

LEGISLATURE OF NEBRASKA
ONE HUNDRED EIGHTH LEGISLATURE
SECOND SESSION

LEGISLATIVE BILL 1269

Introduced by Hardin, 48; Albrecht, 17; Bostelman, 23; Brewer, 43;
Clements, 2; DeKay, 40; Erdman, 47; Halloran, 33; Hansen,
16; Holdcroft, 36; Ibach, 44; Lippincott, 34; Lowe, 37;
Meyer, 41; Murman, 38.

Read first time January 16, 2024

Committee: Judiciary

- 1 A BILL FOR AN ACT relating to crimes and offenses; to amend sections
2 28-1406, 28-1407, 28-1408, 28-1409, 28-1410, 28-1412, 28-1413,
3 28-1414, 28-1415, 28-1416, and 29-439, Reissue Revised Statutes of
4 Nebraska; to change provisions relating to the duty to retreat when
5 using force in self-defense or defense of another; to provide for
6 criminal and civil immunity when justifiable force is used in
7 defense of self or another; 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 28-1406, Reissue Revised Statutes of Nebraska, is
2 amended to read:

3 28-1406 As used in sections 28-1406 to 28-1416 and section 11 of
4 this act, unless the context otherwise requires:

5 (1) Unlawful force shall mean force, including confinement, which is
6 employed without the consent of the person against whom it is directed
7 and the employment of which constitutes an offense or actionable tort or
8 would constitute such offense or tort except for a defense such as the
9 absence of intent, negligence, or mental capacity; duress; youth; or
10 diplomatic status; not amounting to a privilege to use the force;

11 (2) Assent shall mean consent, whether or not it otherwise is
12 legally effective, except assent to the infliction of death or serious
13 bodily harm;

14 (3) Deadly force shall mean force which the actor uses with the
15 purpose of causing or which the actor ~~he~~ knows to create a substantial
16 risk of causing death or serious bodily harm. Purposely firing a firearm
17 in the direction of another person or at a vehicle in which another
18 person is believed to be constitutes deadly force. A threat to cause
19 death or serious bodily harm, by the production of a weapon or otherwise,
20 so long as the actor's purpose is limited to creating an apprehension
21 that the actor ~~he~~ will use deadly force if necessary, shall not
22 constitute deadly force;

23 (4) Actor shall mean any person who uses force in such a manner as
24 to attempt to invoke the privileges and immunities afforded the actor ~~him~~
25 by sections 28-1406 to 28-1416 and section 11 of this act, except any
26 duly authorized law enforcement officer of the State of Nebraska or its
27 political subdivisions;

28 (5) Dwelling shall mean any building or structure, though movable or
29 temporary, or a portion thereof, which is for the time being the actor's
30 home or place of lodging; and

31 (6) Public officer shall mean any elected or appointed officer or

1 employee of the State of Nebraska or its political subdivisions, except
2 any duly authorized law enforcement officer of the State of Nebraska or
3 its political subdivisions.

4 Sec. 2. Section 28-1407, Reissue Revised Statutes of Nebraska, is
5 amended to read:

6 28-1407 (1) Conduct which the actor believes to be necessary to
7 avoid a harm or evil to the actor ~~himself~~ or to another is justifiable
8 if:

9 (a) The harm or evil sought to be avoided by such conduct is greater
10 than that sought to be prevented by the law defining the offense charged;

11 (b) Neither sections 28-1406 to 28-1416 and section 11 of this act
12 nor other law defining the offense provides exceptions or defenses
13 dealing with the specific situation involved; and

14 (c) A legislative purpose to exclude the justification claimed does
15 not otherwise plainly appear.

16 (2) When the actor was reckless or negligent in bringing about the
17 situation requiring a choice of harms or evils or in appraising the
18 necessity for the actor's ~~his~~ conduct, the justification afforded by this
19 section is unavailable in a prosecution for any offense for which
20 recklessness or negligence, as the case may be, suffices to establish
21 culpability.

