

POLICE OFFICERS' ASSOCIATION OF NEBRASKA HANDBOOK



2018 EDITION

Police Officers' Association of Nebraska

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POLICE OFFICER'S ASSOCIATION OF NEBRASKA HANDBOOK

2018 EDITION

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since 1953*

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INTRODUCTION AND DISCLAIMER:

The POAN Handbook is published as a reference tool only. It is not intended, nor warranted, to be a definitive statement of state or local laws, nor of any law enforcement policy.

Readers are urged to review law enforcement actions with the County Attorney, City Attorney, or agency legal advisor. The Nebraska State Statutes are the definitive source of all state laws.

The Police Officers' Association of Nebraska disclaims any liability for errors or omissions contained herein.

Your feedback is welcomed and encouraged. Please send any suggestions, comments, or corrections to P.O.A.N. in writing to the address listed above or via email to nepoan@aol.com.

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| | |
|---|--|
| STATUTES OF LIMITATIONS: [29-110] | |
| These general time limitations apply, unless there is a time limit specifically set out in any statute. | |
| <ul style="list-style-type: none"> These limits don't apply to a person fleeing from justice. | |
| OFFENSE | TIME LIMIT |
| Serious Felonies: Treason, Murder, Arson, Forgery, Sexual assault (1 st or 2 nd degree), Sexual Assault of a Child (1 st , 2 nd , or 3 rd degree), and Incest. | No Time Limit |
| 3rd Degree Sexual Assault of a Child under Sixteen: [28-320] | No Time Limit |
| Most Felonies: | Three Years |
| Most Misdemeanors: | <ul style="list-style-type: none"> Eighteen Months One Year if the penalty is max \$100 fine and/or three months jail. |
| Some Crimes Against a Child under Sixteen Years of Age: Kidnapping, False Imprisonment, Obscenity Child Abuse, Child Porn, Pandering, Debauching a Minor, Sexually Explicit Conduct. | Seven Years to have indictment found or complaint filed and a warrant issued for the offender's arrest. |
| Securities Act Violations: [8-1117] | 5 Years |
| Drug Dealer Tax: [77-4309]. | Six Years |
| Some Fraud Offenses: Criminal Impersonation, Identity Theft, Fraud. | Five Years |
| Vulnerable Adult/Senior Adult Abuse | Six Years [29-110(7)] |

| MISDEMEANOR PENALTY CLASSIFICATIONS: [28-106] | | |
|--|-------------------|--|
| | Minimum | Maximum |
| CLASS I | None | 1 year imprisonment and/or one thousand dollars fine |
| CLASS II | None | 6 months imprisonment and/or one thousand dollars fine |
| CLASS III | None | 3 months imprisonment and/or five hundred dollars fine |
| CLASS IIIA | None | 7 days imprisonment and/or five hundred dollars fine |
| CLASS IV | None | Five hundred dollars fine (no imprisonment) |
| CLASS V | None | One hundred dollars fine (no imprisonment) |
| CLASS W | See DUI Penalties | |

| FELONY PENALTY CLASSIFICATIONS: [28-105] | | |
|---|-----------------------|--|
| | Minimum | Maximum |
| Class I | Death | |
| CLASS IA | Life imprisonment | |
| CLASS IB | 20 years imprisonment | Life imprisonment |
| CLASS IC | 5 years imprisonment | 50 years imprisonment |
| CLASS ID | 3 years imprisonment | 50 years imprisonment |
| CLASS II | 1 year imprisonment | 50 years imprisonment |
| CLASS IIA | None | 20 years imprisonment |
| CLASS III | None | 4 years imprisonment and/or 25 thousand dollar fine, or both |
| CLASS IIIA | None | 3 years imprisonment and/or 10 thousand dollar fine, or both |
| *A felony offender with two prior felonies may be a <i>habitual criminal</i> under [29-2221], subject to longer minimum and maximum penalties (decided by the court at sentencing). | | |

| INFRACTION PENALTY CLASSIFICATIONS: [29-436] | | |
|---|----------------|--|
| | Minimum | Maximum |
| FIRST OFFENSE | None | \$100 |
| SECOND OFFENSE* | \$100 | \$300 |
| THIRD OR SUBSEQUENT OFFENSE* | \$200 | \$500 |
| <ul style="list-style-type: none"> To qualify as a second or higher offense, the conviction must be for the same infraction within a two-year period. Note that some infractions have specific penalties that exceed the penalties noted above, such as possession of marijuana and many traffic infractions. | | |
| CLASS IV | None | 2 years imprisonment and/or 10 thousand dollar fine, or both |

| TRAFFIC INFRACTION PENALTIES [60-689] (Violations of the Rules of the Road with no specific penalty) | |
|--|---|
| FIRST OFFENSE | Not more than \$100 |
| SECOND OFFENSE | Not more than \$200 for a second offense within a one-year period |
| THIRD OFFENSE | Not more than \$300 for a 3rd or subsequent offense within one-year |

SECTION I

PROCEDURE AND GENERAL INFORMATION

TERMS DEFINED:

Some words appear frequently throughout this handbook, some of which are defined here for easy reference. Note, however, that certain statutes use particular definitions that apply only to that section of the law.

AIDING AND ABETTING: Means participation in the unlawful act, evidenced by some word, act, or deed. No particular acts are necessary, nor are any physical part in the commission of the unlawful act is taken or an express agreement therefor.

- Mere encouragement or assistance is sufficient;

ARREST Means custody of another person for the purpose of holding or detaining him or her to answer a criminal charge. It is defined as the taking, seizing, or detaining of the person of another. Words alone do not constitute an arrest unless the person being arrested freely submits to the officer's authority;

ATTEMPT: An attempt to commit a crime is an open, outward act done with the intent to commit a crime which act would have resulted in the commission of the crime if not prevented.

- There must be an intent to commit the crime and an actual effort to carry out that intent.
- An attempt to commit a crime must be distinguished from mere preparation to commit a crime.

BODILY INJURY shall mean physical pain, illness, or any impairment of physical condition;

CRIME: A crime is a wrong that the law considers injurious to the public and punishes by fine and/or imprisonment in a criminal proceeding in which the State is considered the complaining party (synonymous with the term *Offense*);

DEADLY PHYSICAL FORCE: Means force, the intended, natural, and probable consequence of which is to produce death, or which does, in fact, produce death;

DEADLY WEAPON: Means 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;

DEFACE: Means to alter the appearance of something by removing, distorting, adding to, or covering all or part of it;

INTENT: Intent is purely a mental process, defined as that state of mind which desires that a certain act be done.

- Where intent is made an element of a crime, the offense is not committed if the mind of the person doing the unlawful act is innocent. Intent is not the same thing as *motive*;

MALICE: State of mind of intentionally doing a wrong act without cause or excuse. A person acts maliciously when he/she

acts heartlessly, or in total disregard of any social duty;

MOTIVE: Is merely the reason which leads the mind to desire a certain result and is not an element of any crime.

MOTOR VEHICLE: Means every self-propelled land vehicle, not operated upon rails, except self-propelled chairs used by persons who are disabled and electric personal assistive mobility devices;

OMISSION: Means a failure to perform an act as to which a duty of performance is imposed by law;

PEACE OFFICER: Shall include sheriffs, coroners, jailers, marshals, police officers, state highway patrol officers, members of the National Guard on active service by direction of the Governor during periods of emergency, and all other persons with similar authority to make arrests;

PECUNIARY BENEFIT: Means benefit in the form of money, property, commercial interest, or anything else, the primary significance of which is economic gain;

PERSON: Means any natural person and where relevant a corporation or an unincorporated association;

PROBABLE CAUSE: Is the reasonable grounds for action, or the existence of facts and circumstance which would induce a reasonable person to believe that a crime has been committed and that the accused has committed it.

- A mere suspicion or belief is never sufficient.
- The test of probable cause for a warrantless arrest is whether, at the moment of the arrest, the facts and circumstances within the officers' knowledge and of which they had reasonably trustworthy information that the defendant had committed or was committing an offense;

REASONABLE SUSPICION: Is the minimal level of objective justification for detention, and requires more than merely an inchoate and unparticularized suspicion or "hunch". Reasonable Suspicion requires less than the level of suspicion required for probable cause;

RECKLESSLY: Means acting with disregard to a substantial and unjustifiable risk that a material element of a crime exists or will result from defendant's conduct. The risk must involve gross deviation from the standard of conduct that a law-abiding person would observe in the situation. The nature and purpose of the actor's conduct and the circumstances known to the actor are factors in determining an act as reckless;

SERIOUS BODILY INJURY: Means 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;

TAMPER: Means to interfere with something improperly or to make unwarranted alterations in its condition;

THING OF VALUE: Means real property, tangible and intangible personal property, contract rights, choses in action, services, and any rights of use or enjoyment connected therewith;

VOLUNTARY ACT: Means 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;

WARRANT: A warrant is a written court order permitting an officer to do a certain act, such as make an arrest or search.

- It is issued only upon showing probable cause, by a sworn statement made to the issuing court, setting forth the purpose and reasons for the requested warrant.
- If the warrant involved is a search warrant, it will permit the officer to search a named place or person and must accurately describe the items sought for seizure.
- An arrest warrant directs the officer to arrest a named individual, and must state the offense for which the person is arrested.

OFFICER JURISDICTION & POWERS:

1. Definitions for Purposes of this Section:

- **Law enforcement officer** has the same meaning as peace officer, and includes sheriffs, coroners, jailers, marshals, police officers, state highway patrol officers, members of the National Guard on active service by direction of the Governor during periods of emergency, and all other persons with similar authority to make arrests, including conservation officers of the Game and Parks Commission;
- **Primary jurisdiction** means the geographic area within the territorial limits of the state or political subdivision that employs the law enforcement officer.

2. Powers Within the Officer's Primary Jurisdiction:

Within an officer's primary jurisdiction, a law enforcement officer has the power and authority to perform the functions and enforce the laws of Nebraska and the laws of the political subdivision that employs the officer.

3. Powers Beyond The Officer's Primary Jurisdiction:

Any law enforcement officer in Nebraska, but beyond his or her primary jurisdiction, has the power and authority to enforce the laws, including the authority to arrest and detain suspects, as if enforcing the laws or performing the functions within his or her primary jurisdiction in the following cases:

- a. **Fresh Pursuit of a Felony Offender:** [29-215]
A law enforcement officer in a fresh attempt to apprehend a person suspected of committing a felony may follow such person into any other jurisdiction in Nebraska and there arrest and detain such person and return such person to the law enforcement officer's primary jurisdiction;
- b. **Fresh Pursuit of a Misdemeanor Offender:** [29-215]

A law enforcement officer in a fresh attempt to apprehend a person suspected of committing a misdemeanor or a traffic infraction, may follow such person anywhere in an area within twenty-five miles of the boundaries of the law enforcement officer's primary jurisdiction and there arrest and detain such person and return such person to the law enforcement officer's primary jurisdiction;

c. ***With PC to Arrest a DUI Offender:*** [29-215]

When probable cause exists to believe that a person is operating or in the actual physical control of any motor vehicle, motorboat, personal watercraft, or aircraft while under the influence of alcoholic liquor or of any drug, refusal of a chemical test, or an .02 violation, a law enforcement officer has the power and authority to:

- (1) Transport such person to a facility outside of the law enforcement officer's primary jurisdiction for appropriate chemical testing of the person;
- (2) Administer any post-arrest test advisement outside of the law enforcement officer's primary jurisdiction; or
- (3) Perform other procedures or functions outside the officer's primary jurisdiction which are directly and solely related to enforcing the laws concerning a person that is violation.

d. ***Response to Officer Needing Assistance:*** [29-215]

An officer has enforcement, arrest, and detention authority when responding to a call in which a local, state, or federal law enforcement officer is in need of assistance.

- A officer in need of assistance means:

- (1) An officer whose life is in danger, or
- (2) An officer needs assistance in making an arrest and the suspect:
 - (a) Will not be apprehended unless immediately arrested,
 - (b) May cause injury to himself or herself or others or damage to property unless immediately arrested, or
 - (c) May destroy or conceal evidence of the commission of a crime.

e. ***If Contracted By Primary Jurisdiction:*** [29-215]

Municipalities and/or counties may contract with any other municipality or county for law enforcement services.

f. ***When Executing a Warrant:*** [29-407]

An officer named in a warrant to execute it may do so anywhere in the state by apprehending and conveying such offender before a judge. All sheriffs, coroners, and others when required in their respective counties shall aid and assist in the execution of such warrant.

DEATH DURING APPREHENSION OR WHILE IN CUSTODY:

1. The County Coroner Must Be Notified: [23-1821]

Every law enforcement officer, hospital, emergency care facility, physician, nurse, or emergency medical technician, shall immediately notify the county coroner in all cases when it appears that an individual has died while being apprehended by or while in the custody of a law enforcement officer or detention personnel.

- The County Attorney performs coroner duties, but may delegate duties viewing dead bodies and serving papers to the sheriff, or any other peace officer. [23-1210]
- The coroner or coroner's physician shall determine the cause(s) of death and certify it to the presiding judge of the district court.
- Failure to immediately notify the coroner is a Class IV Misdemeanor.

2. Grand Jury Called: [29-1401]

The District Court shall call a grand jury any time an individual dies while being apprehended by or while in the custody of a law enforcement officer or detention personnel.

- A grand jury called pursuant to this section is limited to the review of the incident(s) which caused it to be called.

VEHICULAR PURSUITS:

Although sometimes absolutely necessary, vehicular pursuits greatly increase the possibility of injury including injury or damage to innocent third parties or their property. In response to this very real potential harm law enforcement agencies must set up guidelines for the pursuit of fleeing motor vehicles.

- It is hoped that these guidelines will govern necessary pursuit and prevent unnecessary chase situations.
- It is the duty of every officer to be familiar with agency policy to reasonably respond to a possible pursuit decision.
- All officers must receive specialized training in pursuit driving from the Nebraska Law Enforcement Training Center or as approved by the Police Standards Advisory Council.

Vehicular Pursuit Defined:

A *vehicular pursuit* means an active attempt by an officer operating a motor vehicle to apprehend an occupant of another motor vehicle,

- a. When the driver of the fleeing vehicle is or should be aware of such attempt,
- b. And is resisting apprehension by (1) Maintaining or increasing his or her speed, OR (2) Ignoring the officer, OR (3) Attempting to elude the officer while driving at speeds in excess of those reasonable and proper under the conditions.

Elements of a Pursuit Policy: [29-211]

Every law enforcement agency must adopt and implement a written policy regarding motor vehicle pursuits that includes the following:

- Standards to describe when a pursuit may be initiated taking into consideration the nature and severity of the offense involved;
- Standards to describe when a pursuit is to be discontinued, giving special attention to the danger presented to the general public and the pursuing officer and the probability of later apprehension of the subject based upon his or her identification;
- Procedures governing the operation of pursuits, including the number and type of vehicles which may be used, the method of operation, and the exercise of supervision during pursuits;
- Procedures governing pursuits which include other law enforcement agencies or which extend into the jurisdiction of other law enforcement agencies;
- A system of mandatory continued planning and training of personnel for the proper handling of pursuits, including annual review of the policy with each sworn officer and dispatcher.

Emergency Vehicle Lights and Right of Way: [60-6,151]

Upon the immediate approach of an authorized emergency vehicle which makes use of proper audible or visual signals, the driver of any other vehicle shall yield the right-of-way .

- Flashing or rotating lights shall be red or red and white. A blue light may also be displayed with such flashing or rotating red light or red and white light [60-6,231]
- Other drivers shall immediately drive to a position parallel to and as close as possible to the curb of the roadway clear of any intersection, and shall stop and remain until such emergency vehicle passes unless otherwise directed by any peace officer.
- Any pedestrian using such roadway shall yield the right-of-way until such emergency vehicle passes unless otherwise directed by any peace officer.
- The driver of an authorized emergency vehicle always has the duty to drive with due regard for the safety of all persons using the highway, regardless of the right-of-way.

*Note: Drivers must yield to a stopped emergency vehicle that is using audible or visual signals by moving at least one lane away from it - see [60-6,378].

Liability to Third Parties: [13-911]

In the case of death, injury, or property damage to any innocent third party proximately caused by the action of a law enforcement officer during vehicular pursuit, damages shall be paid to such third party by the political subdivision employing the officer.

- The political subdivision that pays damages is entitled to reimbursement of that amount from the driver of the fleeing vehicle, insurance, and other possible sources.

OFFICER FIREARMS QUALIFICATIONS:

Law enforcement officers must maintain proficiency in firearm operation, and shall qualify at least once every calendar year on a firearm shooting course approved by the Nebraska Law Enforcement Training Center. – see [81-1412] to [81-1412.02]

- Each law enforcement agency shall submit a register to the training center of officers who passed firearm qualification.
- Each law enforcement agency shall maintain records as to the firearm qualifications of its law enforcement officers.

THE RIGHT TO STOP A PERSON: [29-829]

A peace officer may stop any person in a public place who the officer reasonably suspects of committing, who has committed, or who is about to commit a crime and may demand their name, address and an explanation of his actions.

- Reasonable cause for must be founded on articulable facts.
- The detention must be brief, only as long as necessary to confirm or eliminate the reasonable belief.
- When a person is stopped for questioning under this section and the officer reasonably suspects he/she is in danger of life or limb, the suspect may be searched for a dangerous weapon.
- If the officer finds a weapon or any other suspected contraband, the officer may take and keep it until the completion of questioning, at which time he/she shall either return it, if lawfully possessed, or arrest such person.

SEARCH FOR WEAPONS PERMITTED: [29-828]

An officer may search a person for weapons when the circumstances reasonably indicate to an officer that such search is indicated to protect the life of such officer.

