, a private postsecondary
7 career school as defined in section 85-1603, a community college, a
8 public or private college, a junior college, or a university;

9 (9) Short rifle means a rifle having a barrel less than sixteen
10 inches long or an overall length of less than twenty-six inches; and

11 (10) Short shotgun means a shotgun having a barrel or barrels less
12 than eighteen inches long or an overall length of less than twenty-six
13 inches.

14 Sec. 3. (1) Except as provided in subsections (3) and (4) of this
15 section, a person under the age of twenty-five years who knowingly
16 possesses a firearm commits the offense of possession of a firearm by a
17 prohibited juvenile offender if he or she has previously been adjudicated
18 an offender in juvenile court for an act which would constitute a felony
19 or an act which would constitute a misdemeanor crime of domestic
20 violence.

21 (2) Possession of a firearm by a prohibited juvenile offender is a
22 Class IV felony for a first offense and a Class IIIA felony for a second
23 or subsequent offense.

24 (3) Subsection (1) of this section does not apply to the possession
25 of firearms by members of the armed forces of the United States, active
26 or reserve, National Guard of this state, or Reserve Officers Training
27 Corps or peace officers or other duly authorized law enforcement officers
28 when on duty or training.

29 (4)(a) Prior to reaching the age of twenty-five years, a person
30 subject to the prohibition of subsection (1) of this section may file a
31 petition for exemption from such prohibition and thereby have his or her

1 right to possess a firearm reinstated. A petitioner who is younger than
2 nineteen years of age shall petition the juvenile court in which he or
3 she was adjudicated for the underlying offense. A petitioner who is
4 nineteen years of age or older shall petition the district court in the
5 county in which he or she resides.

6 (b) In determining whether to grant a petition filed under
7 subdivision (4)(a) of this section, the court shall consider:

8 (i) The behavior of the person after the underlying adjudication;

9 (ii) The likelihood that the person will engage in further criminal
10 activity; and

11 (iii) Any other information the court considers relevant.

12 (c) The court may grant a petition filed under subdivision (4)(a) of
13 this section and issue an order exempting the person from the prohibition
14 of subsection (1) of this section when in the opinion of the court the
15 order will be in the best interests of the person and consistent with the
16 public welfare.

17 (5) The fact that a person subject to the prohibition under
18 subsection (1) of this section has reached the age of twenty-five or that
19 a court has granted a petition under subdivision (4)(a) of this section
20 shall not be construed to mean that such adjudication has been set aside.
21 Nothing in this section shall be construed to authorize the setting aside
22 of such an adjudication or conviction except as otherwise provided by
23 law.

24 (6) For purposes of this section, misdemeanor crime of domestic
25 violence has the same meaning as in section 28-1206.

26 Sec. 4. Section 28-1351, Reissue Revised Statutes of Nebraska, is
27 amended to read:

28 28-1351 (1) A person commits the offense of unlawful membership
29 recruitment into an organization or association when he or she knowingly
30 and intentionally coerces, intimidates, threatens, or inflicts bodily
31 harm upon another person in order to entice that other person to join or

1 prevent that other person from leaving any organization, group,
2 enterprise, or association whose members, individually or collectively,
3 engage in or have engaged in any of the following criminal acts for the
4 benefit of, at the direction of, or on behalf of the organization, group,
5 enterprise, or association or any of its members:

6 (a) Robbery under section 28-324;

7 (b) Arson in the first, second, or third degree under section
8 28-502, 28-503, or 28-504, respectively;

9 (c) Burglary under section 28-507;

10 (d) Murder in the first degree, murder in the second degree, or
11 manslaughter under section 28-303, 28-304, or 28-305, respectively;

12 (e) Violations of the Uniform Controlled Substances Act that involve
13 possession with intent to deliver, distribution, delivery, or manufacture
14 of a controlled substance;

15 (f) Unlawful use, possession, or discharge of a firearm or other
16 deadly weapon under sections 28-1201 to 28-1212.04 and section 3 of this
17 act;