22 Sec. 3. Section 28-1408, Reissue Revised Statutes of Nebraska, is
23 amended to read:

24 28-1408 (1) Except as provided in subsection (2) of this section,
25 conduct is justifiable when it is required or authorized by:

26 (a) The law defining the duties or functions of a public officer or
27 the assistance to be rendered to such officer in the performance of such
28 officer's ~~his~~ duties;

29 (b) The law governing the execution of legal process;

30 (c) The judgment or order of a competent court or tribunal;

31 (d) The law governing the armed services or the lawful conduct of

1 war; or

2 (e) Any other provision of law imposing a public duty.

3 (2) Sections 28-1409 to 28-1416 and section 11 of this act shall
4 apply to:

5 (a) The use of force upon or toward the person of another for any of
6 the purposes dealt with in such sections; and

7 (b) The use of deadly force for any purpose, unless the use of such
8 force is otherwise expressly authorized by law or occurs in the lawful
9 conduct of war.

10 (3) The justification afforded by subsection (1) of this section
11 shall apply:

12 (a) When the actor believes the actor's ~~his~~ conduct to be required
13 or authorized by the judgment or direction of a competent court or
14 tribunal or in the lawful execution of legal process, notwithstanding
15 lack of jurisdiction of the court or defect in the legal process; and

16 (b) When the actor believes the actor's ~~his~~ conduct to be required
17 or authorized to assist a public officer in the performance of such
18 officer's ~~his~~ duties, notwithstanding that the officer exceeded the
19 public officer's ~~his~~ legal authority.

20 Sec. 4. Section 28-1409, Reissue Revised Statutes of Nebraska, is
21 amended to read:

22 28-1409 (1) Subject to the provisions of this section and of section
23 28-1414, the use of force upon or toward another person is justifiable
24 when the actor believes that such force is immediately necessary for the
25 purpose of protecting the actor ~~himself~~ against the use of unlawful force
26 by such other person on the present occasion.

27 (2) The use of such force is not justifiable under this section to
28 resist an arrest which the actor knows is being made by a peace officer,
29 although the arrest is unlawful.

30 (3) The use of such force is not justifiable under this section to
31 resist force used by the occupier or possessor of property or by another

1 person on the occupier's or possessor's his behalf, if where the actor
2 knows that the person using the force is doing so under a claim of right
3 to protect the property, except that this limitation shall not apply if:

4 (a) The actor is a public officer acting in the performance of the
5 officer's his duties, ~~or~~ a person lawfully assisting the officer him
6 therein, or a person making or assisting in a lawful arrest;

7 (b) The actor has been unlawfully dispossessed of the property and
8 is making a reentry or recapture justified by section 28-1411; or

9 (c) The actor believes that such force is necessary to protect the
10 actor himself against death or serious bodily harm.

11 (4) The use of deadly force shall not be justifiable under this
12 section unless the actor believes that such force is necessary to protect
13 the actor himself against death, serious bodily harm, kidnapping or
14 sexual intercourse compelled by force or threat, nor is it justifiable
15 if:

16 (a) The actor, with the purpose of causing death or serious bodily
17 harm, provoked the use of force against the actor himself in the same
18 encounter; or

19 (b) In a case in which the actor believes that such force is
20 necessary to protect the actor against death or serious bodily harm, (i)
21 the person against whom deadly force is used is a peace officer acting in
22 the performance of such officer's official duties, (ii) the peace officer
23 identified himself or herself as such, and (iii) the actor knew or
24 reasonably should have known the person was a peace officer.