SEARCH WARRANTS: [29-815]

Search warrants must be executed between 7:00 a.m. and 8:00 p.m. unless the warrant specifically authorizes that the public interest requires a "night-time" search

WIRETAPS AND OTHER LAW ENFORCEMENT

INTERCEPTION TECHNIQUES: [86-292], [86-2101]

A Court order must be obtained before using a wiretap, pen register, trap-and-trace device, and other law enforcement techniques regarding the interception of communications.

- Due to the complex nature of this area, law enforcement officers must contact their county attorney or othe legal advisor before engaging in any such investigative techniques.

ARREST WITHOUT A WARRANT: [29-404.02]

29-404.02. Arrest without warrant; when.

An officer may arrest a person without a warrant with reasonable cause to believe that such person has committed:

- a. A felony;
- b. A misdemeanor, and either:
 - (1) It was committed in the presence of the officer, or
 - (2) The officer has reasonable cause to believe that such person either
 - (i) Will not be apprehended unless immediately arrested,
 - (ii) May cause injury to himself or herself or others or damage to property unless immediately arrested, or
 - (iii) May destroy or conceal evidence of the commission of such misdemeanor.
- c. Any of the following acts to one or more household members, whether or not committed in the presence of the peace officer:
 - (1) Attempting or intentionally and knowingly causing bodily injury with or without a dangerous instrument;
 - (2) Placing, by physical menace, another in fear of imminent bodily injury; or
 - (3) Engaging in sexual contact or sexual penetration without consent – see [28-318].

*NOTE: Arrest is mandatory in the case of a violation of a domestic abuse or sexual assault protection order, or court order to exclude the person from certain premises.

CUSTODY IN LIEU OF A CITATION [29-427]

Despite the policy preference for citation versus arrest, an officer may take the accused into custody or, already having done so, detain him/her further when grounds for an arrest exist and any of the following are true:

- a. The accused fails to identify themselves satisfactorily, or
- b. The accused refuses to sign the citation (see below for traffic offenses), or
- c. The officer has reasonable grounds to believe that any of the following conditions apply:
 - (1) The accused will refuse to respond to the citation, or
 - (2) Such custody is necessary to protect the accused or others when his continued liberty would constitute a risk of immediate harm, or
 - (3) Such action is necessary in order to carry out legitimate investigative functions, or
 - (4) The accused has no ties to the jurisdiction reasonably sufficient to assure his appearance, or
 - (5) The accused has previously failed to appear in response to a citation.

ISSUING A CITATION: [29-424]

A citation must have all required information entered on it, including the person's name and address, the offense charged, and the time and place the person cited is to appear in court.

- Unless the subject requests an earlier date, the appearance shall be at least three days after the issuance of the citation.
- One copy of the citation shall be delivered to the person cited, and such person shall sign a duplicate, giving his/her promise to appear at the time and place stated therein.
- Such person thereupon shall be released from custody.
- As soon as practicable, the copy signed by the person cited shall be delivered to the prosecuting attorney.

*NOTE: A citation issued by an officer shall not contain the cited person's social security number.

CITATION IN LIEU OF CUSTODY: [29-422]

It is statutory policy of the State of Nebraska to issue citations in lieu of arrest or continued custody to the maximum extent consistent with the effective enforcement of the law and the protection of the public.

a. **General Preference for Citation Only:**

Any peace officer is authorized to issue a citation in lieu of arrest or continued custody for any offense that is a traffic infraction, any other infraction, or a misdemeanor and for any violation of a city or village ordinance.

b. **Exception for Protection/Restraining Order Violations:**

Arrest is mandatory for a violation of a domestic abuse or sexual assault protection order or court order to exclude the person from certain premises – see [28-311.11] and [42-928].

c. **Transporting Cited Person to Medical Facility:**

An officer is authorized to take a cited person to an appropriate medical facility if the person appears mentally or physically unable to care for him or herself.

REFUSAL TO SIGN A TRAFFIC CITATION: [60-684]

Any person who is issued a traffic citation is required to sign it; failure to do so is a separate violation.

- Refusal to sign a traffic citation is a Class III Misdemeanor.

FAILURE TO PAY/APPEAR: [29-426]

Any person cited who fails to appear or otherwise comply with the command of a citation may be charged with a separate violation, which is a Class III Misdemeanor.

- But, If the prosecutor does not file a complaint at least twenty-four hours before the time set for the appearance, the person is released from the obligation to appear as specified.

HEARING-IMPAIRED PERSON IN CUSTODY - RIGHT TO INTERPRETER: [20-150 to 20-159]

Whenever a hearing-impaired person is arrested and taken into custody, there must be a qualified interpreter present for any interrogation, warning, notification of rights, or taking of a statement.

- Such interpreter must be approved by the Commission for the Hearing Impaired.
- A hearing impaired person may waive the presence of an interpreter, but such a waiver must be in writing and be done knowingly, voluntarily and intelligently.
- An arrested person otherwise eligible for release cannot be held in custody solely to await for a qualified interpreter, and such interpreter shall be provided as soon as possible.

VICTIM RIGHTS:

The statutory public policy is to improve the attitudes of victims and witnesses toward the criminal justice system and to provide a faster and more complete recovery by a victim from the crime.

- Although a “victim” is defined specifically as one who has suffered the effects of a serious crime (homicide, sexual assault, serious injury), the intent of the legislature is relevant to keep in mind when dealing with a victim of any crime.

Legislative Findings:

Victims and witnesses are often unaware of both their rights and obligations, and victims often become isolated and receive little practical advice or necessary care.

- People often do not report crime because they feel disenchanting with the criminal justice system;

Specific Rights of Victims: [81-1848]

Victims as defined by [29-119] have specified rights, including:

- To examine public information collected by criminal justice agencies, but not intelligence or investigative information;
- To receive and be informed of protection from harm and threats arising out of their cooperation;
- To be informed of financial assistance and other social services available due to being a witness or victim of a crime;
- To not have personal identifying information, other than the victim's name, be disclosed on publically available documents;
- To have any stolen or other personal property expeditiously returned by law enforcement when not needed as evidence;
- Appropriate services to insure that employers of victims and witnesses will cooperate in order to minimize an employee's loss of pay or benefits resulting from court appearances;
- To a speedy disposition of the case in order to minimize the time and stress in connection with the matter.

MISSING PERSONS: [29-212] to [29-214]

Required Notifications:

When a report of a missing person has been received by a law enforcement agency having jurisdiction, the agency shall notify:

- a. On duty personnel of the agency as soon as practicable;
- b. All law enforcement agencies considered to be involved;
- c. All law enforcement agencies to which the person filing the report requests that the information be sent; and
- d. All law enforcement agencies requesting the information.

Missing Persons Under 18:

If the missing person is an un-emancipated minor, the law enforcement agency shall immediately transmit the proper information for inclusion in the National Crime Information Center computer and the Missing Persons Information Clearinghouse established within the Nebraska State Patrol.

- Agency rules cannot prevent an immediate investigation by specifying a time limitation for a missing person investigation.

The Missing Persons Information Clearinghouse

The Nebraska State Patrol administers a clearinghouse that is the central repository for information on missing persons.

- The Clearinghouse shall be used by all law enforcement agencies in NE as a central repository for information on missing persons.
- Such information shall be provided on a uniform form prescribed by the Nebraska State Patrol.
- The clearinghouse does not relieve the law enforcement agency having jurisdiction of its investigatory duties and does not automatically involve the Nebraska State Patrol as the primary investigatory agency in such case.
- The Clearinghouse provides several functions, including training to local law enforcement, and coordination with other states and the National Crime Information Center in the exchange of information on missing persons.

JUVENILES IN CUSTODY:

Generally: [29-401]

Any law enforcement officer taking a juvenile under the age of eighteen years into custody for any violation of state law or a local ordinance shall proceed as set forth in the juvenile code.

- In determining the appropriate temporary placement or alternative to detention, an officer shall select the placement which is least restrictive of the juvenile's freedom of movement that is consistent with the best interests of the juvenile and the safety of the community.

Juvenile Right To An Attorney: [43-248.01]

Law enforcement personnel or other governmental officials having custody of a juvenile shall:

- a. Inform the juvenile using developmentally appropriate language and without unnecessary delay, of such person's right to call or consult an attorney,
- b. Permit the juvenile to call or consult such attorney without delay, except when exigent circumstances exist.
- c. Permit an attorney to see and consult with the juvenile alone and in private at the place of custody.

Fingerprints of Juveniles: [43-252]

- The fingerprints of any juvenile less than fourteen years of age, who has been taken into custody for investigation of a crime shall not be taken without consent of a court.
- Fingerprints shall not be taken of a juvenile who is not under investigation for a crime, but is contacted for being wayward, uncontrollable, or truant under [43-247(3)(b)].
- If a judge permits the fingerprinting, the fingerprints must be filed by law enforcement officers in files kept separate from those of persons of the age of majority.
- Fingerprints of any juvenile shall not be sent to a state or federal depository unless one of the following is true:
 - (1) The juvenile has been convicted of a felony;
 - (2) The juvenile has unlawfully terminated his/her commitment to a youth rehab and treatment center; or
 - (3) The juvenile is a runaway and a fingerprint check is needed to identify and return him/her to a parent

Warrantless Temporary Custody of a Juvenile:

[43-247], [43-248]

An officer may take a juvenile into temporary custody without a warrant or court order under any of the following circumstances:

- (1) An officer has reasonable grounds to believe the juvenile violated a state law or municipal ordinance and the juvenile is eleven years of age or older; or
- (2) A juvenile is seriously endangered in his or her surroundings and immediate removal appears to be necessary for the juvenile's protection; or
- (3) The officer believes the juvenile to be mentally ill and dangerous as defined in section [71-908] and that the harm described in that section is likely to occur before proceedings may be instituted before the juvenile court; or
- (4) The officer has reasonable grounds to believe that the juvenile has run away from his or her parent, guardian, or custodian; or
- (5) A probation officer has reasonable cause to believe that a juvenile is in violation of probation and will attempt to leave the jurisdiction or place lives or property in danger;
- (6) The officer has reasonable grounds to believe the juvenile is

truant from school;

- (7) The officer has reasonable grounds to believe the juvenile is immune from prosecution for prostitution under [28-801(5)].
- (8) The juvenile is at least eleven years of age and is wayward or habitually disobedient and uncontrolled by a parent/guardian/custodian.

Juveniles in Need of Assistance: [43-251.02]

An officer may refer a child and the child's parent(s) or guardian to a clinically credentialed community-based provider for immediate crisis intervention, de-escalation, and respite care services if:

- a. The child has not committed a criminal offense,
- b. He/she appears to be in need of assistance, and
- c. Fits the criteria of [43-247(b)]:
 - The juvenile is in a situation or engages in an occupation, including prostitution, dangerous to life or limb or injurious to the health or morals of such juvenile, or
 - Is wayward or habitually disobedient, and uncontrolled by his or her parent, guardian, or custodian; or
 - Acts so as to injure or endanger seriously the morals or health of himself, herself, or others; or
 - Is habitually truant from home or school.

Seriously Endangered Juveniles: [43-250(2)]

A juvenile taken into custody under [43-249(2)] shall be delivered to DHHS for temporary placement.

- The officer must make a full report to the County Attorney within 24 hours.

Mentally Ill and Dangerous Juveniles: [43-250(3)]

An officer who takes temporary custody of a juvenile who is mentally ill and dangerous under [43-248(3)] may place the juvenile at a mental health facility for evaluation and emergency treatment or may deliver the juvenile to the DHHS.

- The officer shall execute a written certificate as prescribed by DHHS that summarizes the subject's behavior supporting the officer's belief that he/she is mentally ill and dangerous, and that the harm described in section [71-908] is likely to occur before proceedings before a juvenile court may be invoked.
- A copy of the certificate shall be sent to the county attorney.
- The peace officer shall notify the juvenile's parents, guardian, custodian, or relative of the juvenile's placement.
- An officer may not use a jail or detention facility designed for juveniles who are accused of criminal offenses as a temporary placement for a juvenile taken into custody for allegedly being mentally ill and dangerous.

Truant Juveniles: [43-250(4)]

When an officer has reasonable grounds to believe a juvenile is truant from school, the juvenile may be taken into temporary custody without a warrant.

- The officer shall deliver the juvenile to his/her enrolled school.
- The juvenile shall not be fingerprinted.

Prostitution Cases: [43-250(2)], [28-801]

A juvenile detained for suspicion of prostitution under [28-801] is subject to temporary custody, and the detaining officer shall immediately report the allegation to DHHS for investigation.

- The Officer shall deliver the juvenile to DHHS for temporary placement as determined by the Department.
- The officer must make a full report to the County Attorney within 24 hours.
- The Juvenile is immune from prosecution from prostitution.
- Fingerprints shall not be taken of the juvenile.

Parental Notice Required: [43-250(1)]

An officer who takes a juvenile into temporary custody shall immediately take reasonable measures to notify the juvenile's parent, guardian, custodian, or relative.

Gang Affiliation of a Juvenile: [43-276(1)]

Officers must be sure to note any facts to determine whether the juvenile is a criminal street gang member. Prosecutors consider such affiliation when determining whether to file a criminal charge, an juvenile petition, or to offer diversion or mediation.

- ***Criminal street gang*** means three or more people with a common identifying name, sign, or symbol whose group identity or purposes include engaging in illegal activities;
- ***Criminal street gang member*** is one who willingly or voluntarily becomes and remains a member of a criminal street gang

Juveniles Arrested For a Warrant: [43-250(5)]

A juvenile in custody pursuant to a warrant of arrest shall be delivered to a probation officer for a decision on further detention.

- If detention is not required, the juvenile may be released without bond if release is in the best interests of the juvenile, the safety of the community is not at risk, and the court is notified that the juvenile was released.

Releasing a Juvenile: [43-250(1)(b)]

An officer may immediately release a juvenile taken into temporary custody for a law violation or for being a runaway upon the execution of a promise to appear:

1. Promises To Appear Requirements:

A valid promise to appear requires a juvenile to appear before the court of the county in which such juvenile was taken into custody at a time and place specified in a written notice.

2. Written Notice Requirements:

The notice shall also contain a concise statement of the reasons such juvenile was taken into custody:

- Notice shall be prepared in triplicate;
- The officer shall deliver one copy to the juvenile and require such juvenile or his or her parent, guardian, other custodian, or relative, to sign a written promise to appear at the time and place designated in the notice;
- As soon as practicable, the officer shall file one copy of the notice with the county or city attorney and, when required by the court, also file a copy of the notice with the court or appointed officer.

Retaining Custody of a Juvenile: [43-250]

An officer may retain temporary custody of a juvenile taken into temporary custody for a law violation (if the juvenile is at least eleven years of age), for being a runaway, for a probation violation, or for violating an order for conditional release.

- An officer may deliver the juvenile, if necessary, to the probation officer and communicate all relevant available information regarding such juvenile to the probation officer;
- The peace officer shall implement the probation officer's decision to release or to detain and place the juvenile, based on the probation officer's determination of the need for detention using a detention-screening instrument;
- A detained juvenile shall not be detained in any secure detention facility for longer than twenty-four hours, excluding non-judicial days, unless such juvenile has appeared personally before a court for a hearing to determine if continued detention is necessary;
- When secure detention of a juvenile is necessary, such detention shall occur within a juvenile detention facility unless one of the exceptions below applies.

Juveniles, Placement in an Adult Jail: [43-250]

When a juvenile is taken into temporary custody for a law violation other than a status offense or for being seriously endangered, the following restrictions apply to secure detention, if determined necessary:

- Generally, detention shall occur at a juvenile detention facility;
- Within a metropolitan area where no juvenile detention facility is reasonably available, a juvenile may be placed in an adult jail solely for the purposes of identification, ascertaining his/her health and well-being, and for safekeeping while awaiting transport to an appropriate juvenile placement or

release to a responsible party. Such placement may not exceed six hours, excluding non-judicial days;

- Outside of a metropolitan area and where no juvenile detention facility is reasonably available, the juvenile may be held in an adult jail not to exceed twenty-four hours excluding non-judicial days while awaiting an initial court appearance, solely for the purposes of identifying the juvenile and ascertaining his/her health and well-being and for safekeeping while awaiting transport to an appropriate juvenile placement or release to a responsible party;
- If a felony charge is filed against the juvenile as an adult, he/she may be securely held in a jail or other adult detention facility beyond the specified time limits noted above;
- A juvenile who has committed any felony or has committed a misdemeanor or infraction that is not a traffic or status offense, may be held in a secure area of a jail or other facility used for the detention of adults for up to six hours before and six hours after any court appearance;
- A status offender or non-offender taken into temporary custody shall not be held in adult jail.

Restrictions on Holding a Juvenile in an Adult Jail:

Whenever a juvenile is held in a secure area of any jail or other facility intended or used for the detention of adults, the following restrictions apply:

- There shall be no verbal, visual, or physical contact between the juvenile and any incarcerated adult;
- There shall be adequate staff to supervise and monitor the juvenile's activities at all times.
- If a juvenile is under sixteen years of age or is homeless, neglected, or endangered, he/she shall not be placed within a secure area of a jail or other adult detention facility.
- After July 1, 2017, a juvenile under the age of eleven should not be held in an adult detention facility for any reason.
- This section does not apply to a juvenile who is at least sixteen years of age and who is charged with a felony as an adult.

Juveniles Under Sixteen in Adult Jail: [43-247(3)]

A juvenile under sixteen years of age shall not be placed within a secure area of a jail or other facility intended or used for the detention of adults if any of the following criteria apply:

- a. The juvenile is homeless or destitute;
- b. The juvenile is without proper support through no fault of his or her parent, guardian, or custodian;
- c. The juvenile is abandoned by a parent, guardian, or custodian;
- d. The juvenile lacks proper parental care by reason of the fault or habits of his or her parent, guardian, or custodian;
- e. The parent, guardian, or custodian neglects or refuses to provide proper or necessary subsistence, education, or other

- care necessary for the health, morals, or well-being of the juvenile;
- f. The juvenile's parent, guardian, or custodian is unable to provide or neglects or refuses to provide special care made necessary by the mental condition of the juvenile;
 - g. The juvenile is in a situation or engages in an occupation dangerous to life or limb or injurious to the health or morals of such juvenile;
 - h. The juvenile, by reason of being wayward or habitually disobedient, is uncontrolled by his or her parent, guardian, or custodian; who deports himself or herself so as to injure or endanger seriously the morals or health of himself, herself, or others; or who is habitually truant from home or school; or
 - i. The juvenile is mentally ill and dangerous as defined in section [71-908].

