

LEGISLATIVE BILL 465

Approved by the Governor February 19, 1982

Introduced by Pirsch, 10

AN ACT relating to crimes and punishments; to amend section 28-904, Reissue Revised Statutes of Nebraska, 1943, and section 28-101, Revised Statutes Supplement, 1980; to impose certain conditions upon the sentences of persons convicted for prescribed offenses while in custody; to define and redefine offenses; to provide penalties; and to repeal the original sections.

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

Section 1. That section 28-101, Revised Statutes Supplement, 1980, be amended to read as follows:

28-101. Sections 28-101 to 28-1335 ~~and sections 28-437, and 28-439 to 28-444~~ and sections 3 to 7 of this act shall be known as the Nebraska Criminal Code.

Sec. 2. That section 28-904, Reissue Revised Statutes of Nebraska, 1943, be amended to read as follows:

28-904. (1) A person commits the offense of resisting arrest if, while intentionally preventing or attempting to prevent a peace officer, acting under color of his or her official authority, from effecting an arrest of the actor or another, he or she:

(a) Uses or threatens to use physical force or violence against the peace officer or another; or

(b) Uses any other means which creates a substantial risk of causing physical injury to the peace officer or another; or

(c) Employs means requiring substantial force to overcome resistance to effecting the arrest.

(2) It is an affirmative defense to prosecution under this section if the peace officer involved was out of uniform and did not identify himself or herself as a peace officer by showing his or her credentials to the person whose arrest is attempted.

(3) Resisting arrest is (a) a Class I misdemeanor for the first such offense and (b) a Class IV felony for any second or subsequent such offense.

(4) Resisting arrest through the use of a deadly or dangerous weapon is a Class IV felony.

Sec. 3. (1) A person commits the offense of assault on an officer in the first degree if he or she intentionally or knowingly causes serious bodily injury to a peace officer or employee of the Department of Correctional Services while such officer or employee is engaged in the performance of his or her official duties.

(2) Assault on an officer in the first degree shall be a Class II felony.

Sec. 4. (1) A person commits the offense of assault on an officer in the second degree if he or she:

(a) Intentionally or knowingly causes bodily injury with a dangerous instrument to a peace officer or employee of the Department of Correctional Services while such officer or employee is engaged in the performance of his or her official duties; or

(b) Recklessly causes bodily injury with a dangerous instrument to a peace officer or employee of the Department of Correctional Services while such officer or employee is engaged in the performance of his or her official duties.

(2) Assault on an officer in the second degree shall be a Class III felony.

Sec. 5. (1) A person commits the offense of assault on an officer in the third degree if he or she intentionally, knowingly, or recklessly causes bodily injury to a peace officer or employee of the Department of Correctional Services while such officer or employee is engaged in the performance of his or her official duties.

(2) Assault on an officer in the third degree shall be a Class IV felony.

Sec. 6. (1) Any person who is legally confined in a jail or correctional or penal institution and intentionally, knowingly, or recklessly causes bodily injury to another person shall be guilty of a Class IV felony, except that if a deadly or dangerous weapon is used to commit such assault he or she shall be guilty of a Class III felony.

(2) Sentences imposed under subsection (1) of this section shall be consecutive to any sentence or sentences imposed for violations committed prior to the

violation of subsection (1) of this section and shall not include any credit for time spent in custody prior to sentencing unless the time in custody is solely related to the offense for which the sentence is being imposed under this section.

Sec. 7. (1) Any person who is legally confined in a jail or correctional or penal institution and who commits (a) assault in the first, second, or third degree as defined in sections 28-308 to 28-310, (b) terroristic threats as defined in section 28-311, (c) kidnapping as defined in section 28-313, or (d) false imprisonment in the first or second degree as defined in sections 28-314 and 28-315, against any person for the purpose of compelling or inducing the performance of any act by such person or any other person shall be guilty of a Class II felony.

(2) Sentences imposed under subsection (1) of this section shall be served consecutive to any sentence or sentences imposed for violations committed prior to the violation of subsection (1) of this section and shall not include any credit for time spent in custody prior to sentencing unless the time in custody is solely related to the offense for which the sentence is being imposed under this section.

Sec. 8. That original section 28-904, Reissue Revised Statutes of Nebraska, 1943, and section 28-101, Revised Statutes Supplement, 1980, are repealed.