25 ~~(b) The actor knows that he can avoid the necessity of using such~~
26 ~~force with complete safety by retreating or by surrendering possession of~~
27 ~~a thing to a person asserting a claim of right thereto or by complying~~
28 ~~with a demand that he abstain from any action which he has no duty to~~
29 ~~take, except that:~~

30 ~~(i) The actor shall not be obliged to retreat from his dwelling or~~
31 ~~place of work, unless he was the initial aggressor or is assailed in his~~

1 ~~place of work by another person whose place of work the actor knows it to~~
2 ~~be; and~~

3 ~~(ii) A public officer justified in using force in the performance of~~
4 ~~his duties or a person justified in using force in his assistance or a~~
5 ~~person justified in using force in making an arrest or preventing an~~
6 ~~escape shall not be obliged to desist from efforts to perform such duty,~~
7 ~~effect such arrest or prevent such escape because of resistance or~~
8 ~~threatened resistance by or on behalf of the person against whom such~~
9 ~~action is directed.~~

10 (5) Except as required by subsections (3) and (4) of this section, a
11 person employing protective force may estimate the necessity thereof
12 under the circumstances as such person he believes them to be when the
13 force is used, without retreating, surrendering possession, doing any
14 other act which such person he has no legal duty to do, or abstaining
15 from any lawful action.

16 (6) The justification afforded by this section extends to the use of
17 confinement as protective force only if the actor takes all reasonable
18 measures to terminate the confinement as soon as the actor he knows that
19 the actor he safely can do so, unless the person confined has been
20 arrested on a charge of crime.

21 Sec. 5. Section 28-1410, Reissue Revised Statutes of Nebraska, is
22 amended to read:

23 28-1410 ~~(1)~~—Subject to the provisions of this section and of
24 section 28-1414, the use of force upon or toward the person of another is
25 justifiable to protect a third person when:

26 (1) ~~(a)~~ The actor would be justified under section 28-1409 in using
27 such force to protect the actor ~~himself~~ against the injury the actor he
28 believes to be threatened to the person whom the actor he seeks to
29 protect;

30 (2) ~~(b)~~ Under the circumstances as the actor believes them to be,
31 the person whom the actor he seeks to protect would be justified in using

1 such protective force; and

2 ~~(3) (e) The actor believes that the actor's his intervention is~~
3 necessary for the protection of such other person.

4 ~~(2) Notwithstanding subsection (1) of this section:~~

5 ~~(a) When the actor would be obliged under section 28-1409 to~~
6 ~~retreat, to surrender the possession of a thing or to comply with a~~
7 ~~demand before using force in self-protection, he shall not be obliged to~~
8 ~~do so before using force for the protection of another person, unless he~~
9 ~~knows that he can thereby secure the complete safety of such other~~
10 ~~person;~~

11 ~~(b) When the person whom the actor seeks to protect would be obliged~~
12 ~~under section 28-1409 to retreat, to surrender the possession of a thing~~
13 ~~or to comply with a demand if he knew that he could obtain complete~~
14 ~~safety by so doing, the actor is obliged to try to cause him to do so~~
15 ~~before using force in his protection if the actor knows that he can~~
16 ~~obtain complete safety in that way; and~~

17 ~~(c) Neither the actor nor the person whom he seeks to protect is~~
18 ~~obliged to retreat when in the other's dwelling or place of work to any~~
19 ~~greater extent than in his own.~~

20 Sec. 6. Section 28-1412, Reissue Revised Statutes of Nebraska, is
21 amended to read:

22 28-1412 (1) Subject to the provisions of this section and of section
23 28-1414, the use of force upon or toward the person of another is
24 justifiable when the actor is making or assisting in making an arrest and
25 the actor believes that such force is immediately necessary to effect a
26 lawful arrest.

27 (2) The use of force is not justifiable under this section unless:

28 (a) The actor makes known the purpose of the arrest or believes that
29 it is otherwise known by or cannot reasonably be made known to the person
30 to be arrested; and

31 (b) When the arrest is made under a warrant, the warrant is valid or

1 believed by the actor to be valid.

2 (3) The use of deadly force is not justifiable under this section
3 unless:

4 (a) The arrest is for a felony;

5 (b) Such person effecting the arrest is authorized to act as a peace
6 officer or is assisting a person whom such person ~~he~~ believes to be
7 authorized to act as a peace officer;

8 (c) The actor believes that the force employed creates no
9 substantial risk of injury to innocent persons; and

10 (d) The actor believes that:

11 (i) The crime for which the arrest is made involved conduct
12 including the use or threatened use of deadly force; or

13 (ii) There is a substantial risk that the person to be arrested will
14 cause death or serious bodily harm if such person's ~~his~~ apprehension is
15 delayed.