THE SEX OFFENDER REGISTRATION ACT:

[29-4001 to 4014]

Generally:

State policy is to assist efforts of local law enforcement agencies to protect their communities, conduct investigations, and quickly apprehend sex offenders by requiring convicted sex offenders to register as provided by the Sex Offender Registration Act

- Any person subject to the Sex Offender Registration Act shall register within three working days of becoming subject to the Act, and report a change of residence, work, school, or other information within three days.
- Felony sex offenders are also subject to having their DNA entered into the State DNA Bank, administered by the NSP.

*NOTE: This summary is for general reference only. Any detailed questions on this subject should be directed to an officer's legal advisor.

Offenders Who Must Register: [29-4003]

The Sex Offender Registration Act shall apply to any person who on or after January 1, 1997, has ever pled guilty or nolo contendere (*no contest*) to, or has been found guilty of any of the following offenses:

- *Kidnapping Of A Minor* [28-313], except when the person is the parent of the minor and was not convicted of any other offense in this section;
- *False Imprisonment Of A Minor* [28-314] or [28-315];
- *Sexual Assault* [28-319] or [28-320];
- *Sexual Assault of A Child Second Or Third Degree* [28-320.01];
- *Sexual Assault of A Child First Degree* [28- 319.01];
- *Sexual Abuse of A Vulnerable Adult or Senior Adult* [28-386];

- *Incest Of A Minor* [28-703];
- *Pandering Of A Minor* [28-802];
- *Visual Depiction Of Sexually Explicit Conduct Of A Child* [28-1463.03] or [28-1463.05];
- *Knowingly Possessing Any Visual Depiction Of Sexually Explicit Conduct* which has a child as one of its participants or portrayed observers [28-813.01];
- *Criminal Child Enticement* [28-311];
- *Child Enticement By Means Of A Computer* [28-320.02];
- *Debauching A Minor* [28-805].

*NOTE: An offender must also register if he/she has been found guilty of Attempt, Solicitation, Aiding or Abetting, Being an Accessory, or Conspiracy to commit an offense listed above.

Additional Registrable Offenses:

In addition to the registrable offenses listed above, the Sex Offender Registration Act applies to any person who on or after January 1, 2010 has ever pled guilty to, pled nolo contendere to, or been found guilty of any of the following:

- Murder in the first degree [28-303];
- Murder in the second degree [28-304];
- Manslaughter [28-305];
- Assault in the first degree [28-308];
- Assault in the second degree [28-309];
- Assault in the third degree [28-310];
- Stalking [28-311.03];
- Unlawful Intrusion [28-311.08(5)];
- Kidnapping pursuant to section [28-313];
- False imprisonment [28-314] or [28-315];
- Sexual abuse of an inmate or parolee 1st degree [28-322.02];
- Sexual abuse of an inmate or parolee 2nd degree [28-322.03];
- Sexual abuse of a protected individual [28-322.04];
- Incest [28-703];
- Child abuse [28-707(1)(d) or (e)];
- Enticement by electronic communication device [28-833].

*NOTE: An offender also must register if that person has pled guilty or nolo contendere to or been found guilty of Attempt, Solicitation, Aiding or Abetting, Being an Accessory, or Conspiracy to commit an offense listed (1) through (16) above.

*NOTE: In order for the Sex Offender Registration Act to apply to offenses listed in (1) through (7), (9), and (10) above, a court must have found evidence of sexual penetration or sexual contact, including consideration of the factual basis for a plea-based conviction and information contained in the presentence report.

Other Registration Considerations:

- An offender who enters Nebraska must register for any offense that is substantially equivalent to a registrable offense in another jurisdiction;
- An offender must register if incarcerated or on probation or parole for a registrable offense prior to January 1, 1997;
- An offender who enters Nebraska must register if required to register as a sex offender in another U.S. jurisdiction;
- A person appealing a conviction of a registrable offense must still register during the appeals process.

Duration of Registration: [29-4005]

- a. A sex offender must register during any period of supervised release, probation, or parole and afterwards continue to comply for the full registration period unless granted a reduction (excluding time they are in custody or under an inpatient civil commitment).
- b. A sex offender shall keep the registration current for the full registration period unless granted a reduction:
 - Fifteen years, if the offense was punishable by less than one year. After ten years, the offender may make a request to the Nebraska State Patrol for a reduction in the registration period to ten years;
 - Twenty-five years, if the offense was punishable by imprisonment for more than one year; or
 - Life, if the offense was punishable by imprisonment for more than one year and was an aggravated offense or the offender had a prior sex offense conviction or is a lifetime registrant in another jurisdiction.

Registration Verification: [29-4006]

A registered sex offender who is not incarcerated must appear in person to the office of the sheriff of the county in which he or she resides for verification purposes at specific intervals, depending on the duration of the offender's registration period. Verification information is sent by the sheriff to the Nebraska State Patrol on the day it is received and in a manner prescribed by NSP for such purpose. Failure to report for verification is a violation of the Act.

- (1) A person required to register under the act for *fifteen years* shall report every twelve months in the month of his/her birth;
- (2) A person required to register under the act for *twenty-five years* shall report every six months. The offender shall report, in person, in the month of his or her birth and in the sixth month following the month of his/her birth.
- (3) A person required to register under the act *for life* shall report, in person, every three months in the month of his or her birth and every three months following the month of his/her birth.

Changes in Registrants Information:

A registered offender must notify the sheriff if he or she has a new

address, temporary domicile, habitual living location, new employment, new vocation, attends school, or is incarcerated for more than three days, or no longer has a residence, temporary domicile, or habitual living location.

- Notice must be in writing and must be given within three days of a change
- The sheriff shall submit such information to the Nebraska State Patrol on the date it is received.

False or Misleading Information: [29-4008]

It is unlawful for any person that is subject to the Sex Offender Registration Act to:

- a. Knowingly and willfully,
- b. Furnish any false or misleading information in the registration.

Failure to Update Information: [29-4008]

It is unlawful for any person that is subject to the Sex Offender Registration Act to:

- a. Knowingly and willfully,
- b. Fail to provide or timely update law enforcement of any of the information required to be provided by the act.

Penalty Classification for Violations: [29-4011]

- a. Any person required to register under the Sex Offender Registration Act who violates the act is guilty of a Class IIIA Felony;
- b. A second or subsequent violation of the act is a Class IIA Felony, with a mandatory minimum term of at least one year in prison.
- c. If the violation which caused the person to be placed on the registry was a misdemeanor, a second or subsequent violation of the act is a Class IIIA Felony.

Release of Registrant Information: [29-4009]

Information obtained under the Sex Offender Registration Act shall NOT be confidential, but many things may not be disclosed to the general public.

- a. The authorized release of information shall conform with the rules and regulations of the Nebraska State Patrol.
- b. Information concerning the address or whereabouts of a sex offender may be disclosed to his or her victim or victims.
- c. The following information may only be disclosed to law enforcement agencies, including federal or state probation or parole agencies, if appropriate:
 - A sex offender's social security number;
 - Any references to arrests of a sex offender that did not result in conviction;
 - A sex offender's travel or immigration information;

- A sex offender's remote communication device identifiers and addresses;
- A sex offender's email addresses, instant messaging identifiers, chat room identifiers, global unique identifiers, and other Internet communication identifiers;
- A sex offender's telephone numbers;
- A sex offender's motor vehicle operator's license information or state identification card number;
- The name of any employer of a sex offender;
- The identity of any victim of a sex offense.

Notification of Sex Offenders: [29-4013]

The Nebraska State Patrol creates rules and regulations for the release of information pursuant to section [29-4009].

- a. NSP shall have access to all documents that are generated by any governmental agency that may have bearing on sex offender registration and community notification, and shall not be charged for access to documents under this subsection.
- b. Information release procedures shall provide for law enforcement and public notification using electronic systems.
- c. Information concerning the address or whereabouts of a sex offender may be disclosed to his or her victim or victims.
- d. The following shall have access to public notification information:
 - Any agency responsible for conducting employment-related background checks under section 3 of the National Child Protection Act of 1993, 42 U.S.C. 5119a;
 - Any social service entity responsible for protecting minors in the child welfare system;
 - Any volunteer organization in which contact with minors or other vulnerable individuals might occur;
 - Public housing agencies in each area in which a registered sex offender resides or is an employee or a student;
 - Any governmental agency conducting confidential background checks for employment, volunteer, licensure, or certification purposes;
 - Any health care provider who serves children or vulnerable adults for the purpose of conducting confidential background checks for employment.

*NOTE: Nothing in this section prevents law enforcement officers from providing community notification concerning any person who poses a danger under circumstances that are not provided for in the Sex Offender Registration Act.

Sexual Predator Residency Restrictions: [29- 4015 et seq.]

A political subdivision *may* enact an ordinance, resolution, or other legal restriction prescribing where sex offenders may reside.

- Such restrictions must be limited to sexual predators,

- Residency restrictions may extend no more than five hundred feet from a school or child care facility,
- Various date restrictions regulate when such laws apply and exemptions for certain offenders.

EPC of Dangerous Sex Offenders: [71-919]

An officer may take a person into emergency protective custody (EPC) or continue that person's custody, if there is probable cause to believe that a person is dangerously mentally ill or is a dangerous sex offender, and one of the following applies:

- a. Such person is likely to engage acts of sexual violence,
- b. Such person is substantially unable to control his or her criminal behavior, or
- c. The person poses a substantial risk of serious harm to another person or persons within the near future as manifested by evidence of recent violent acts or threats of violence or by placing others in reasonable fear of such harm; or
- d. The person poses a substantial risk of serious harm to themselves within the near future as manifested by evidence of recent attempts or threats of suicide or serious bodily harm or inability to provide for his/her basic needs, including food, clothing, shelter, essential medical care, or personal safety.

*NOTE: EPC is undertaken because the risk of a harm listed above is likely to occur *before* mental health proceedings under the Nebraska Mental Health Commitment Act or the Sex Offender Commitment Act may be initiated.

Where to Take Them?

A person taken into emergency protective custody under this section shall be admitted to an appropriate and available medical facility unless such person has a prior conviction for a sex offense listed in section [29-4003].

- A person EPC'd who has a prior conviction for a sex offense listed in section [29-4003] shall be admitted to a jail or Department of Correctional Services facility unless a medical or psychiatric emergency exists for which treatment at a medical facility is required.
- After any medical or psychiatric emergency has passed and it is safe to transport, such person shall be transferred to an available jail or Department of Correctional Services facility.

Required Notifications:

Once a person is admitted to a facility under this section, the law enforcement officer shall execute a written certificate prescribed and provided by the Department of Health and Human Services.

- The certificate shall allege the officer's belief that the person in custody is mentally ill and dangerous or a dangerous sex offender and shall contain a summary of the person's

behavior supporting such allegations.

- A copy of such certificate shall be immediately forwarded to the county attorney.

DISCRIMINATION BASED OFFENSES:

Statement of Rights: [28-110]

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

Enhanced Penalty: Discrimination Based Offenses: [28-111]

Various criminal offenses that are committed because of the victim's race, color, religion, ancestry, national origin, gender, sexual orientation, age, or disability are subject to an enhanced penalty.

- Enhancement also applies if the crime was committed because of the victim's *association* with a person of a certain race, color, religion, ancestry, national origin, gender, sexual orientation, age, or disability.

Enhanced Penalty:

The offender is subject to the next higher penalty classification than prescribed, unless the offense is already punishable as a Class IB felony or higher classification.

Enumerated offenses:

- Manslaughter [28-305]
- Assault 1st [28-308], 2nd [28-309], or 3rd [28-310] degree;
- Terroristic threats, section 28- 311.01;
- Stalking [28-311.03]
- Kidnapping [28-313]
- False imprisonment 1st [28-314], or 2nd [28-315] degree;
- Sexual Assault 1st [28- 319] or 2nd or 3rd degree [28-32];
- Sexual Assault of a child [28-319.01 and 28-320.01]
- Arson 1st [28-502], 2nd [28-503], or 3rd [28-504] degree;
- Criminal mischief [28-519]
- Criminal trespass first [28-520], or second [28-521] degree;
- Unauthorized Application Of Graffiti [28-524]

CRIMES AGAINST A PREGNANT WOMAN: [28-115]

Generally:

Various criminal offenses committed against a pregnant woman are subject to an enhanced penalty.

- The prosecutor must prove beyond a reasonable doubt that the victim was pregnant at the time of the offense.

Enhanced Penalty:

The offender is subject to the next higher penalty classification:.

- The penalty is not enhanced if the offense is already punishable as a Class I, IA, or IB felony.
- A Class I Misdemeanor becomes punishable as a Class IIIA Felony under this section.

Enumerated Offenses:

- Assault,
- Sexual Assault,
- Sexual Assault of a Child,
- Sexual Abuse of an inmate/parolee 1st or 2nd degree;
- Sexual Abuse of a protected person 1st or 2nd degree,
- Domestic Assault 1st, 2nd, or 3rd degree;
- Assault on an officer, emergency responder, state correctional employee, DHHS employee, or health care professional (including assault with a motor vehicle),
- Assault and other person crimes by a confined person;
- DUI causing serious bodily injury.

SECTION II
CRIMES AND THEIR ELEMENTS

INCHOATE OFFENSES:

GENERALLY:

An inchoate offense is the crime of preparing for, seeking to commit, or aiding another to commit another crime.

CRIMINAL ATTEMPT:**1. Elements:** [28-201]

A person attempts to commit a crime if he/she *either*:

- a. Intentionally engages in conduct that would constitute the crime if the attendant circumstances were as he or she believes them to be, OR
- b. Intentionally engages in conduct which, under the circumstances as he/she believes them to be, constitutes a *substantial step* in a course of conduct intended to culminate in his or her commission of the crime.

2. Classification:

- Class II Felony when the crime attempted is a Class IA, IB, IC, or ID felony;
- Class IIA Felony when the crime attempted is a Class II felony;
- Class IIIA Felony when the crime attempted is a Class IIA felony;
- Class IV Felony when the crime attempted is a Class III or IIIA felony;

- Class I Misdemeanor when the crime attempted is a Class IV felony;
- Class II Misdemeanor when the crime attempted is a Class I misdemeanor; and
- Class III Misdemeanor when the crime attempted is a Class II misdemeanor.

*NOTE: For conduct to be a substantial step, it must be strongly corroborative of the defendant's criminal intent.

CONSPIRACY:

1. Elements: [28-202]

A person shall be guilty of criminal conspiracy if he/she;

- Has intent to promote or facilitate commission of a felony;
- Agrees with one or more persons that one or more of them shall engage in or solicit the conduct, or cause/solicit the result specified by the definition of the offense; and
- Someone in the conspiracy commits an overt act in pursuance of the conspiracy.

2. Other Considerations:

- A person who conspires to commit a crime with one person, and that other person has conspired with another person to commit the same crime, is guilty of conspiring to commit such crime with such other person or persons whether or not he knows their identity.
- Conspiracy to commit multiple crimes is only one conspiracy charge if all crimes are the object of the same agreement or continuous conspiratorial relationship.

3. Affirmative Defense: [28-203]

It is an affirmative defense that defendant, under circumstances manifesting a voluntary and complete renunciation of criminal intent, gave timely warning to law enforcement or otherwise made a reasonable effort to prevent the conduct or result which is the object of the conspiracy.

4. Classification:

Conspiracy is a crime of the same class as the most serious offense that is an object of the conspiracy.

- It is a defense to conspiracy that conduct occurred in response to an entrapment.

ACCESSORY TO A FELONY:

1. Elements: [28-204]

A person is an accessory to a felony if he/she does any of the following with intent to interfere with, hinder, delay, or prevent the discovery, apprehension, prosecution, conviction, or punishment of another for an offense:

- Harbors or conceals the other;

- b. Provides or aids in providing a weapon, transportation, disguise, or other means of effecting escape or avoiding discovery or apprehension;
- c. Conceals or destroys evidence of the crime or tampers with a witness, informant, document, or other source of information, regardless of its admissibility in evidence;
- d. Warns the other of impending discovery or apprehension other than in connection with an effort to bring another into compliance with the law;
- e. Volunteers false information to a peace officer; or
- f. By force, intimidation, or deception, obstructs anyone in the performance of any act that might aid in the discovery, detection, apprehension, prosecution, conviction, or punishment of such person.

2. Classification:

- Class IIA Felony if the actor violates subdivision (1)(a), (1)(b), or (1)(c) of this section, the actor knows of the conduct of the other, and the conduct of the other constitutes a Class I, IA, IB, IC, or ID felony;
- Class IIIA Felony if the actor violates subdivision (1)(a), (1)(b), or (1)(c) of this section, the actor knows of the conduct of the other, and the conduct of the other constitutes a Class II felony or Class IIA felony;
- Class IV Felony if the actor violates subdivision (1)(a), (1)(b), or (1)(c) of this section, the actor knows of the conduct of the other, and the conduct of the other constitutes a Class III or Class IIIA felony;
- Class I Misdemeanor if the actor violates subdivision (1)(a), (1)(b), or (1)(c) of this section, the actor knows of the conduct of the other, and the conduct of the other constitutes a Class IV felony;
- Class IV Felony if the actor violates subdivision (1)(d), (1)(e), or (1)(f) of this section, knows of the conduct of the other, and the conduct of the other constitutes a felony of any class other than a Class IV felony.
- Class I Misdemeanor if the actor violates subdivision (1)(d), (1)(e), or (1)(f) of this section, the actor knows of the conduct of the other, and the conduct of the other constitutes a Class IV felony.