18 (g) Assault in the first degree or assault in the second degree
19 under section 28-308 or 28-309, respectively;

20 (h) Assault on an officer, an emergency responder, a state
21 correctional employee, a Department of Health and Human Services
22 employee, or a health care professional in the first, second, or third
23 degree under section 28-929, 28-930, or 28-931, respectively, or assault
24 on an officer, an emergency responder, a state correctional employee, a
25 Department of Health and Human Services employee, or a health care
26 professional using a motor vehicle under section 28-931.01;

27 (i) Theft by unlawful taking or disposition under section 28-511;

28 (j) Theft by receiving stolen property under section 28-517;

29 (k) Theft by deception under section 28-512;

30 (l) Theft by extortion under section 28-513;

31 (m) Kidnapping under section 28-313;

1 (n) Any forgery offense under sections 28-602 to 28-605;

2 (o) Criminal impersonation under section 28-638;

3 (p) Tampering with a publicly exhibited contest under section
4 28-614;

5 (q) Unauthorized use of a financial transaction device or criminal
6 possession of a financial transaction device under section 28-620 or
7 28-621, respectively;

8 (r) Pandering under section 28-802;

9 (s) Bribery, bribery of a witness, or bribery of a juror under
10 section 28-917, 28-918, or 28-920, respectively;

11 (t) Tampering with a witness or an informant or jury tampering under
12 section 28-919;

13 (u) Unauthorized application of graffiti under section 28-524;

14 (v) Dogfighting, cockfighting, bearbaiting, or pitting an animal
15 against another under section 28-1005; or

16 (w) Promoting gambling in the first degree under section 28-1102.

17 (2) Unlawful membership recruitment into an organization or
18 association is a Class IV felony.

19 Sec. 5. Section 28-1354, Reissue Revised Statutes of Nebraska, is
20 amended to read:

21 28-1354 For purposes of the Public Protection Act:

22 (1) Enterprise means any individual, sole proprietorship,
23 partnership, corporation, trust, association, or any legal entity, union,
24 or group of individuals associated in fact although not a legal entity,
25 and shall include illicit as well as licit enterprises as well as other
26 entities;

27 (2) Pattern of racketeering activity means a cumulative loss for one
28 or more victims or gains for the enterprise of not less than one thousand
29 five hundred dollars resulting from at least two acts of racketeering
30 activity, one of which occurred after August 30, 2009, and the last of
31 which occurred within ten years, excluding any period of imprisonment,

1 after the commission of a prior act of racketeering activity;

2 (3) Until January 1, 2017, person means any individual or entity, as
3 defined in section 21-2014, holding or capable of holding a legal,
4 equitable, or beneficial interest in property. Beginning January 1, 2017,
5 person means any individual or entity, as defined in section 21-214,
6 holding or capable of holding a legal, equitable, or beneficial interest
7 in property;

8 (4) Prosecutor includes the Attorney General of the State of
9 Nebraska, the deputy attorney general, assistant attorneys general, a
10 county attorney, a deputy county attorney, or any person so designated by
11 the Attorney General, a county attorney, or a court of the state to carry
12 out the powers conferred by the act;

13 (5) Racketeering activity includes the commission of, criminal
14 attempt to commit, conspiracy to commit, aiding and abetting in the
15 commission of, aiding in the consummation of, acting as an accessory to
16 the commission of, or the solicitation, coercion, or intimidation of
17 another to commit or aid in the commission of any of the following:

18 (a) Offenses against the person which include: Murder in the first
19 degree under section 28-303; murder in the second degree under section
20 28-304; manslaughter under section 28-305; assault in the first degree
21 under section 28-308; assault in the second degree under section 28-309;
22 assault in the third degree under section 28-310; terroristic threats
23 under section 28-311.01; kidnapping under section 28-313; false
24 imprisonment in the first degree under section 28-314; false imprisonment
25 in the second degree under section 28-315; sexual assault in the first
26 degree under section 28-319; and robbery under section 28-324;