16 (4) The use of force to prevent the escape of an arrested person
17 from custody is justifiable when the force could justifiably have been
18 employed to effect the arrest under which the person is in custody,
19 except that a guard or other person authorized to act as a peace officer
20 is justified in using any force, including deadly force, which such guard
21 or other person ~~he~~ believes to be immediately necessary to prevent the
22 escape of a person from a jail, prison, or other institution for the
23 detention of persons charged with or convicted of a crime.

24 (5) A private person who is summoned by a peace officer to assist in
25 effecting an unlawful arrest is justified in using any force which such
26 person ~~he~~ would be justified in using if the arrest were lawful, except
27 that such use of force is not justified if such person believes ÷
28 ~~Provided, that he does not believe~~ the arrest is unlawful.

29 (6) A private person who assists another private person in effecting
30 an unlawful arrest, or who, not being summoned, assists a peace officer
31 in effecting an unlawful arrest, is justified in using any force which

1 such person he would be justified in using if the arrest were lawful, if:

2 (a) Such person He believes the arrest is lawful; and

3 (b) The arrest would be lawful if the facts were as such person he
4 believes them to be.

5 (7) The use of force upon or toward the person of another is
6 justifiable when the actor believes that such force is immediately
7 necessary to prevent such other person from committing suicide,
8 inflicting serious bodily harm upon himself or herself, committing or
9 consummating the commission of a crime involving or threatening bodily
10 harm, damage to or loss of property or a breach of the peace, except
11 that:

12 (a) Any limitations imposed by the other provisions of sections
13 28-1406 to 28-1416 and section 11 of this act on the justifiable use of
14 force in self-protection, for the protection of others, the protection of
15 property, the effectuation of an arrest or the prevention of an escape
16 from custody shall apply notwithstanding the criminality of the conduct
17 against which such force is used; and

18 (b) The use of deadly force is not in any event justifiable under
19 this subsection unless:

20 (i) The actor believes that there is a substantial risk that the
21 person whom the actor he seeks to prevent from committing a crime will
22 cause death or serious bodily harm to another unless the commission or
23 the consummation of the crime is prevented and that the use of such force
24 presents no substantial risk of injury to innocent persons; or

25 (ii) The actor believes that the use of such force is necessary to
26 suppress a riot or mutiny after the rioters or mutineers have been
27 ordered to disperse and warned, in any particular manner that the law may
28 require, that such force will be used if they do not obey.

29 (8) The justification afforded by subsection (7) of this section
30 extends to the use of confinement as preventive force only if the actor
31 takes all reasonable measures to terminate the confinement as soon as the

1 ~~actor~~ he knows that the actor he safely can do so, unless the person
2 confined has been arrested on a charge of crime.

3 Sec. 7. Section 28-1413, Reissue Revised Statutes of Nebraska, is
4 amended to read:

5 28-1413 The use of force upon or toward the person of another is
6 justifiable if:

7 (1) The actor is the parent or guardian or other person similarly
8 responsible for the general care and supervision of a minor or a person
9 acting at the request of such parent, guardian, or other responsible
10 person and:

11 (a) Such force is used for the purpose of safeguarding or promoting
12 the welfare of the minor, including the prevention or punishment of the
13 minor's ~~his or her~~ misconduct; and

14 (b) Such force used is not designed to cause or known to create a
15 substantial risk of causing death, serious bodily harm, disfigurement,
16 extreme pain or mental distress, or gross degradation;

17 (2) The actor is the guardian or other person similarly responsible
18 for the general care and supervision of an incompetent person and:

19 (a) Such force is used for the purpose of safeguarding or promoting
20 the welfare of the incompetent person, including the prevention of such
21 person's ~~his or her~~ misconduct, or, when such incompetent person is in a
22 hospital or other institution for such person's ~~his or her~~ care and
23 custody, for the maintenance of reasonable discipline in such
24 institution; and