AIDING CONSUMMATION OF A FELONY: [28-205]

1. Elements:

It is unlawful to:

- a. Intentionally aid another,
- b. To secrete, disguise, or convert the proceeds of a felony,
- c. Or otherwise profit from a felony.

2. Classification:

Class IV Felony.

AIDING & ABETTING: [28-206]

A person who aids, abets, procures, or causes another to commit any offense may be prosecuted and punished as if he were the principal offender.

OFFENSES AGAINST THE PERSON:

MURDER IN THE FIRST DEGREE:

1. Elements: [28-303]

A person commits murder in the first degree if he or she kills another person under any of the following circumstances:

- a. Purposely and with deliberate and premeditated malice,
- b. In the perpetration of or attempt to perpetrate any of the following crimes: Sexual assault in the first degree, Arson, Robbery, Kidnapping, Hijacking any public or private means of transportation, or Burglary, or
- c. By administering poison or causing the same to be done.

2. Classification:

Class I or IA Felony, depending on existence of aggravating factors.

MURDER IN THE SECOND DEGREE:

1. Elements: [28-304]

A person commits murder in the second degree if he/she:

- a. Causes the death of a person,
- b. Intentionally, but without premeditation.
 - *Malice* is not an element of 2nd degree murder

2. Classification:

Class IB Felony

MANSLAUGHTER:

1. Elements: [28-305]

A person commits manslaughter if he/she:

- a. Kills another,
- b. Without malice,
- c. Under either of the following circumstances:
 - (1) Upon a sudden quarrel (*voluntary manslaughter*),
OR
 - (2) Unintentionally while in the commission of an unlawful act (*involuntary manslaughter*).

2. Classification:

Class IIA Felony

MOTOR VEHICLE HOMICIDE:

1. Elements: [28-306]

A person commits motor vehicle homicide by:

- a. Unintentionally causing the death of another,
- b. While engaged in the operation of a motor vehicle,
- c. In violation of the law (State or local).

2. Classification:

- a. Class I misdemeanor;
- b. Class IIIA Felony if the proximate cause of the death of another is the operation of a motor vehicle in a reckless [60-6,213] or willful reckless [60-6,214] manner;
- c. Class IIA Felony if the proximate cause of the death of another is the operation of a motor vehicle while DUI [60-6,196] or while within a period of revocation of up to fifteen-years for DUI [60-6,197.06]. The court will also revoke the offender for one to fifteen years;
- d. Class II Felony if the proximate cause of the death of another is the operation of a motor vehicle while DUI [60-6,196] or while within a period of revocation of up to fifteen-years for DUI [60-6,197.06], and the offender has a prior conviction for either one of those offenses. The court will also revoke the offender for fifteen years.

*NOTE: This offense shall be treated as a separate and distinct offense from any other related offenses, such as DUI.

CRIMES AGAINST AN UNBORN CHILD

DEFINITIONS AND EXEPTIONS:

- ***Premeditation*** is designing to do something before it is done.
- ***Unborn child*** means an individual person in utero at any stage of development.
- ***Death of an unborn child*** means the unborn child died as a result of the crime (whether before, during, or after birth).
- Crimes against an unborn child do not apply to:
 - a. Any act or conduct by the mother of the unborn child; or
 - b. A medical procedure done with consent of the mother; or
 - c. The lawful dispensing or administering a drug or device.

MOTOR VEHICLE HOMICIDE OF AN UNBORN CHILD:

1. Elements: [28-394]

It is a violation of this section if any person to:

- a. Unintentionally,
- b. While engaged in the operation of a motor vehicle,
- c. While in violation of a state or local law,
- d. Cause the death of an unborn child.

2. Classification:

- Class I Misdemeanor
- Class IIIA Felony if the proximate cause of death was reckless driving or willful reckless driving.
- Class IIIA Felony if the proximate cause of death is DUI or refusal of a chemical test.
- Class IIA Felony if the proximate cause of death is DUI or refusal of a chemical test and the driver has a previous conviction for DUI or refusal.
- A felony offender will also have his/her driving privilege

revoked for 60 days, up to 15 years.

*NOTE: This offense shall be treated as a separate and distinct offense from any other related offenses, such as DUI.

MANSLAUGHTER OF AN UNBORN CHILD:

1. Elements: [28-393]

It is unlawful to:

- a. Kill an unborn child *without malice* upon a sudden quarrel with any person or,
- b. Causes the death of an unborn child *unintentionally* while in the perpetration of or attempt to perpetrate any criminal assault, any sexual assault, arson, robbery, kidnapping, intentional child abuse, hijacking of any public or private means of transportation, or burglary.

2. Classification:

Class IIA Felony

MURDER OF AN UNBORN CHILD FIRST DEGREE:

1. Elements: [28-391]

A person commits murder of an unborn child first degree by:

- a. Committing an act or engaging in conduct that causes the death of an unborn child,
- b. Intending, with deliberate and premeditated malice, to kill the unborn child or the mother of the unborn child,
- c. With knowledge of the pregnancy.

2. Classification:

Class IA Felony

MURDER OF AN UNBORN CHILD SECOND DEGREE:

1. Elements: [28-392]

A person commits murder of an unborn child first degree by:

- a. Committing an act or engaging in conduct that causes the death of an unborn child,
- b. Intending, but without premeditation, to kill the unborn child of another.

2. Classification:

Class IB Felony

ASSAULT OF AN UNBORN CHILD FIRST DEGREE:

1. Elements: [28-397]

It is a violation of this section for any person to:

- a. Intentionally or knowingly,
- b. Cause serious bodily injury to an unborn child,
- c. During any criminal assault on a pregnant woman

2. Classification:

Class IIA Felony

ASSAULT OF AN UNBORN CHILD SECOND DEGREE:

1. Elements: [28-398]

It is unlawful for any person to:

- a. Recklessly cause serious bodily injury to an unborn child,
- b. With a dangerous instrument,
- c. During any criminal assault on a pregnant woman

2. Classification:

Class IIIA Felony

ASSAULT OF AN UNBORN CHILD THIRD DEGREE:

1. Elements: [28-399]

It is unlawful for any person to:

- a. Recklessly cause serious bodily injury to an unborn child,
- b. During any criminal assault on a pregnant woman.

2. Classification:

Class I Misdemeanor

ASSAULT:

FIRST DEGREE ASSAULT:

1. Elements: [28-308]

Assault in the first degree means:

- a. Intentionally or knowingly
- b. Causing serious bodily injury to another person.

2. *Serious bodily injury* 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.

3. Classification:

Class II Felony

SECOND DEGREE ASSAULT:

1. Elements: [28-309]

Assault in the second degree means any of the following:

- a. Intentionally or Knowingly:
 - (1) Causing *bodily injury* to another person,
 - (2) With a dangerous instrument; or
- b. Recklessly:
 - (1) Causing *serious bodily injury* to another person
 - (2) With a dangerous instrument; or
- c. Unlawfully striking or wounding another:
 - (1) While legally confined in a jail or an adult correctional or penal institution, or
 - (2) While otherwise in legal custody of the Department of Correctional Services, or
 - (3) While committed as a dangerous sex offender under the Sex Offender Commitment Act.

2. Definitions:

- ***Serious bodily injury*** involves a substantial risk of death,

serious permanent disfigurement, or protracted loss or impairment of the function of any body part or organ;

- ***Bodily Injury*** means physical pain, illness, or any impairment of physical condition.

3. Classification:

Class IIA Felony

THIRD DEGREE ASSAULT:

1. Elements: [28-310]

Third degree assault means:

- a. Intentionally, knowingly, or recklessly causes bodily injury to another person; OR
- b. Threatens another in a menacing manner.

2. Classification:

- Class I Misdemeanor
- Class II Misdemeanor if committed in a fight or scuffle entered into by mutual consent

*See index for various other types of assault, such as assault on an officer, health care worker, corrections employee, firefighter, sexual assault, assault by a confined person, with bodily fluid, etc.

DOMESTIC ASSAULT

MANDATORY LAW ENFORCEMENT TRAINING: [42-927]

All law enforcement agencies shall provide officers an education and training program designed to inform the officers of the problems of domestic abuse, procedures to deal with such problems, the Protection from Domestic Abuse Act, and services and facilities available to abused family and household members.

DEFINITIONS: [28-323]

- ***Intimate Partner*** means a spouse, a former spouse, persons who have a child in common (whether or not they have been married or lived together at any time), and persons who are or were involved in a dating relationship.
- ***Dating Relationship*** means frequent, intimate associations primarily characterized by the expectation of affectional or sexual involvement. But not a casual relationship or an ordinary association in a business or social context.

FIRST DEGREE DOMESTIC ASSAULT:

1. Elements: [28-323]

A person commits first-degree domestic assault by:

- a. Intentionally or knowingly,
- b. Causing *serious bodily injury* to his/her intimate partner.

2. Classification:

- Class IIA Felony
- Class II Felony for a second or subsequent violation.

SECOND DEGREE DOMESTIC ASSAULT:

1. Elements: [28-323]

A person commits second-degree domestic assault by:

- a. Intentionally or knowingly,
- b. Causing *bodily injury* to his/her intimate partner,
- c. With a *dangerous instrument*.

2. Classification:

- Class IIIA Felony
- Class IIA Felony for a second or subsequent violation.

THIRD DEGREE DOMESTIC ASSAULT:

1. Elements: [28-323]

A person commits third degree domestic assault by:

- a. Intentionally or knowingly,
- b. Causing *bodily injury* to his/her intimate partner, OR
- c. Threatens an intimate partner with *bodily injury*, OR
- d. Threatens an intimate partner in a menacing manner.

2. Classification:

- Class I Misdemeanor
- Class IIIA Felony for 2nd or subsequent violation of causing or threatening imminent bodily injury.

STRANGULATION

1. Elements: [28-310.01]

A person commits strangulation if he/she:

- a. Knowingly or intentionally
- b. Impedes the normal breathing or normal blood circulation
- c. By applying pressure on the throat or neck of another person.

2. Affirmative Defense:

It is an *affirmative defense* that the act constituting strangulation was the result of a legitimate medical procedure

3. Classification:

- a. Class IIIA Felony
- b. Class IIA Felony:
 - For a second or subsequent offense,
 - If a dangerous instrument was used or attempted to be used, or
 - If the victim suffered serious bodily injury.

ASSISTING SUICIDE:

1. Elements: [28-307]

A person commits assisting suicide if he/she:

- a. Aids and abets another in committing or attempting to commit suicide,
- b. With intent to assist that person in committing suicide,

2. Classification:

Class IV Felony

CHILD ENTICEMENT:

1. Elements: [28-311]

A person commits child enticement if he/she

- a. By any means, and without privilege to do so;
- b. Knowingly solicits, coaxes, entices, or lures,
- c. Or *attempts* to solicit, coax, entice, or lure,
- d. Any child under the age of fourteen,
- e. To enter any vehicle,
- f. Or to enter into any place with intent to seclude the child,
- g. Whether or not the person knows the age of the child.

2. Definition:

- **Seclude** means take, remove, hide, secrete, conceal, isolate, or otherwise unlawfully separate a child from his/her parent, guardian, legal custodian or the general public.

3. Affirmative Defenses:

An accused may raise an affirmative defense to a charge of child enticement by showing any of the following:

- a. The accused had permission (express or implied) of the parent, guardian, or other legal custodian;
- b. The accused acted within the scope of lawful duties as:
 - A law Enforcement Officer, Firefighter (paid or volunteer), or Emergency Services Provider,
 - Other emergency service provider, such as a funeral director, school district employee, or a person rendering emergency care gratuitously;
 - Operator of a government-owned vehicle used for informing, educating, organizing, or transporting children (bookmobile, etc.);
 - Nonprofit or religious worker providing activities for children;
 - Agent acting under any board of education.
- c. The accused acted in response to a bona fide emergency;
- d. The accused reasonably believed the act was necessary to preserve the health, safety, or welfare of the child.

4. Classification:

- a. Class IIIA Felony;
- b. Class IIA Felony if the offender has been previously convicted of any of the following:
 - Child enticement under this section,
 - Sexual assault of a child 1st degree [28-319.01], 2nd or 3rd degree [28-320.01]
 - Child enticement by electronic communication device [28-320.02] ,
 - Assault [28-308], [28-309], or [28-310],
 - Kidnapping under section [28-313], or
 - False imprisonment [28-314] or [28-315] when the victim was under 18.

ELECTRONIC CHILD ENTICEMENT:

1. Elements: [28-833]

It is unlawful for any person nineteen years of age or over:

- a. To knowingly and intentionally utilize an electronic communication device,
- b. To contact a child under sixteen years of age,
- c. Or to contact a peace officer believed by such person to be a child less than sixteen years of age,
- d. And do any of the following:
 - (1) Use or transmit any indecent, lewd, lascivious, or obscene language, writing, or sound;
 - (2) Transmit or otherwise disseminates any visual depiction of *sexually explicit conduct* as defined in section [28-1463.02]; or
 - (3) Offer or solicit any indecent, lewd, or lascivious act.

2. Definitions:

- ***Electronic Communication Device*** means any device, which, in its ordinary and intended use, transmits electronic writings, sounds, visual images, or data of any nature to another electronic communication device.
- ***Sexually Explicit Conduct*** [28-1463.02] means any of the following:
 - (a) Real or simulated intercourse:
 - Whether genital-genital, oral-genital, anal-genital, or oral-anal, or with an artificial genital
 - Between persons of the same or opposite sex
 - Or between a human and an animal;
 - (b) Real or simulated masturbation;
 - (c) Real or simulated sadomasochistic abuse;
 - (d) Erotic fondling;
 - (e) Erotic nudity; or
 - (f) Real or simulated defecation or urination for the purpose of sexual gratification or sexual stimulation of one or more of the persons involved

3. Venue

Enticement by electronic communication device is deemed to have been committed either at the place where the communication was initiated *or* where it was received.

4. Classification:

Class IV Felony

TERRORISTIC THREATS

1. Elements: [28-311.01]

A person commits terroristic threats if he/she:

- a. Threatens to commit any crime of violence,
- b. With the intent to terrorize another, OR
- c. With the intent of causing the evacuation of a building, place of assembly, or facility of public transportation, OR
- d. In reckless disregard of the risk of causing such terror or

evacuation.

2. Classification:
Class IIIA Felony

STALKING:

1. Elements: [28-311.03]

It is unlawful for any person to:

- a. Willfully harasses another person,
- b. With the intent to injure, threaten or intimidate.

2. Definitions:

- ***Harass*** means a knowing and willful course of conduct directed at a specific person that seriously terrifies, threatens, or intimidates the person and which serves no legitimate purpose. Such course of conduct must:
 - (i) Be such conduct as would cause a reasonable person to suffer substantial emotional distress, and
 - (ii) Actually cause substantial emotional distress.
- ***Course of Conduct*** means a pattern of conduct composed of a series of acts over a period of time, however short, showing a continuity of purpose, including following, detaining, restraining the personal liberty of, or stalking the person, telephoning the person, contacting or otherwise communicating with the person.

3. Classification:

- Class I Misdemeanor (first offense)
- Class IIIA Felony if:
 - (1) The offender has a prior conviction for stalking or a substantially conforming violation within the last seven years;
 - (2) The victim is under sixteen years of age;
 - (3) The person possessed a deadly weapon at any time during the violation;
 - (4) The person was also in violation of a protection order at any time during the violation; or
 - (5) The person has been convicted of any felony in NE or a crime in another jurisdiction that would be a felony in NE and the victim or a family or household member was also the victim of such previous felony.

PROTECTION ORDERS GENERALLY

1. Procedure:

A victim may file for a protection order by filing a petition with the court. The court may then issue an order to enjoin the respondent from such things as harassing, disturbing, contacting, or otherwise communicating with the victim.

- The court will provide petition and affidavit forms, but will not assist the victim in completing the forms.

2. Valid Protection Orders

An enforceable protection order may be issued under

Nebraska law, or may be a *foreign* protection order issued by another jurisdiction (state, tribe, or territory).

- Foreign protection orders are enforced as if issued in NE, and officers may rely on a copy that appears authentic.

3. Duration of Restrictions:

A protection order is effective for one year unless renewed, dismissed, or modified by a court.

4. Enforcement

A protection order is enforceable after it has been served, or if issued *ex parte* (temporarily without service or notice).

- The officer must confirm the order by either being provided a copy of it or by communicating with the local law enforcement agency.
- Arrest may be mandatory, depending upon the type of protection order involved.
- A person arrested shall be taken to court within a reasonable time to determine bond & conditions of release.

HARASSMENT PROTECTION ORDER VIOLATION

1. Elements: [28-311.09]:

It is unlawful for any person:

- a. To knowingly violate a harassment protection order,
- b. After service or notice of such order, or
- c. After such order was issued temporarily by the court *ex parte* (without notice or hearing).

2. Officer's Duties

An officer may arrest if both:

- a. There is probable cause to believe that the person is in violation of a harassment protection order, and
- b. The officer confirms the order by either being provided a copy of it from the petitioner or by communicating with the local law enforcement agency.

3. Classification:

- Class II Misdemeanor

DOMESTIC ABUSE PROTECTION ORDER VIOLATION:

1. Elements: [42-924], [42-925]

It is unlawful for any person:

- a. To knowingly violate a domestic abuse protection order,
- b. After service or notice of such order, or
- c. After such order was issued temporarily by the court *ex parte* (without notice or hearing) under [42-925].