27 (b) Offenses relating to controlled substances which include: To
28 unlawfully manufacture, distribute, deliver, dispense, or possess with
29 intent to manufacture, distribute, deliver, or dispense a controlled
30 substance under subsection (1) of section 28-416; possession of marijuana
31 weighing more than one pound under subsection (12) of section 28-416;

1 possession of money used or intended to be used to facilitate a violation
2 of subsection (1) of section 28-416 prohibited under subsection (17) of
3 section 28-416; any violation of section 28-418; to unlawfully
4 manufacture, distribute, deliver, or possess with intent to distribute or
5 deliver an imitation controlled substance under section 28-445;
6 possession of anhydrous ammonia with the intent to manufacture
7 methamphetamine under section 28-451; and possession of ephedrine,
8 pseudoephedrine, or phenylpropanolamine with the intent to manufacture
9 methamphetamine under section 28-452;

10 (c) Offenses against property which include: Arson in the first
11 degree under section 28-502; arson in the second degree under section
12 28-503; arson in the third degree under section 28-504; burglary under
13 section 28-507; theft by unlawful taking or disposition under section
14 28-511; theft by shoplifting under section 28-511.01; theft by deception
15 under section 28-512; theft by extortion under section 28-513; theft of
16 services under section 28-515; theft by receiving stolen property under
17 section 28-517; criminal mischief under section 28-519; and unlawfully
18 depriving or obtaining property or services using a computer under
19 section 28-1344;

20 (d) Offenses involving fraud which include: Burning to defraud an
21 insurer under section 28-505; forgery in the first degree under section
22 28-602; forgery in the second degree under section 28-603; criminal
23 possession of a forged instrument under section 28-604; criminal
24 possession of written instrument forgery devices under section 28-605;
25 criminal impersonation under section 28-638; identity theft under section
26 28-639; identity fraud under section 28-640; false statement or book
27 entry under section 28-612; tampering with a publicly exhibited contest
28 under section 28-614; issuing a false financial statement for purposes of
29 obtaining a financial transaction device under section 28-619;
30 unauthorized use of a financial transaction device under section 28-620;
31 criminal possession of a financial transaction device under section

1 28-621; unlawful circulation of a financial transaction device in the
2 first degree under section 28-622; unlawful circulation of a financial
3 transaction device in the second degree under section 28-623; criminal
4 possession of a blank financial transaction device under section 28-624;
5 criminal sale of a blank financial transaction device under section
6 28-625; criminal possession of a financial transaction forgery device
7 under section 28-626; unlawful manufacture of a financial transaction
8 device under section 28-627; laundering of sales forms under section
9 28-628; unlawful acquisition of sales form processing services under
10 section 28-629; unlawful factoring of a financial transaction device
11 under section 28-630; and fraudulent insurance acts under section 28-631;

12 (e) Offenses involving governmental operations which include: Abuse
13 of public records under section 28-911; perjury or subornation of perjury
14 under section 28-915; bribery under section 28-917; bribery of a witness
15 under section 28-918; tampering with a witness or informant or jury
16 tampering under section 28-919; bribery of a juror under section 28-920;
17 assault on an officer, an emergency responder, a state correctional
18 employee, a Department of Health and Human Services employee, or a health
19 care professional in the first degree under section 28-929; assault on an
20 officer, an emergency responder, a state correctional employee, a
21 Department of Health and Human Services employee, or a health care
22 professional in the second degree under section 28-930; assault on an
23 officer, an emergency responder, a state correctional employee, a
24 Department of Health and Human Services employee, or a health care
25 professional in the third degree under section 28-931; and assault on an
26 officer, an emergency responder, a state correctional employee, a
27 Department of Health and Human Services employee, or a health care
28 professional using a motor vehicle under section 28-931.01;

29 (f) Offenses involving gambling which include: Promoting gambling in
30 the first degree under section 28-1102; possession of gambling records
31 under section 28-1105; gambling debt collection under section 28-1105.01;

1 and possession of a gambling device under section 28-1107;