25 (b) Such force used is not designed to cause or known to create a
26 substantial risk of causing death, serious bodily harm, disfigurement,
27 extreme or unnecessary pain, mental distress, or humiliation;

28 (3) The actor is a doctor or other therapist or a person assisting
29 such doctor or therapist ~~him or her~~ at the doctor's or therapist's ~~his or~~
30 ~~her~~ direction and:

31 (a) Such force is used for the purpose of administering a recognized

1 form of treatment which the actor believes to be adapted to promoting the
2 physical or mental health of the patient; and

3 (b) Such treatment is administered with the consent of the patient
4 or, if the patient is a minor or an incompetent person, with the consent
5 of the patient's ~~his or her~~ parent or guardian or other person legally
6 competent to consent in the patient's ~~his or her~~ behalf or the treatment
7 is administered in an emergency when the actor believes that no one
8 competent to consent can be consulted and that a reasonable person,
9 wishing to safeguard the welfare of the patient, would consent;

10 (4) The actor is a warden or other authorized official of a
11 correctional institution and:

12 (a) The actor ~~He or she~~ believes that the force used is necessary
13 for the purpose of enforcing the lawful rules or procedures of the
14 institution, unless the actor's ~~his or her~~ belief in the lawfulness of
15 the rule or procedure sought to be enforced is erroneous and such ~~his or~~
16 ~~her~~ error is the result of ignorance or mistake as to the provisions of
17 sections 28-1406 to 28-1416 and section 11 of this act, any other
18 provision of the criminal law, or the law governing the administration of
19 the institution;

20 (b) The nature or degree of force used is not forbidden by section
21 28-1408 or 28-1409; and

22 (c) If deadly force is used, its use is otherwise justifiable under
23 sections 28-1406 to 28-1416 and section 11 of this act;

24 (5) The actor is a person responsible for the safety of a vessel or
25 an aircraft or a person acting at such responsible person's ~~his or her~~
26 direction and:

27 (a) The actor ~~He or she~~ believes that the force used is necessary to
28 prevent interference with the operation of the vessel or aircraft or
29 obstruction of the execution of a lawful order unless such belief in the
30 lawfulness of the order is erroneous and such error is the result of
31 ignorance or mistake as to the law defining such authority; and

1 (b) If deadly force is used, its use is otherwise justifiable under
2 sections 28-1406 to 28-1416 and section 11 of this act; and

3 (6) The actor is a person who is authorized or required by law to
4 maintain order or decorum in a vehicle, train, or other carrier or in a
5 place where others are assembled, and:

6 (a) The actor ~~He or she~~ believes that the force used is necessary
7 for such purpose; and

8 (b) Such force used is not designed to cause or known to create a
9 substantial risk of causing death, bodily harm, or extreme mental
10 distress.

11 Sec. 8. Section 28-1414, Reissue Revised Statutes of Nebraska, is
12 amended to read:

13 28-1414 (1) The justification afforded by sections 28-1409 to
14 28-1412 is unavailable when:

15 (a) The actor's belief in the unlawfulness of the force or conduct
16 against which the actor ~~he~~ employs protective force or the actor's ~~his~~
17 belief in the lawfulness of an arrest which the actor ~~he~~ endeavors to
18 effect by force is erroneous; and

19 (b) The actor's ~~His~~ error is the result of ignorance or mistake as
20 to the provisions of sections 28-1406 to 28-1416 and section 11 of this
21 act, any other provision of the criminal law, or the law governing the
22 legality of an arrest or search.

23 (2) When the actor believes that the use of force upon or toward the
24 person of another is necessary for any of the purposes for which such
25 belief would establish a justification under sections 28-1408 to 28-1413
26 but the actor is reckless or negligent in having such belief or in
27 acquiring or failing to acquire any knowledge or belief which is material
28 to the justifiability of the actor's ~~his~~ use of force, the justification
29 afforded by those sections is unavailable in a prosecution for an offense
30 for which recklessness or negligence, as the case may be, suffices to
31 establish culpability.