2. Officer's Duties: [42-928], [42-929]

An officer shall arrest if both:

- a. There is probable cause to believe the person is in violation of any of the following :
 - (1) A domestic abuse protection order,
 - (2) An order excluding that person from certain premises

- pursuant to a divorce proceeding under [42-357],
- (3) A foreign protection order issued by another state, tribe, or territory – see [42-931]; and
- b. The officer confirms the order by either being provided a copy of it from the petitioner or by communicating with the local law enforcement agency.
- c. **Classification:**
- Class I Misdemeanor;
 - Class IV Felony if the offender has a prior conviction for violating any protection order.

SEXUAL ASSAULT PROTECTION ORDER VIOLATION

1. **Elements:** [28-311.11(4)]:
It is unlawful for any person:
- a. To knowingly violate a sexual assault protection order,
 - b. After service or notice of such order,
 - c. Or, after such order was issued temporarily by the court *ex parte* (without notice or hearing).
2. **Officer's Duties**
An officer shall arrest if
- a. There is probable cause to believe that the person is in violation of a SA protection order, and
 - b. The officer confirms the order by either being provided a copy of it from the petitioner or by communicating with the local law enforcement agency.
3. **Classification:**
- Class I Misdemeanor,
 - Class IV Felony for second offense within one year,
 - Class IV Felony for a third or subsequent offense.

HAZING:

1. **Elements:** [28-311.06]
It shall be unlawful for any person to:
- a. Engage in any activity,
 - b. By which a person intentionally or recklessly endangers the physical or mental health or safety of an individual,
 - c. For the purpose of initiation into, admission into, affiliation with, or continued membership,
 - d. With any organization.
2. **Definition:**
Hazing Activity includes such acts as whipping, beating, branding, sexual penetration, exposure of the genitals with intent to affront or alarm any person, lewd fondling or caressing the body of another person, forced and prolonged calisthenics, prolonged exposure to the elements, forced consumption of food, liquor, beverage, drug, or harmful substance, prolonged sleep deprivation, or any brutal treatment or unlawful act which endangers the physical or mental health or safety of any person.

3. Classification:

Class II Misdemeanor

- An organization whose members commit the offense of hazing shall be punished by a fine of up to ten thousand dollars (excluding an alumni association or a corporation that owns the house or real estate of the organization).
- Consent is not a defense to hazing – see [28-311.07]

KIDNAPPING:

1. Elements: [28-313]

A person commits kidnapping if he/she:

- a. Abducts another,
- b. Or, having abducted another, continues to restrain that person with intent to do any of the following:
 - Hold the person for ransom or reward;
 - Use the person as a shield or hostage;
 - Terrorize the person or a third person;
 - Commit a felony; or
 - Interfere with the performance of any government or political function.

2. Classification:

- Class IA Felony
- Class II Felony if the person kidnapped was voluntarily released or liberated alive by the abductor and in a safe place without serious bodily injury, prior to trial.

FALSE IMPRISONMENT FIRST DEGREE:

1. Elements: [28-314]

It is unlawful to knowingly restrain or abduct another person under either of the following circumstances:

- a. Under circumstances that are terrorizing or which expose the person to the risk of serious bodily injury, or
- b. With intent to hold the person in a condition of involuntary servitude.

2. Classification:

Class IIIA Felony

FALSE IMPRISONMENT SECOND DEGREE:

1. Elements: [28-315]

A person commits false imprisonment second degree by:

- a. Knowingly restraining another person,
- b. Without legal authority.

2. Classification:

Class I Misdemeanor

VIOLATION OF CHILD CUSTODY:

1. Elements: [28-316]

It is unlawful for anyone, including a natural/foster parent to:

- a. Take or entice any child under nineteen years of age,

- b. From the custody of the child's parent with legal custody, guardian, or other lawful custodian,
 - c. Knowing or heedless that he/she has no right to do so.
- 2. Classification:**
- Class II Misdemeanor.
 - Class IV Felony if done in violation of a court order with the intent to deprive the lawful custodian of custody.

UNLAWFUL INTRUSION:

1. Elements: [28-311.08(1)]

It is unlawful for any person to:

- a. Intrude upon any other person,
- b. Without his or her consent or knowledge,
- c. In a *place of solitude or seclusion*.

2. Definitions:

- ***Intrude*** means either:
 - (a) Viewing of another person in a state of undress as it is occurring; or
 - (b) Recording by video, photographic, digital, or other electronic means of another person in a state of undress.
- ***Place of solitude or seclusion*** means:
 - (a) A place where a person would intend to be in a state of undress and have a reasonable expectation of privacy,
 - (b) Including, but not limited to, any facility, public or private, used as a restroom, tanning booth, locker room, shower room, fitting room, or dressing room.

3. Classification:

- Class I Misdemeanor for a first offense (viewing only);
- Class IV Felony for a subsequent offense of viewing;
- Class IV Felony if intrusion is recorded or photographed,
- Class IIA Felony if a video or an image recorded in violation is distributed to another person or otherwise made public in any manner that would enable it to be viewed by another person.

4. Other:

- An offender who is over 19 years of age who commits this offense against a victim who is less than 18 years of age must register as a Sex Offender.
- Felony charges must be brought within three years of the offense, discovery of a recording of the violation, the distribution of the recording, or the youngest victim reaching the age of twenty-one years.

UNLAWFUL INTRUSION BY “UPSKIRTING”:

1. Elements: [28-311.08(2)]

It shall be unlawful for any person to

- a. Knowingly photograph, film, record, or live broadcast,

- b. An image of the intimate area of any other person,
- c. Without his or her knowledge and consent,
- d. When his or her intimate area would not be generally visible to the public,
- e. Regardless of whether such other person is located in a public or private place.

2. Definitions:

- ***Intimate Area*** means naked or undergarment-clad genitalia, pubic area, buttocks, or female breast.

4. Classification:

- Class I Misdemeanor for a first offense;
- Class IV Felony for a subsequent offense;
- Class IIA Felony if a video or an image is distributed to another person or otherwise made public in any manner that would enable it to be viewed by another person.

4. Other:

- An offender who is over 19 years of age who commits this offense against a victim who is less than 18 years of age must register as a Sex Offender.
- Felony charges must be brought within three years of the offense, discovery of a recording of the violation, the distribution of the recording, or the youngest victim reaching the age of twenty-one years.

ROBBERY:

1. Elements: [28-324]

It is unlawful for any person to:

- a. To take money or personal property of any value,
- b. With the intent to steal,
- c. From a person,
- d. By either (1) use of force and violence or (2) by putting the person in fear,

2. Classification:

Class II Felony

SEX OFFENSES

[28-317] to [28-322.04]

Special Considerations for Sex Offense Cases: [28-317]

- a. Nebraska law is intended to protect the victim of criminal sexual offenses at all stages of the judicial process.
- b. The alleged offender shall have constitutionally guaranteed due process procedures preserved.
- c. There shall be a system of investigation, prosecution, punishment, and rehabilitation for the welfare and benefit of the citizens of Nebraska.

Definitions: [28-318]

- ***Actor*** means a person accused of sexual assault;

- ***Force or threat of force*** means:
 - a. Use of physical force which overcomes the victim's resistance OR
 - b. Threat of physical force, express or implied, against the victim or a third person that:
 - (1) Places the victim in fear of death or serious personal injury to the victim or a third person, and
 - (2) The victim reasonably believes that the actor has the present or future ability to execute the threat.
- ***Intimate Parts*** means the genital area, groin, inner thighs, buttocks, or breasts;
- ***Past Sexual Behavior*** means sexual behavior other than the sexual behavior upon which the sexual assault is alleged;
- ***Serious Personal Injury*** means great bodily injury or disfigurement, extreme mental anguish or mental trauma, pregnancy, disease, or loss or impairment of a sexual or reproductive organ;
- ***Sexual contact*** means
 - a. Intentional touching of the victim's sexual or intimate parts or of the victim's clothing covering the immediate area of the victim's sexual or intimate parts,
 - b. Touching by the victim of the actor's sexual or intimate parts or the clothing covering the immediate area of the actor's sexual or intimate parts when such touching is intentionally caused by the actor, or
 - c. Touching of a child with the actor's sexual or intimate parts on any part of the child's body for purposes of sexual assault of a child under sections [28-319.01] and [28-320.01].
 - d. Sexual contact shall include only conduct which can be reasonably construed as being for the purpose of sexual arousal or gratification of either party.
- ***Sexual penetration*** means:
 - a. Sexual intercourse in its ordinary meaning, OR
 - b. Cunnilingus, fellatio, anal intercourse, OR
 - c. Any intrusion, however slight, of any part of the actor's or victim's body or any object manipulated by the actor into the genital or anal openings of the victim's body that can be reasonably construed as being for nonmedical or non-health purposes
 - d. Sexual penetration does not require emission of semen
- ***Without Consent*** means any of the following:
 - a. Victim was compelled to submit due to the use of force or threat of force or coercion, or
 - b. Victim expressed lack of consent by words or conduct, or
 - c. Consent was given as a result of the actor's deception as to the identity of the actor or the nature or purpose of the act on the part of the actor.

Victim's Right to Refuse Polygraph: [29-216]

Law enforcement and other government officials are prohibited from requiring a polygraph examination or truth-telling device of a victim of a sex offense as a condition for proceeding with an investigation

- The refusal of a victim to submit to such an examination shall not prevent the investigation of the offense.

Examination of Victim: [29-4306]

The victim of sexual assault or domestic violence victim may be examined by a health care professional or emergency room without separate authorization by a law enforcement agency.

- With the consent of the victim, such examination shall include the collect forensic evidence using a standardized sexual assault evidence collection kit.
- Examination of an eighteen-year-old victim does not require consent or notification of a parent, guardian, or other person.

Mandatory Report by Health Care Provider *2018 Update*

Health care providers must immediately report to law enforcement every case of consultation for medical care for physical injury which appears to have been received in connection with, or as a result of, the commission of any criminal offense. Special consent rules govern sexual assault cases. [28-902]

- In the case of a sexual assault victim 18 years of age or older, the health care provider must ask for written consent to report it to law enforcement.
- The report must still be made with or without consent in the case of a serious bodily injury or any bodily injury where a deadly weapon was used to inflict such injury.
- Failing to report as required is a Class III Misdemeanor.

Sexual Assault Evidence Collection Kit [28-902]

If obtained, a sexual assault evidence kit must be submitted to law enforcement, regardless of the victim's age or consent.

- With consent of the reporting victim, the kit will be submitted with identifying information.
- Without consent, the kit (if obtained) must still be provided to law enforcement using an anonymous reporting protocol.
- A law enforcement agency receiving a sexual assault evidence kit must preserve it for twenty years after the date of receipt or as otherwise ordered by a court.
- Failing to report as required is a Class III Misdemeanor.

Costs of Forensic Tests: [13-607]

The full out-of-pocket cost or expense that may be charged to a sexual assault victim in connection with a forensic medical examination shall be paid for by the primary law enforcement agency investigating the reported sexual assault.

Resistance Required by Victim:

The victim need only resist verbally or physically:

- a. To make the victim's refusal to consent genuine and real,
- b. And to reasonably make refusal to consent known to the actor.
- c. A victim need not resist verbally or physically if it would be useless or futile to do so.

SEXUAL ASSAULT FIRST DEGREE

1. Elements: [28-319]

It is unlawful for any person to subject another person to sexual penetration under any of the following circumstances:

- a. Without the consent of the victim, OR
- b. When the offender knew or should have known that the victim was mentally or physically incapable of resisting or appraising the nature of his or her conduct, OR
- c. When the actor is nineteen years of age or older and the victim is at least twelve but less than sixteen years of age.

2. Classification:

Sexual assault in the first degree is a Class II Felony

- Whether the victim suffered *serious personal injury* is a sentencing consideration for the judge.
- Mandatory 25 years prison for 2nd or subsequent offense.

SEXUAL ASSAULT SECOND DEGREE:

1. Elements: [28-320]

Any person who subjects another person to *sexual contact*:

- a. Without consent of the victim,
- b. OR when the actor knew or should have known that the victim was physically or mentally incapable of resisting or appraising the nature of his or her conduct,
- c. And the actor causes *serious personal injury* to the victim.

2. Classification:

Class IIA Felony

SEXUAL ASSAULT THIRD DEGREE:

1. Elements: [28-320]

Any person who subjects another person to *sexual contact*:

- a. Without consent of the victim,
- b. OR when the actor knew or should have known that the victim was physically or mentally incapable of resisting or appraising the nature of his or her conduct (no serious personal injury).

2. Classification:

Class I Misdemeanor

SEXUAL ASSAULT OF A CHILD FIRST DEGREE:

1. Elements: [28-319.01]

First degree sexual assault of a child means either:

- a. Subjecting another person to sexual penetration and:
 - (1) The victim is under twelve years of age, and

- (2) The actor is nineteen years of age or older; OR
- b. Subjecting another person to sexual penetration, and:
 - (1) Victim is between twelve and sixteen years old, and
 - (2) The actor is twenty-five years of age or older.

2. Classification:

Class IB Felony

- a. Minimum 15 years prison for first offense
- b. Minimum 25 years prison if:
 - Second or subsequent offense, or
 - Prior conviction for first degree sexual assault (or attempt), sexual assault of a child (or attempt), any other state/federal offense with same elements.

*NOTE: The age of the actor is an essential element of the offense that must be proven beyond a reasonable doubt.

SEXUAL ASSAULT OF A CHILD SECOND DEGREE:

1. Elements: [28-320.01]

A person commits 2nd degree sexual assault of a child by:

- a. Subjecting another person age fourteen or younger,
- b. To *sexual contact*,
- c. And the actor is at least age nineteen years or older,
- d. And the actor causes *serious personal injury* to the victim.

2. Classification:

- a. Class II Felony (first offense)
- b. Class IC Felony with minimum 25 years prison if:
 - Second or subsequent offense, or
 - Previous conviction for 1st degree sex assault (or attempt), 1st degree sex assault of a child (or attempt), or any other state/federal offense with same elements.

SEXUAL ASSAULT OF A CHILD THIRD DEGREE:

1. Elements: [28-320.01]

A person commits 3rd degree sexual assault of a child by:

- a. Subjecting another person age fourteen years or younger,
- b. To *sexual contact* (not causing serious personal injury),
- c. And the actor is at least nineteen years of age or older.

2. Classification:

- a. Class IIIA Felony (first offense)
- b. Class IC Felony if:
 - (1) Second or subsequent offense, or
 - (2) Prior conviction for 1st degree sexual assault (adult or child victim), attempt of either offense, or any other state/federal offense with same elements.

SEXUAL ASSAULT; USE OF COMPUTER:

1. Elements: [28-320.02]

No person shall *knowingly*:

- a. Solicit, coax, entice, or lure,

- b. A child sixteen years of age or younger,
- c. OR a peace officer who is believed by such person to be a child sixteen years of age or younger,
- d. By means of an *electronic communication device*,
- e. To engage in an act that would be a sexual assault or sexual assault of a child.

2. Classification:

- Class ID Felony;
- Class IC Felony if:
 - (1) Second or subsequent offense, or
 - (2) Prior conviction for Assault, Kidnapping, Child Enticement, False Imprisonment, Felony Sexual Assault (1st or 2nd degree), Sexual Assault of a Child, Possession or Distribution of Child Pornography, or Enticement by Electronic Communication Device.

*NOTE: A person shall not be convicted of *both* a violation of this section (luring a child using a computer) and a completed (physical) sexual assault if the violations arise out of the same set of facts with the same victim.

SEXUAL ABUSE OF AN INMATE/PAROLEE, 1st DEGREE:

1. Elements: [28-322.02]

It is unlawful for any *person* to:

- a. Subjects an inmate or a parolee,
- b. To *sexual penetration*.

2. Definitions:

- ***Inmate or Parolee*** means an individual confined in a Dept. of Correctional facility or a city or county correctional or jail facility or under parole supervision
- ***Person*** means any of the following:
 - a. An employee or contract worker of the Dept. of Correctional Services or Parole Administration (including central administration);
 - b. An employee of a city/county correctional or jail facility (including central administration);
 - c. Anyone, other than an inmate's spouse, who has authorized control of an inmate or his/her activities;
 - d. An employee of the Office of Probation Administration who performs official duties within any facility operated by the Dept. of Correctional Services or a city/county correctional or jail facility.

3. Classification:

Class IIA Felony

- Consent is not a defense.

SEXUAL ABUSE OF AN INMATE/PAROLEE 2nd DEGREE:

1. Elements: [28-322.03]

It is unlawful for any person (defined above) to:

- a. Subject an inmate or parolee,
- b. To sexual contact.

2. Definitions: Same as [28-322.02].

3. Classification:

Class IIIA Felony

- Consent is not a defense.

SEXUAL ABUSE OF A PROTECTED PERSON 1ST DEGREE:

1. Elements: [28-322.04]

It is unlawful for:

- a. Any employee of the Dept of Health and Human Services (including admin and contract employees),
- b. To subject a person in the care or custody of the DHHS,
- c. To sexual penetration (as defined in [28-318])

2. Classification:

Class IIA Felony

- Consent by the protected individual is not a defense.

SEXUAL ABUSE OF A PROTECTED PERSON 2nd DEGREE:

1. Elements: [28-322.04]

It is unlawful for:

- a. Any employee of the Department of Health and Human Services (including administration and contract employees).
- b. To subject a person in the care or custody of the DHHS,
- c. To sexual contact (as defined in [28-318]).

2. Classification:

Class IIIA Felony (Consent is not a defense).

ABUSE OF A VULNERABLE OR SENIOR ADULT:

1. Elements: [28-386]

It is unlawful for any person:

- a. To knowingly and intentionally,
- b. Commit any act,
- c. Causing or permitting a vulnerable or senior adult to be:
 - Physically injured;
 - Unreasonably confined;
 - Sexually abused or exploited;
 - Exploited by intimidation, force, threat, or isolation,
 - Cruelly punished; or
 - Neglected (lack of essential services).