2 (g) Offenses relating to firearms, weapons, and explosives which
3 include: Carrying a concealed weapon under section 28-1202;
4 transportation or possession of machine guns, short rifles, or short
5 shotguns under section 28-1203; unlawful possession of a handgun under
6 section 28-1204; unlawful transfer of a firearm to a juvenile under
7 section 28-1204.01; using a deadly weapon to commit a felony or
8 possession of a deadly weapon during the commission of a felony under
9 section 28-1205; possession of a deadly weapon by a prohibited person
10 under section 28-1206; possession of a firearm by a prohibited juvenile
11 offender under section 3 of this act; possession of a defaced firearm
12 under section 28-1207; defacing a firearm under section 28-1208; unlawful
13 discharge of a firearm under section 28-1212.02; possession, receipt,
14 retention, or disposition of a stolen firearm under section 28-1212.03;
15 unlawful possession of explosive materials in the first degree under
16 section 28-1215; unlawful possession of explosive materials in the second
17 degree under section 28-1216; unlawful sale of explosives under section
18 28-1217; use of explosives without a permit under section 28-1218;
19 obtaining an explosives permit through false representations under
20 section 28-1219; possession of a destructive device under section
21 28-1220; threatening the use of explosives or placing a false bomb under
22 section 28-1221; using explosives to commit a felony under section
23 28-1222; using explosives to damage or destroy property under section
24 28-1223; and using explosives to kill or injure any person under section
25 28-1224;

26 (h) Any violation of the Securities Act of Nebraska pursuant to
27 section 8-1117;

28 (i) Any violation of the Nebraska Revenue Act of 1967 pursuant to
29 section 77-2713;

30 (j) Offenses relating to public health and morals which include:
31 Prostitution under section 28-801; pandering under section 28-802;

1 keeping a place of prostitution under section 28-804; labor trafficking,
2 sex trafficking, labor trafficking of a minor, or sex trafficking of a
3 minor under section 28-831; a violation of section 28-1005; and any act
4 relating to the visual depiction of sexually explicit conduct prohibited
5 in the Child Pornography Prevention Act; and

6 (k) A violation of the Computer Crimes Act;

7 (6) State means the State of Nebraska or any political subdivision
8 or any department, agency, or instrumentality thereof; and

9 (7) Unlawful debt means a debt of at least one thousand five hundred
10 dollars:

11 (a) Incurred or contracted in gambling activity which was in
12 violation of federal law or the law of the state or which is
13 unenforceable under state or federal law in whole or in part as to
14 principal or interest because of the laws relating to usury; or

15 (b) Which was incurred in connection with the business of gambling
16 in violation of federal law or the law of the state or the business of
17 lending money or a thing of value at a rate usurious under state law if
18 the usurious rate is at least twice the enforceable rate.

19 Sec. 6. (1) When the petition alleges the juvenile committed an act
20 which would constitute a felony or an act which would constitute a
21 misdemeanor crime of domestic violence, the court shall explain the
22 specific legal consequences that an adjudication for such an act will
23 have on the juvenile's right to possess a firearm. The court shall
24 provide such explanation at the earlier of:

25 (a) The juvenile's first court appearance or, if the juvenile is not
26 present in the court at the time of the first appearance, by written
27 notice sent by regular mail to the juvenile's last-known address; or

28 (b) Prior to adjudication.

29 (2) For purposes of this section:

30 (a) Firearm has the same meaning as in section 28-1201; and

31 (b) Misdemeanor crime of domestic violence has the same meaning as

1 in section 28-1206.

2 Sec. 7. Section 43-2,129, Revised Statutes Supplement, 2017, is
3 amended to read:

4 43-2,129 Sections 43-245 to 43-2,129 and section 6 of this act shall
5 be known and may be cited as the Nebraska Juvenile Code.

6 Sec. 8. Original sections 28-1351 and 28-1354, Reissue Revised
7 Statutes of Nebraska, and sections 28-101, 28-1201, and 43-2,129, Revised
8 Statutes Supplement, 2017, are repealed.