1 (3) When the actor is justified under sections 28-1408 to 28-1413 in
2 using force upon or toward the person of another but the actor he
3 recklessly or negligently injures or creates a risk of injury to innocent
4 persons, the justification afforded by those sections is unavailable in a
5 prosecution for such recklessness or negligence towards innocent persons.

6 Sec. 9. Section 28-1415, Reissue Revised Statutes of Nebraska, is
7 amended to read:

8 28-1415 Conduct involving the appropriation, seizure or destruction
9 of, damage to, intrusion on or interference with property is justifiable
10 under circumstances which would establish a defense of privilege in a
11 civil action based thereon, unless:

12 (1) Sections 28-1406 to 28-1416 and section 11 of this act or the
13 law defining the offense deals with the specific situation involved; or

14 (2) A legislative purpose to exclude the justification claimed
15 otherwise plainly appears.

16 Sec. 10. Section 28-1416, Reissue Revised Statutes of Nebraska, is
17 amended to read:

18 28-1416 (1) Except as otherwise provided in section 11 of this act,
19 in ~~In~~ any prosecution based on conduct which is justifiable under
20 sections 28-1406 to 28-1416, justification is an affirmative defense.

21 (2) The justification defenses provided for under sections 28-1406
22 to 28-1416 and section 11 of this act shall be available in any civil
23 action for assault and battery or intentional wrongful death and, where
24 applicable, shall be a bar to recovery.

25 Sec. 11. (1) For purposes of this section, criminal prosecution
26 includes arrest, detention in custody, the filing of charges, and
27 conviction.

28 (2) An actor who uses force that is justifiable under section
29 28-1409 or 28-1410 is immune from criminal prosecution or any civil
30 liability for such use of force.

31 (3) A law enforcement agency may use standard procedures for

1 investigating a use of force that may be justifiable under section
2 28-1409 or 28-1410, but such agency shall not arrest the actor for such
3 use of force unless such agency determines that there is probable cause
4 to believe such use of force was not justifiable under such sections.

5 (4) If charges are filed against the actor for a use of force that
6 may be justifiable under section 28-1409 or 28-1410, the actor may assert
7 that such use of force was justifiable under such section at a pretrial
8 immunity hearing. If the actor makes a prima facie case that such use of
9 force was justifiable under such section, the burden shifts to the
10 prosecutor to prove by clear and convincing evidence that such use of
11 force was not justifiable under such section.

12 (5) In any civil action against an actor arising from a use of force
13 that is justifiable under section 28-1409 or 28-1410, the court shall
14 award reasonable attorney's fees and costs, compensation for loss of
15 income, and compensation for any expenses incurred if the court finds the
16 use of force was justifiable under such section.

17 Sec. 12. Section 29-439, Reissue Revised Statutes of Nebraska, is
18 amended to read:

19 29-439 (1) If a peace officer receives complaints under section
20 28-323 from two or more opposing persons, the officer shall evaluate each
21 complaint separately to determine who was the predominant aggressor. If
22 the officer determines that one person was the predominant aggressor, the
23 officer need not arrest the other person believed to have committed an
24 offense. In determining whether a person is the predominant aggressor,
25 the officer shall consider, among other things:

- 26 (a) Prior complaints under section 28-323;
27 (b) The relative severity of the injuries inflicted on each person;
28 (c) The likelihood of future injury to each person; and
29 (d) Whether one of the persons acted with a justified use of force
30 under sections 28-1406 to 28-1416 and section 11 of this act.

31 (2) In addition to any other report required, a peace officer who

1 arrests two or more persons with respect to such a complaint shall submit
2 a detailed, written report setting forth the grounds for arresting
3 multiple parties.

4 Sec. 13. Original sections 28-1406, 28-1407, 28-1408, 28-1409,
5 28-1410, 28-1412, 28-1413, 28-1414, 28-1415, 28-1416, and 29-439, Reissue
6 Revised Statutes of Nebraska, are repealed.