2. Definitions:

- A ***vulnerable adult*** is any person 18 years or older who has a substantial mental or functional impairment or who has a guardian or conservator under the Nebraska Probate Code.

- A **senior adult** is any person age sixty-five or older.
 - **Essential services** are those services necessary to safeguard the person or property of a vulnerable adult, such as sufficient and appropriate food and clothing, temperate and sanitary shelter, treatment for physical needs, and proper supervision.
 - **Exploitation** means the wrongful or unauthorized control of money or any other property of a vulnerable or senior adult by means of undue influence, breach of a fiduciary duty or relationship, deception, extortion, intimidation, force or threat of force, isolation, or any unlawful means.
 - **Isolation** means intentional acts, including confinement or physical/chemical restraint done for the purpose of:
 - (a) Preventing a vulnerable or senior adult from having contact with family, friends, or concerned persons,
 - (b) Prevent the vulnerable or senior adult from receiving mail or telephone calls; or
 - (c) Social Deprivation.
 - (d) Isolation does not include (i) medical isolation prescribed by a licensed physician, (ii) action taken in compliance with any protection order, or (iii) action authorized by an administrator of a nursing home pursuant to section [71-6021].
3. **Law Enforcement Duties:** [28-373]
 Upon receipt of a report of vulnerable adult abuse, it shall be the duty of a law enforcement agency to:
- a. Make an investigation if deemed warranted,
 - b. Take immediate steps to protect the vulnerable adult,
 - c. Institute legal proceedings if appropriate,
 - d. Notify DHHS of an investigation no later than the next working day following receipt of the report.
4. **Classification:**
Class IIIA Felony

*NOTE: For a complete overview of the Adult Protective Service Act, see [28-348] to [28-387].

DRUG AND NARCOTIC VIOLATIONS:

TERMS DEFINED:

As used in the Uniform Controlled Substances Act, unless the context otherwise requires:

- **Administer** means to directly apply a controlled substance by injection, inhalation, ingestion, or any other means to the body of a patient or research subject;
- **Administration** means the Drug Enforcement Administration, United States Department of Justice;
- **Controlled substance** means a drug, biological, substance, or immediate precursor in Schedules I to V of section 28-405.

- **Controlled Substance Analogue** is to be treated as a controlled substance. Controlled substance shall not include distilled spirits, wine, malt beverages, tobacco, or any over the counter, non-prescription non-narcotic substance.
- **Department** means the Department of Health and Human Services;
- **Dispense** means to deliver a controlled substance to an ultimate user or a research subject pursuant to a medical order issued by a practitioner authorized to prescribe, including the packaging, labeling, or compounding necessary to prepare the controlled substance for such delivery;
- **Distribute** means to deliver other than by administering or dispensing a controlled substance;
- **Drug** means: (a) articles recognized in the official U.S. Pharmacopoeia, official Homeopathic Pharmacopoeia, or official National Formulary, (b) substances intended for use in the diagnosis, cure, mitigation, treatment, or prevention of disease, and (c) substances intended for use as a component of any article specified in (a) or (b), but does not include devices or their components, parts, or accessories;
- **Deliver or delivery** means the actual, constructive, or attempted transfer from one person to another of a controlled substance, whether or not there is an agency relationship;
- **Exceptionally hazardous drug** means: (a) a narcotic drug, (b) thiophene analog of phencyclidine, (c) phencyclidine, (d) amobarbital, (e) secobarbital, (f) pentobarbital, (g) amphetamine, or (h) Methamphetamine;
- **Manufacture** means the production, preparation, propagation, conversion, or processing of a controlled substance, either directly or indirectly, including any packaging or repackaging of the substance or labeling or relabeling of its container. Manufacture does not include the preparation or compounding of a controlled substance by an individual for his or her own use (except for the manufacture of Methamphetamine);
- **Marijuana** means all parts of the plant of the genus cannabis, whether growing or not, the seeds thereof, and every compound, manufacture, salt, derivative, mixture, or preparation of such plant or its seeds. Cannabidiol contained in an FDA approved medication is not included;
- **Methamphetamine** means Methamphetamine, its salts, optical isomers, and salts of its isomers;
- **Narcotic drug** means any of the following, whether produced directly or indirectly by extraction from substances of vegetable origin, independently by means of chemical synthesis, or by a combination of extraction and chemical synthesis:
 - (a) Opium, opium poppy and poppy straw, coca leaves, and opiates;

- (b) A compound, manufacture, salt, derivative, or preparation of opium, coca leaves, or opiates; or
- (c) A substance and any compound, manufacture, salt, derivative, or preparation thereof which is chemically equivalent to or identical with any of the substances referred to in subdivisions (a) and (b) of this subdivision.
- **Opiate** means any substance having an addiction-forming or addiction-sustaining liability similar to morphine or being capable of conversion into a drug having such addiction-forming or addiction-sustaining liability.;
- **Opium poppy** means the plant of the species *Papaver somniferum* L., except the seeds thereof;
- **Paraphernalia** means all equipment, products, and materials of any kind used, intended for use, or designed for use in manufacturing, injecting, ingesting, inhaling, or otherwise introducing a controlled substance into the human body;
- **Poppy straw** means all parts, except the seeds, of the opium poppy after mowing;
- **Person** means any corporation, association, partnership, limited liability company, or one or more persons;
- **Production** includes the manufacture, planting, cultivation, or harvesting of a controlled substance;
- **Uniform Controlled Substances Act** means sections [28-401] to [28-456.01] of the Nebraska Revised Statutes.

ADDITIONAL PENALTIES FOR JUVENILES:

In addition to the general penalties for a controlled substance violation, a person eighteen years of age or younger may be subject to the following additional penalties under [28-416(19)]:

- For the first offense the court may impound any operator's license or permit (or prohibit the offender from getting one) for thirty days and order alcohol education;
- For a second offense the court may impound any operator's license or permit (or prohibit the offender from getting one) for ninety days, and require twenty to forty hours of community service and an alcohol education class;
- For a third or subsequent offense the court may impound any operator's license or permit (or prohibit the offender from getting one) for twelve months and require at least sixty hours of community service, an alcohol education, and to submit to an alcohol assessment.

IMMUNITY FOR REPORTED OVERDOSE CASES [28-472].

1. Eligible Offenses:

Immunity under this section only applies to violations of:

- (1) Use or possess drug paraphernalia [28-441] or
- (2) Possession of a controlled substance (other than marijuana or synthetic cannabinoids) [28-416(3)].

2. Who Can Claim Immunity:

A person may be exempt from criminal liability if:

- (1) The person makes a good faith request for emergency medical assistance, and:
 - a. The request was made in response to a drug overdose of himself, herself, or another;
 - b. Medical assistance was requested as soon as the drug overdose was apparent;
 - c. The evidence was obtained as a result of the drug overdose and the request for medical assistance.
- (2) When emergency medical assistance was requested for the drug overdose of another person:
 - a. The requesting person remained on the scene until medical or law enforcement personnel arrived; and
 - b. The requesting person cooperated with medical and law enforcement personnel.

3. Definition:

As used in this section, *drug overdose* means an acute condition resulting from the consumption or use of a controlled substance that a layperson would reasonably believe requires emergency medical assistance.

*NOTE: Only the two offenses listed are subject to immunity, and this section does not extend to the investigation, arrest, or prosecution of any person for any other criminal offense.

CONTROLLED SUBSTANCES, SEIZING ITEMS WITHOUT A WARRANT:

1. Elements: [28-431]

An officer can seize the following without a search warrant:

- a. Unauthorized and unlawful controlled substances;
- b. Raw materials and equipment used in the production of unauthorized and unlawful controlled substances;
- c. Containers of the items in (a) and (b);
- d. books, records and research used in violation of this Act;
- e. Conveyances intended to transport items in (a) and (b);
- f. Drug paraphernalia;
- g. Money used or intended to be used to violate this act.

2. Disposition of Seized Money and Property:

- a. The procedures for forfeiture of money or property used or intended to be used in violation of drug laws are found at [28-431] and [28-1439.02] to [28-1439.05]).
 - Within 10 days, the county attorney must file a petition in district court for disposition of it.
 - The owner or other interested person may file a petition for release by showing they had no actual drug law violations.
- b. In addition to the penalties for violating or conspiring to commit the violation, the court may also order the

forfeiture of money or property derived from, used, or intended to be used in the violation. [28-416(18)].

ADMINISTERING SECRET MEDICINE:

1. Elements: [28-403]

It is unlawful for a physician or other person:

- a. To prescribe any drug or medicine to another person,
- b. The true nature and composition of which, if inquired of, is not truly made known,
- c. But of which is avowed to be a secret medicine or composition,
- d. Thereby endangering the life of such other person.

2. Classification:

Class III Misdemeanor

ADMINISTERING NARCOTICS TO A DEPENDANT PERSON:

1. Elements: [28-412]

It is unlawful to:

- a. Prescribe, administer, or dispense any narcotic drug listed in section [28-405],
- b. Except *buprenorphine*,
- c. For detoxification treatment or maintenance treatment,
- d. Except as otherwise provided for by law.

2. Lawful Dispensing of Narcotics:

A narcotic drug may be administered or dispensed (under certain conditions) to a narcotic-dependent person for detoxification treatment or maintenance treatment by a registered practitioner, a physician, or in a hospital.

3. Classification:

Class IV Felony

MANUFACTURE OR DISTRIBUTION OF A CONTROLLED SUBSTANCE:

1. Elements: [28-416(1)]

It shall be unlawful to knowingly or intentionally:

- a. Manufacture, distribute, deliver, or dispense, or
- b. Possess with the intent to manufacture, distribute, deliver, or dispense,
- c. A controlled substance.

2. Classification:

- Class II Felony for any exceptionally hazardous drug classified in Schedule I, II, or III;
- Class IIA Felony for any other controlled substance classified in Schedule I, II, or III
- Class IIIA Felony for a controlled substance classified in Schedule IV or V;
- See enhanced penalty provisions below.

POSSESSION OF A CONTROLLED SUBSTANCE:

1. Elements: [28-416(3)]

It shall be unlawful to:

- a. Knowingly or intentionally,
- b. Possess a controlled substance (except marijuana or synthetic cannabinoids),
- c. Unless *lawfully* obtained by medical order or otherwise.

2. Classification:

Class IV Felony

*NOTE: The immunity provisions of [28-4720] may apply in the case of an overdose reported for medical assistance.

COUNTERFEIT CONTROLLED SUBSTANCES:

1. Elements: [28-416(1)]

It shall be unlawful to:

- a. Knowingly or intentionally,
- b. Create, distribute, or possess with intent to distribute,
- c. A counterfeit controlled substance.

2. Definition:

A *Counterfeit Controlled Substance* is a controlled substance or the container/labeling of one which, without authorization, bears the trademark, trade name, or other identifying mark, imprint, number, or device, or any likeness thereof, of a manufacturer, distributor, or dispenser other than the person or persons who in fact manufactured, distributed, or dispensed such substance and which thereby falsely purports or is represented to be the product of, or to have been distributed by, such other manufacturer, distributor, or dispenser.

3. Classification:

- Class II Felony for any exceptionally hazardous drug classified in Schedule I, II, or III;
- Class III Felony for any other controlled substance classified in Schedule I, II, or III;
- Class IIIA Felony for a controlled substance classified in Schedule IV or V;
- See enhanced penalty provisions below.

IMITATION CONTROLLED SUBSTANCES:

1. Elements: [28-445]

It is unlawful to:

- a. Knowingly and intentionally,
- b. Manufacture, distribute, deliver, or possess with intent to distribute or deliver,
- c. An imitation controlled substance.

2. Definition: [28-401(29)]

An *Imitation controlled substance* is not a controlled substance or controlled substance analogue but is represented in a way that would lead a reasonable person to believe it is

such a substance. All relevant factors will be considered in determining whether a substance is an imitation controlled substance or analogue, including, but not limited to:

- Whether the substance is represented as having an effect similar to or the same as an illicit controlled substance;
- Whether the substance is represented by way of terminology which is deceptively similar to or the same as that describing a particular controlled substance;
- Whether the dosage unit price substantially exceeds the reasonable price of a similar dosage unit of like chemical composition legally sold over the counter;
- Whether the substance was approved by the FDA for over-the-counter sales and contained the packaging and labeling information approved by the FDA.
- Whether the substance is packaged in a manner and quantity similar to illicit controlled substances;
- Whether the dosage unit appearance is deceptively similar to that of a particular controlled substance;
- Whether the substance is distributed to persons who represent it as a controlled substance or controlled substance analogue, under circumstances that indicate the distributor knows, intends, or should know that the distributee is making or will make such representations;
- Whether the person in possession or control of the substance utilized deception, fraud, or evasive tactics or actions to prevent the seizure, discovery, or detection of the substance by law enforcement

3. Classification:

- Class III Misdemeanor for the first offense;
- Class II Misdemeanor for a 2nd or subsequent offense;

CONTROLLED SUBSTANCE ANALOGUE: [28-401(30)]

1. Defined:

A controlled substance analogue is a substance that either:

- a. Has a chemical structure substantially similar to a Schedule I or Schedule II controlled substance, OR
- b. Or has a stimulant, depressant, analgesic, or hallucinogenic effect on the central nervous system that is substantially similar to or greater than that of a Schedule I or Schedule II controlled substance.

2. Elements:

To the extent intended for human consumption, a controlled substance analogue shall be treated as a controlled substance under Schedule I of section [28-405] for purposes of the Uniform Controlled Substances Act.

ENHANCED PENALTIES FOR DRUG OFFENSES AND SCHOOLS, KIDS, ETC: [28-416(4) and (16)]

1. Elements:

- a. Enhanced penalties apply to:
 - (1) Any person eighteen years of age or older
 - (2) Who knowingly or intentionally,
 - (3) Manufactures, distributes, delivers, dispenses,
 - (4) Or possesses with intent to manufacture, distribute, deliver, or dispense,
 - (5) A controlled substance or a counterfeit controlled substance.
- b. Under any of the following circumstances:
 - (1) To a person under the age of eighteen years,
 - (2) Within one thousand feet of a school, playground, college, or university;
 - (3) Within one hundred feet of a youth center, public swimming pool, or video arcade facility.

2. Classification:

The next higher penalty classification than the penalty prescribed, but not greater than a Class IB Felony.

FIREARMS AND DRUG VIOLATIONS:

1. Elements: [28-416(16)]

It is unlawful for any person to:

- a. Knowingly or intentionally possess a firearm,
- b. While such person,
- c. Manufactures, distributes, delivers, dispenses,
- d. Or possesses with intent to do the same,
- e. A controlled substance or a counterfeit controlled substance.

2. Classification:

The next higher penalty classification than the penalty prescribed, but not greater than a Class IB Felony.

MONEY & CONTROLLED SUBSTANCE VIOLATIONS:

1. Elements: [28-416(17)]

It is unlawful to:

- a. Knowingly or intentionally be in possession of money,
- b. Used or intended to be used to facilitate the manufacture, distribution, delivery, or dispensing,
- c. Or the possession with intent to manufacture, distribute, deliver, or dispense,
- d. A controlled substance or a counterfeit controlled substance.

2. Classification:

Class IV Felony

INVOLVING MINORS IN DRUG VIOLATIONS:

1. Elements: [28-416(5)]

It is unlawful for any person eighteen years of age or older,

- a. To knowingly and intentionally employ, hire, use, cause, persuade, coax, induce, entice, seduce, or coerce any person under the age of eighteen,
- b. To manufacture, transport, distribute, carry, deliver, dispense, prepare for delivery, offer for delivery, possess with intent to do the same, or to aid and abet any person to do the same,
- c. A controlled substance or a counterfeit controlled substance.

2. Classification:

- First Offense is punished by the next higher penalty classification than the penalty prescribed, depending upon the controlled substance involved.
- Second or subsequent violation is punished by the next higher penalty classification than that prescribed for a first violation.
- In no event shall an offender be punished by a penalty greater than a Class IB Felony.
- It is not a defense that the offender did not know the age of the person.

METHAMPHETAMINE, COCAINE, CRACK COCAINE, HEROIN, OR AMPHETAMINE VIOLATIONS:

1. Elements:

It is unlawful for any person to:

- a. Knowingly or intentionally,
- b. Manufacture, Distribute, Deliver, Dispense, or Possess with intent to do the same,
- c. Any of the following controlled substances:
 - (1) Cocaine, or any mixture or substance containing a detectable amount of cocaine;
 - (2) Base Cocaine (Crack) or any mixture or substance containing a detectable amount of base cocaine;
 - (3) Heroin, or any mixture or substance containing a detectable amount of heroin;
 - (4) Amphetamine, its salts, optical isomers, and salts of its isomers; or
 - (5) Methamphetamine, its salts, optical isomers, and salts of its isomers.

2. Classification:

- Class IB Felony for 140 grams or more;
- Class IC Felony for 28 grams to less than 140 grams;
- Class ID Felony for 10 grams to less than 28 grams.

POSSESSION OF OTHER METHAMPHETAMINE

INGREDIENTS:

1. Elements: [28451 TO 28-452]

It is unlawful for any person to possess:

- a. Anhydrous Ammonia, Ephedrine, Pseudoephedrine, or Phenylpropanolamine, or salts or isomers,
- b. With intent to manufacture Methamphetamine.

2. Classification:

Class IV Felony

PSEUDOEPHEDRINE OR PHENYLPROPANOLAMINE

RESTRICTIONS:

1. Packaging Restrictions: [28-456], [28-456.01]

Any drug product containing pseudoephedrine, phenylpropanol-amine, or their salts or optical isomers may be sold without a prescription only if they are:

- a. Labeled/marketed consistent with the pertinent OTC Tentative Final or Final Monograph;
- b. Manufactured/distributed for legitimate medicinal use in a manner that reduces or eliminates the likelihood of abuse;
- c. Packaged sizes (liquid or non-liquid) of not more than three and six-tenths grams.

2. Selling Restrictions: [28-456]

Drug products containing such substances may be sold only if:

- a. Sold by a person, eighteen years of age or older, in the course of his or her employment;
- b. Purchaser must be eighteen years of age or older and show proof of identification (valid Driver's License, State I.D., military I.D., alien registration card, or passport). ;
- c. Drug product must be kept behind a counter, or in an area not accessible to customers, or in a locked case;
- d. Violation of a sales restriction is a civil penalty of fifty dollars per day, one hundred dollars per day for a second or any subsequent violation.
 - Any such drug products shall be seized and destroyed upon the finding of a violation of this section.

3. Purchase Limits: [28-456.01]

a. 24 Hour Limit – 3.6 Grams

No person shall purchase, receive, or otherwise acquire any drug product containing more than three and six-tenths grams of pseudoephedrine base or three and six-tenths grams of phenylpropanolamine base during a 24 hour period unless purchased under a medical order.

- Class IV Misdemeanor for the first offense,
- Class III Misdemeanor for each subsequent offense.

b. 30 Day Limit – 9 Grams

No person shall purchase, receive, or otherwise acquire any drug product containing more than nine grams of pseudoephedrine base or nine grams of

phenylpropanolamine base during a thirty-day period unless purchased pursuant to a medical order.

- Class IV Misdemeanor for the first offense,
- Class III Misdemeanor for each subsequent offense.

4. Enforcement:

DHHS, in conjunction with the Attorney General, NSP, and local law enforcement agencies, has authority to make inspections and investigations to enforce this section.

METHAMPHETAMINE PRECURSOR RESTRICTIONS:

1. Elements: [28-458]

It is unlawful for anyone who otherwise lawfully sells any drug product that is a methamphetamine precursor to:

- a. Knowingly fail to submit methamphetamine precursor information to the National Precursor Log Exchange; OR
- b. Knowingly submit incorrect information to the exchange.

2. Definition:

- *Methamphetamine precursor* means any drug product containing phenylpropanolamine, pseudoephedrine, or ephedrine, or that is required to be documented pursuant to the logbook requirements of 21 U.S.C. 830;

3. Classification:

Class IV Misdemeanor

- Law enforcement has real-time access to the exchange without a fee through an online portal authorized by the Nebraska Attorney General.

EXPOSING METHAMPHETAMINE OR INGREDIENTS TO A CHILD OR VULNERABLE ADULT:

1. Elements: [28-457]

It is unlawful for any person to:

- a. Knowingly or intentionally,
- b. Cause or permit, .
- c. A child (under 19 years of age), or vulnerable adult,
- d. To ingest, inhale or have contact with,
- e. Methamphetamine, chemical substance, or paraphernalia.

2. Definition:

Chemical Substance means a substance intended to be used as an immediate precursor or reagent or any other chemical intended to be used in the manufacture of Methamphetamine.

3. Classification:

- a. Class I Misdemeanor for cases involving inhaling or contact.
- b. Class IV Felony for any second or subsequent conviction
- c. Class IIIA Felony for all cases of ingestion, or if a child or vulnerable adult actually suffers serious bodily injury;

4. Affirmative Defense:

It is an affirmative defense that the chemical substance was provided by lawful prescription for the child or vulnerable

adult and administered to them according to prescription.

*NOTE: A child or vulnerable adult residing with a person violating this section shall be taken into protective custody

CONTROLLED SUBSTANCE INGREDIENTS; OTHER RESTRICTIONS ON OTC SUBSTANCES:

1. Elements: [28-450]

It is unlawful for any person to:

- a. Sell, distribute, or otherwise transfer,
- b. Any drug product containing pseudoephedrine ephedrine, phenylpropanolamine, or their salts, isomers, or salts of isomers,
- c. Knowing that such drug products will be used as an immediate precursor to any controlled substance or with reckless disregard to how the product will be used.

2. Classification:

Class III Misdemeanor

DRUG PARAPHERNALIA - USE OR POSSESSION:

1. Elements: [28-441]

It is unlawful for any person to:

- a. Use, or possess with the intent to use
- b. Drug paraphernalia
- c. To manufacture, inject, ingest, inhale, or otherwise introduce into the human body
- d. A controlled substance.

2. Exceptions:

This section does not apply to pharmacists, pharmacist interns, pharmacy technicians, and pharmacy clerks who sell hypodermic syringes or needles for the prevention of the spread of infectious diseases.

3. Classification:

Infraction

*NOTE: The immunity provisions of [28-4720] may apply in the case of an overdose reported for medical assistance.

DRUG PARAPHERNALIA, DELIVERY OR MANUFACTURE:

1. Elements: [28-442]

It shall be unlawful for any person to:

- a. Deliver or possess with intent to deliver,
- b. OR manufacture with the intent to deliver,
- c. Drug paraphernalia,
- d. Knowing or under circumstances they reasonably should know,
- e. That it will be used to manufacture, inject, ingest, inhale, or otherwise be used to introduce into the human body,
- f. A controlled substance.

2. Exceptions:

This section does not apply to pharmacy workers who sell hypodermic syringes or needles for the prevention of the spread of infectious diseases.

3. Classification:

- Class II Misdemeanor
- Class I Misdemeanor if the offender is over age 18 and delivers paraphernalia to a minor under age 18 who is at least three years younger than the offender [28-443].

DRUG PARAPHERNALIA UNLAWFUL ADVERTISEMENTS:

1. Elements: [28-444]

It is unlawful for any person to:

- a. Place any advertisement in any newspaper, magazine, handbill, or other publication,
- b. Knowing, or under circumstances where one reasonably should know,
- c. The purpose is to promote the sale of objects for use as drug paraphernalia.

2. Classification:

Class III Misdemeanor

POSSESSION OF MARIJUANA:

1. Elements: [28-416(13)]

- a. It is unlawful to knowingly or intentionally,
- b. Possess marijuana.

2. Classification:

The penalty for possession of marijuana depends on the quantity:

a. ***Less than one ounce:***

- (1) The first offense is an Infraction with a fine of \$300.
 - A judge may also order a drug education course.
- (2) A second offense is a Class IV Misdemeanor with a fine of \$400. And the offender may be imprisoned up to 5 days.
- (3) The third and any subsequent offense is a Class IIIA Misdemeanor with a fine of \$500 and the offender will be imprisoned not to exceed seven days.

b. ***More than one ounce but less than one pound:***

- Class IIIA Misdemeanor.

c. ***More than one pound***

- Class IV Felony

*NOTE: The weight of marijuana means its weight at or about the time it is seized or comes into the possession of law enforcement, whether cured or uncured at that time.

- In all cases of possession of marijuana less than one ounce, the offender is to receive a citation.

SYNTHETIC CANNABINOIDS:

Are synthetic drugs similar to marijuana, known by such names as “K2” or “Spice” and are Schedule I controlled substances.

1. Elements (possession): [28-416], [28-405(c)(25)]

It is unlawful to knowingly or intentionally possess:

- a. Any substance containing a quantifiable amount of the substances, chemicals, or compounds described, defined, or delineated in Schedule I [28-405(c)(25)(A-L)]; or
- b. Any *Cannabinoid Receptor Agonist* - any non-naturally occurring substance, chemical compound, mixture, or preparation, not specifically listed elsewhere in the drug schedules and not approved for human consumption by the FDA – see [28-405(c)(25)(M)].

2. Definitions:

- A *Cannabinoid Receptor Agonist* is any chemical compound or substance that demonstrates the presence of binding activity at one or more of the CB1 or CB2 cell membrane receptors within the human body.

3. Classification: [28-416(13)]

- Possession of any quantifiable amount of a synthetic cannabinoid has the same penalty as for possession of marijuana one ounce or less.
- A synthetic cannabinoid is a Schedule I controlled substance, so the laws and penalties for manufacturing, distribution, and possession with intent apply as well.

SYNTHETIC PHENETHYLAMINES:

These are synthetic drugs known by names such as “Blue Mystic” or “Smiles”, and are Schedule I controlled substances.

1. Elements: [28-416], [28-405]

- a. It is unlawful to knowingly or intentionally,
- b. Possess any substance,
- c. Containing any quantity of the materials, compounds, mixtures, or structures in Schedule I [28-405 (c)(26)].

2. Classification:

- Possession is a Class IV Felony,
- Manufacturing or trafficking is a Class IIA Felony.

SYNTHETIC TRIPTAMINES:

These are synthetic drugs known by names such as “Foxy” or “Methoxy”, and are Schedule I controlled substances.

1. Elements: [28-416], [28-405]

- a. It is unlawful to knowingly or intentionally,
- b. Possess any substance containing any quantity of the materials, compounds, mixtures, or structures listed in Schedule I [28-405 (c)(27)].

2. Classification:

- Possession is a Class IV Felony,
- Manufacturing or trafficking is a Class IIA Felony.

SYNTHETIC CATHINONES (Bath Salts):

Compounds known as “bathsalts” or “Khat” are Schedule I Controlled Substances. These include mephedrone, methyldone, and 4-Methylenedioxypyrovalerone (MDPV).

1. Elements: [28-416], [28-405]

- a. It is unlawful to knowingly or intentionally,
- b. Possess any substance,
- c. Containing any quantity of the materials, compounds, mixtures, or structures in Schedule I [28-405 (c)(28)].

2. Classification:

- Possession is a Class IV Felony,
- Manufacturing or trafficking is a Class IIA Felony.

SYNTHETIC OPIOIDS:

These are synthetic drugs known by names such as “*Pink*” or “*U4*”, made from the compound known as U-47700 and are Schedule I controlled substances.

1. Elements: [28-416], [28-405]

- a. It is unlawful to knowingly or intentionally,
- b. Possess any substance containing any quantity of the materials, compounds, mixtures, or structures listed in Schedule I [28-405(a)(58)].

2. Classification:

- Possession is a Class IV Felony,
- Manufacturing or trafficking is a Class IIA Felony.

LOOKALIKE SUBSTANCES:**1. Elements:** [28-471(1)]

It is unlawful for any person to knowingly:

- a. Offer, display, market, advertise for sale, or sell,
- b. A lookalike substance,
- c. In packaging with a label or marking which:
 - (1) Is false, misleading, or incomplete,
 - (2) Does not specifically identify all chemicals or chemical compounds contained on or in the substance or product inside the packaging, or
 - (3) Does not specifically identify the name and place of business of the manufacturer, packer, or distributor of the product or substance in the packaging.

2. Defined: [28-401(44)]

A Lookalike Substance is a product or substance not specifically designated by [28-405] as a controlled substance that is either:

- (1) Portrayed in such a manner to lead another person to reasonably believe that it produces effects on the human body that replicate, mimic, or are intended to simulate the effects produced by a controlled substance; OR
- (2) That possesses one or more of the following:

- (a) The packaging or labeling suggests that the user will achieve an effect that replicates or mimics those produced by a controlled substance;
- (b) The name or packaging uses images or labels suggesting that it is a controlled substance or produces effects that replicate or mimic those produced by a controlled substance;
- (c) It is marketed or advertised for a particular use or purpose but the cost is disproportionately higher than other products or substances marketed or advertised for the same or similar use or purpose;
- (d) The packaging or label contains words or markings that state or suggest that it is in compliance with state and federal laws regulating controlled substances;
- (e) The owner or person in control of it uses evasive tactics or actions to avoid detection or inspection of it by law enforcement authorities;
- (f) The owner or person in control of it makes a verbal or written statement suggesting or implying that it is a synthetic drug or that consumption of it will replicate or mimic effects of a controlled substance;
- (g) The owner or person in control of it makes a verbal or written statement to a prospective buyer, or recipient implying that it may be resold for profit; or
- (h) It contains a chemical or chemical compound that does not have a legitimate relationship to the use or purpose claimed by the seller, distributor, packer, or manufacturer of the product or substance or indicated by the product name, appearing packaging or label or depicted in advertisement of it.

3. Exceptions:

Substances intended solely for investigational use by qualified experts to investigate the safety of drugs if the drug is plainly labeled for investigational use only and the investigational use is authorized by state or federal law.

4. Classification:

Class IV Felony

*NOTE: Lookalike substances and related items such as paraphernalia, money, vehicles, records, and equipment, are subject to warrantless seizure and forfeiture, as is done for controlled substances under [28-431].

LOOKALIKE SUBSTANCES & DECEPTIVE TRADE PRACTICES:

1. Elements: [87-302(22)]

A person engages in a deceptive trade practice when he/she:

- a. In the course of business, vocation, or occupation,
- b. In the manufacture, production, importation, distribution, promotion, display for sale, offer for sale, attempt to sell,

- or sale of a lookalike substance,
- c. Does any of the following:
- (1) Makes a deceptive or misleading representation or designation; or
 - (2) Omits material information about a substance; or
 - (3) Fails to identify the contents of the package or the nature of the substance contained inside it; or
 - (4) Causes confusion or misunderstanding as to the effects a substance causes when ingested, injected, inhaled, or otherwise introduced into the body.

2. Classification:

Class II Misdemeanor [87-303.08]

- Each individually packaged product in violation is a separate crime, and any violation is separate and distinct from any other offenses arising from the same incident.

NARCOTIC DRUG PACKAGING & RECORDS VIOLATIONS:

1. Elements: [28-417]

It shall be unlawful for any person:

- a. To omit, remove, alter, or obliterate a symbol required by federal or state law,
- b. To alter, deface, or remove any label affixed to a package of narcotic drugs; or
- c. To refuse or fail to make, keep, or furnish any record, notification, order form, statement, invoice, or information required under the Uniform Controlled Substances Act, or
- d. To refuse any entry into any premises for inspection authorized by the act.

2. Classification:

Class III Misdemeanor

MAINTAINING A DRUG HOUSE:

1. Elements: [28-417(e)]

It is unlawful for any person:

- a. To keep or maintain any store, shop, warehouse, dwelling house, building, vehicle, boat, aircraft, or place,
- b. That such person knows or should know,
- c. Is resorted to by persons using, keeping, or selling controlled substances in violation of the Uniform Controlled Substances Act.

2. Classification:

Class III Misdemeanor

POSSESSION OF PRESCRIPTION NARCOTICS IN AN UNAUTHORIZED CONTAINER:

1 Elements: [28-417(f)]

It is unlawful for any person:

- a. To whom or for whose use any controlled substance has

- been lawfully prescribed, sold, or dispensed,
- b. Or the owner of any animal for which any such substance has been lawfully prescribed, sold, or dispensed,
- c. To possess it in a container other than which it was delivered.

2. Classification:

Class III Misdemeanor

BEING UNDER THE INFLUENCE OF A CONTROLLED SUBSTANCE:

1. Elements: [28-417(g)]

It is unlawful for any person:

- a. To be under the influence of any controlled substance,
- b. For a purpose other than the treatment of a sickness or injury as prescribed or administered by a practitioner.

2. Classification:

Class III Misdemeanor

*NOTE: It is not necessary to prove that the accused was under the influence of any specific controlled substance, only that the defendant showed physical and physiological symptoms or reactions from using any controlled substance.

CONTROLLED SUBSTANCE REGISTRANT VIOLATIONS:

1. Elements: [28-418(a-h)]

It is unlawful for any person who is a registrant to distribute a controlled substance classified in Schedule I or II of section [28-405] in the course of his or her legitimate business, and knowingly or intentionally do any of the following:

- a. Use a registration number which is fictitious, revoked, suspended, or issued to another person;
- b. Acquire or obtain or to attempt to acquire or obtain;
- c. Possess a controlled substance by theft, misrepresentation, fraud, forgery, deception, or subterfuge;
- d. Furnish false or fraudulent material information in or omit any material information from any application, report, or other document required to be kept or filed under the Uniform Controlled Substances Act;
- e. Make, distribute, or possess any punch, die, plate, stone, or other thing designed to print, imprint, or reproduce the trademark, trade name, or other identifying mark upon any drug or container or labeling so as to render such drug a counterfeit controlled substance;
- f. Distribute or dispense a controlled substance in violation of section [28-414].
- g. Manufacture a controlled substance not authorized by his or her registration;
- h. Distribute or dispense a controlled substance not authorized by his or her registration to another registrant or authorized person.

2. Definition:

A **Registrant** is any person who has a controlled substances registration issued by NE, the DEA, or the USDOJ.

3. Classification:

Class IV Felony

ACQUIRING A CONTROLLED SUBSTANCE BY FRAUD:

1. Elements: [28-418(1)(c)]

It is unlawful for any person:

- a. To acquire, obtain, or attempt to acquire or obtain,
- b. A controlled substance,
- c. By theft, misrepresentation, fraud, forgery, deception, or subterfuge.

2. Classification:

Class IV Felony

POSSESSION OF A FORGED PRESCRIPTION:

1. Elements: [28-418(1)(h)]

It is unlawful for any person:

- a. To possess a false or forged medical order,
- b. For a controlled substance,
- c. Issued by a practitioner authorized to prescribe.

2. Classification:

Class IV Felony

*NOTE: This law does not apply to law enforcement, practitioners, or attorneys in the performance of official duties.

DRUG DEALER TAX: [77-4301] to [77-4316]

A tax is imposed on illegal marijuana and controlled substances:

1. Elements:

- a. No dealer may possess marijuana, controlled substance, or imitation controlled substance,
- b. Unless the tax has been paid,
- d. As evidenced by an official stamp, label, or otherwise.

2. Definitions:

For purposes of the Drug Tax, a **Dealer** is a person who unlawfully manufactures, produces, ships, transports, imports, or in any manner acquires or possesses:

- Six or more ounces of marijuana, or
- Seven or more grams of any controlled substance which is sold by weight, or
- Ten or more dosage units of any controlled substance that is not sold by weight.

3. Classification:

Class IV Felony.

- The dealer must also pay the tax.
- Marijuana is not included in this section, but is subject to its own tax.

USING OR SELLING INTOXICATING COMPOUNDS:

1. Elements: [28-419] to [28-423]

a. No person shall:

- (1) Breathe, inhale, or drink; or
- (2) Knowingly sell or offer for sale, deliver or give to any person (when such person knows or should know of the intended use of the substance), or
- (3) Induce or entice any person to breath, inhale, drink, sell, deliver, or give to any person,

b. Any compound, liquid, or chemical, or other substance,

c. For the purpose of inducing an intoxicated condition.

2. Prohibited Substances:

An intoxicating compound is any substance that induces an intoxicated condition, including any compound, liquid, or chemical containing:

- Acetate, Acetone, Benzene, Butyl Alcohol, Cyclohexanone, Ethyl Acetate, Ethyl Alcohol, Ethylene Dichloride, Ethylene Trichloride, Hexane, Isopropanol, Isopropyl Alcohol, Methyl Alcohol, Methyl Cellosolve Acetate, Methyl Ethyl Ketone, Methyl Isobutyl Ketone, Pentachlorophenol, Petroleum Ether, Toluene, Toluol, Trichloroathane, Trichloroethylene,

3. Intoxicated Condition means any condition of intoxication, stupefaction, depression, giddiness, paralysis, inebriation, excitement, or irrational behavior, or in any manner changing, distorting, or disturbing the auditory, visual, mental, or nervous processes.

4. Records Required of Sale

Every person selling or offering for sale at retail any of the prohibited substances shall maintain a register in which are recorded the date of each sale, the quantity sold, and the name and address of the purchaser.

- Records of each sale shall be available for inspection by any peace officer for at least one year

5. Classification

Class III Misdemeanor

*NOTE: Alcoholic Liquor and lawfully used medical or dental prescription substances are not included in this section as intoxicating compounds.

TOBACCO AND VAPOR VIOLATIONS:

SMOKING IN A PUBLIC PLACE OR PLACE OF EMPLOYMENT

1. Elements: [71-5729] [71-5731]

It is a violation of the NE Clean Indoor Air Act to:

- a. Smoke in a place of employment or a public place, OR
- b. For a proprietor of a place of employment or public place to ensure compliance with the Act.

2. Definitions:

- Smoke or smoking means the lighting of any cigarette, cigar, pipe, or other smoking material or the possession of any lighted cigarette, cigar, pipe, or other smoking material, regardless of its composition.

3. Exceptions:

Smoking is allowed in the following places:

- Guestrooms and suites that are rented to guests and that are designated as smoking rooms,
- Indoor areas used for approved research study on the health effects of smoking;
- Tobacco retail outlets (only sells tobacco and directly related products); and
- Cigar shops (but not cigarettes, and only by persons 21 years of age or older).

4. Classification:

- Class V Misdemeanor.
- Class IV Misdemeanor for a second or subsequent offense.

*NOTE: Every act or omission by an employee or agent of a proprietor is deemed to be the act or omission of such proprietor and such proprietor is subject to the same penalty as if the act or omission had been committed by such proprietor.

TOBACCO SELF-SERVICE DISPLAYS

1. Elements: [28-1429.03]

- a. It is illegal to sell or distribute cigarettes, cigars, vapor products, alternative nicotine products, or tobacco in any form whatever through a self-service display.
- b. Except at a tobacco specialty store or cigar shop.

2. Classification

Class III Misdemeanor.

- For a second or subsequent offense within a twelve-month period, the court shall order a six-month suspension of the tobacco license.

USE OF TOBACCO OR VAPOR BY A MINOR:

1. Elements: [28-1418]

It is unlawful to:

- a. Smoke cigarettes or cigars,
- b. Use vapor products or alternative nicotine products, or
- c. Use tobacco in any form whatever.

2. Definitions:

- ***Alternative nicotine product*** means any noncombustible product containing nicotine that is intended for human consumption, whether chewed, absorbed, dissolved, or ingested by any other means. Alternative nicotine product does not include any product regulated as a drug or device by the FDA.
- ***Vapor product*** means any noncombustible product containing nicotine that employs a heating element, power source, electronic circuit, or other electronic, chemical, or mechanical means, regardless of shape or size, that can be used to produce vapor from nicotine in a solution or other form. Vapor product includes any electronic cigarette, or similar product and any vapor cartridge or other container of nicotine in a solution or other form that is intended to be used with or in an electronic cigarette or similar product or device. Vapor Product does not include any product regulated as a drug or device by the FDA.

3. Classification:

Class V Misdemeanor

- A minor charged with this violation may be free from prosecution if he/she furnishes evidence for the conviction of the person who provided the tobacco or vapor product.

SELLING OR GIVING TOBACCO OR VAPOR TO A MINOR:

1. Elements: [28-1419]

It is unlawful to:

- a. Sell, give, or furnish, in any way,
- b. Tobacco in any form whatever, or
- c. Any cigarettes, cigarette paper, vapor products, or
- d. Alternative nicotine products,
- e. To any minor under eighteen years of age.

2. Classification:

Class III Misdemeanor

ALLOWING THE SALE OR GIFT OF TOBACCO OR VAPOR TO A MINOR:

1. Elements: [28-1425]

It is unlawful for the holder of a tobacco license to:

- a. Willingly allow any person under the age of eighteen,
- b. To take tobacco products, vapor products, or alternative nicotine products,
- c. From his or her place of business.

2. Classification:

Class III Misdemeanor

- The court may also revoke the tobacco license.

*NOTE: Any officer, director, or manager having charge or control of the business of any corporation in violation may also be prosecuted if he/she has knowledge of such violation.

MISREPRESENTING AGE TO OBTAIN TOBACCO OR VAPOR:

1. Elements: [28- 1427]

It is unlawful for any person under age eighteen to:

- a. Obtain cigars, tobacco, cigarettes, cigarette material, vapor products, or alternative nicotine products,
- b. From a tobacco licensee,
- c. By representing that he or she is of the age of eighteen.

2. Classification:

Class V Misdemeanor

NOVELTY LIGHTERS:

1. Elements: [28- 1357]

It is unlawful to:

- a. Sell, offer, or distribute for retail sale or promotion,
- b. A novelty lighter manufactured on or after July 18, 2014,
- c. Without a child safety feature.

2. Definition:

- A novelty lighter has only one button or function, and:
 - (1) Is designed to resemble a cartoon character, toy, gun, watch, musical instrument, vehicle, animal, food or beverage container, or a similar item,
 - (2) Plays musical notes, or
 - (3) Has flashing lights.
- Novelty lighter does not include the following:
 - (1) A lighter manufactured prior to January 1, 1980;
 - (2) A lighter incapable of being fueled or lacking a device necessary to produce combustion or a flame;
 - (3) A standard disposable or refillable lighter that is printed or decorated with a logo, label, decal, artwork, or heat shrinkable sleeve.

3. Exception:

This section does not apply to transportation of novelty lighters or storage that is closed to the public for retail sales

4. Classification:

Class IV Misdemeanor

OFFENSES AGAINST PROPERTY:

ARSON FIRST DEGREE:

1. Elements: [28-502]

A person commits arson in the first degree if he/she:

- a. Intentionally damages a building or property within it,
- b. By starting a fire or causing an explosion,
- c. Or if a fire or explosion is started or caused during any robbery, burglary, or felony criminal mischief,
- d. When another person is present in the building at the time
- e. And either:
 - (1) The actor knows that fact, or
 - (2) The presence of a person inside was a reasonable probability under the circumstances.

2. Classification:

Class II Felony

ARSON SECOND DEGREE:

1. Elements: [28-503]

A person commits arson in the second degree if he/she:

- a. Intentionally damages a building or property contained within a building,
- b. By starting a fire or causing an explosion,
- c. Or if a fire/explosion is started/caused during a robbery, burglary, or felony criminal mischief.

2. Affirmative Defenses:

- a. No person other than the accused has a security or proprietary interest in the damaged building; or
- b. If other persons have such interests, all of them consented to his or her conduct; or
- c. The accused sole intent was to destroy or damage the building for a lawful and proper purpose.

3. Classification:

Class III Felony

ARSON THIRD DEGREE:

1. Elements: [28-504]

A person commits arson in the third degree if he/she:

- a. Intentionally sets fire to, burns, causes to be burned,
- b. Or by the use of any explosive,
- c. Damages or destroys, or causes to be damaged/destroyed,
- d. Any property of another person without such other person's consent.

2. Classification:

- Class II Misdemeanor if the damages are less than \$500
- Class I Misdemeanor if the damages are \$500 to \$1500,
- Class IV Felony if the damages are \$1500 or more.

BURNING TO DEFRAUD INSURER:**1. Elements:** [28-506]

This crime is committed by any person who,

- a. Sets fire to or burns or attempts so to do,
- b. Or who causes, aids, counsels or procures the burning,
- c. Of any building or any personal property,
- d. Which is insured by any person, company or corporation against loss or damage by fire,
- e. With the intent to deceive or harm an insurer

2. Classification:Class IV Felony

- It does not make any difference whether the offender owned the property burned or not.

BURGLARY:**1. Elements:** [28-507]

A person commits burglary if such person:

- a. Willfully, maliciously, and forcibly,
- b. Breaks and enters any real estate or any improvements erected thereon,
- c. With intent to commit any felony
- d. Or with intent to steal property of any value.

2. Classification:Class IIA Felony**POSSESSION OF BURGLARS TOOLS:****1. Elements:** [28-508]

It is unlawful to knowingly possess:

- a. Any explosive, tool, instrument, or other article,
- b. That is adapted, designed, or commonly used for committing or facilitating the an offense involving forcible entry into premises or theft by a physical taking,
- c. With the intent to use the explosive, tool, instrument, or article to commit such an offense,
- d. Or knowing that some person intends ultimately to use it to commit such an offense.

2. Classification:Class IV Felony**CRIMINAL MISCHIEF:****1. Elements:** [28-519]

Criminal mischief is any of the following:

- a. Damaging property of another intentionally or recklessly;
- b. Intentionally tampering with property of another so as to endanger person or property; or
- c. Intentionally or maliciously causing another to suffer pecuniary loss by deception or threat.

2. Classification:

- a. Class III Misdemeanor

If \$500 damage/loss or less.

- b. Class II Misdemeanor
If \$500 and \$1,500 damage/loss or less.
- c. Class I Misdemeanor
If between \$1,500 and \$5,000 damage/loss or less.
- d. Class IV Felony
If loss/damage is \$5,000 or more, OR if there is a substantial interruption or impairment of public communication, transportation, supply of water, gas, or power, or other public service.

DAMAGING PROPERTY OF A PUBLIC POWER SUPPLIER:

1. Elements: [70-2104]

It is unlawful for any person to:

- a. Willfully and maliciously:
- b. Damage, injure, or destroy,
- c. Or attempts to damage, injure, or destroy:
 - (1) Any machine, appliance, facility, or apparatus owned by a public power supplier used for generating electricity; or
 - (2) Any facility or electric wire owned by a public power supplier that is used for conducting, transforming, transmitting, or distributing electricity, or
 - (3) Any pole, bracket, insulator, or other appliance or apparatus owned by a public power supplier that supports or carries any electric wire owned by a public power supplier.

2. Definition:

A *public power supplier* means a public power district, a municipality, an electric cooperative, an electric membership association, a joint interlocal entity, a joint public agency, or any other governmental entity providing electric service

3. Classification:

Class IV Felony

INTERRUPTING ELECTRICITY OF A PUBLIC POWER SUPPLIER:

1. Elements: [70-2104]

It is unlawful for any person to:

- a. Willfully and maliciously do any act,
- b. For the purpose of interrupting the generation, transmission, or distribution of electricity by a public power supplier.

2. Classification:

Class IV Felony

TRESPASSING FIRST DEGREE:

1. Elements: [28-520]

A person commits first-degree criminal trespass if he/she:

- a. Enters or secretly remains in any building or occupied

structure or any separately secured or occupied portion thereof, knowing that he/she is not licensed or privileged to do so; OR

- b. Enters or remains in or on a public power infrastructure facility knowing that he or she does not have the consent of an authorized person.

2. Definition:

A *public power infrastructure facility* is a power plant or any other facility used by a public power supplier for electricity that is surrounded by a fence or is otherwise enclosed.

3. Classification:

Class I Misdemeanor

- See Affirmative Defenses below.

TRESPASSING SECOND DEGREE:

1. Elements: [28-521]

A person commits second degree criminal trespass if,

- a. Knowing that he/she is not licensed or privileged to do so,
- b. Enters or remains in any place,
- c. With notice against trespass that is given by:
 - (1) Actual communication to the actor; or
 - (2) Posting in a manner prescribed by law or reasonably likely to come to the attention of intruders; or
 - (3) Fencing or other enclosure manifestly designed to exclude intruders (Except at a *public power infrastructure facility* – see 1st degree trespass).

2. Classification:

- Class III Misdemeanor, except as provided for in subsection (3) of this section.
- Class II Misdemeanor if the offender defies an order to leave personally communicated to him by the owner of the premises or other authorized person.
- See Affirmative Defenses below.

TRESPASSING - AFFIRMATIVE DEFENSES: [28-522]

Any of the following may be an affirmative defense to prosecution for criminal trespass:

- A building or occupied structure involved in an offense under section [28- 520] was abandoned; or
- The premises were at the time open to members of the public and the actor complied with all lawful conditions imposed on access to or remaining in the premises; or
- The actor reasonably believed that the owner of the premises or other person empowered to license access thereto would have licensed him to enter or remain; or
- The actor was navigating a non-powered vessel on a stream or river and it was necessary to travel around any fence or obstructions in such stream or river.

LITTERING:

1. Elements: [28-523]

It is unlawful to:

- a. Deposit, throw, discard, or otherwise dispose of,
- b. Any litter,
- c. On any public or private property, or in any waters.

2. Exceptions:

It is not littering if:

- a. Such property is an area designated by law for the disposal of such material and such person is authorized by the proper public authority to so use such property; or
- b. The litter is placed in a receptacle or container installed on such property for such purpose.

3. Definitions:

- *Litter* means all waste material susceptible of being dropped, deposited, discarded, or otherwise disposed of.
- Litter does not include wastes of primary processes of farming or manufacturing.
- *Waste material* means material appearing in a place or in a context not associated with that material's function or origin.

4. Classification:

- Class III Misdemeanor for a first offense.
- Class II Misdemeanor for a second offense.
- Class I Misdemeanor for a third or subsequent offense.

*NOTE: The operator of a motor vehicle or watercraft may be cited for any littering from the vehicle, regardless of who throws the litter.

GRAFFITI, UNAUTHORIZED APPLICATION:

1. Elements: [28-524]

It is unlawful for any person to:

- a. Knowingly and intentionally,
- b. Apply graffiti of any type,
- c. Without the express permission of the owner or operator of the property:
 - (1) On any building, public or private, OR
 - (2) On any other tangible property, public or private.

2. Definition:

Graffiti means any letter, word, name, number, symbol, slogan, message, drawing, picture, writing, or any other mark visible to the public that is drawn, painted, chiseled, scratched, or etched on a rock, tree, wall, bridge, fence, gate, building, or other structure.

- Graffiti is not advertising or any mark lawfully placed by an owner, tenant, or authorized agent.

3. Classification:

- Class III Misdemeanor for a first offense,

- Class IV Felony for a second or subsequent offense

4. Additional Sanctions:

In addition to the criminal penalty, the court may also order an offender to do any of the following:

- To clean up, repair, or replace the damaged property,
- To keep the defaced property or another specified property in the community free of graffiti or other inscribed materials for up to one year,
- To pay restitution (payment can be combined with labor),
- To undergo counseling,
- Suspend defendant's motor vehicle operator's license for up to one year (applies to an adjudicated juvenile as well).

THEFT OFFENSES:

[28-509] to [28-518]

THEFT IS A SINGLE OFFENSE: [28-510]

Theft is a single offense that can be committed in multiple ways, as noted in the various offenses of [28-509 to 28-518].

- A person charged with theft under one section (such as theft by deception) can be found guilty of theft under a different section (such as theft by unlawful taking) based on the evidence at trial.

THEFT DEFINITIONS: [28-509]

- ***Deprive*** means to withhold property of another permanently or for so extended a period as to appropriate a major portion of its economic value, or with intent to restore only upon payment of reward or other compensation;
- ***Property*** means anything of value, including real estate, tangible and intangible personal property, contract rights, credit cards (or similar instruments), choses in action and other interests in or claims to wealth, admission or transportation tickets, captured or domestic animals, food and drink, and electric or other power;
- ***Property of another*** means property that anyone has an interest in, which the offender is not privileged to infringe, even if the offender also has an interest in the property and even if the property was used in an unlawful transaction or was subject to forfeiture as contraband.

THEFT BY UNLAWFUL TAKING:

1. Elements: [28-511]

A person commits the crime of theft if he or she:

- Takes, or exercises control over, movable property of another with the intent to deprive him or her thereof; OR
- Transfers immovable property of another or any interest therein with the intent to benefit him or herself or another not entitled thereto.

2. Presumption:

It shall be presumed that failure to return leased or rented movable property (except a motor vehicle) is done with intent to deprive if the property is not returned within ten days after notice by certified mail of the expiration of a written lease or rental agreement.

3. Classification:

See [28-518] below.

THEFT OF A RENTED OR LEASED MOTOR VEHICLE:

1. Elements: [28-511(4)]

A person is guilty of theft if he or she:

- a. Rents or leases a motor vehicle,
- b. Under a written lease or rental agreement specifying the time and place for the return of the vehicle,
- c. And either:
 - (1) Fails to return the vehicle within seventy-two hours of written demand by certified mail to the address given by him or her for such purpose, OR
 - (2) Used a fraudulent or stolen credit card.

2. Exceptions:

This section does not apply to any person who:

- a. Unintentionally failed to return a rented motor vehicle or to inform the owner of the location of the vehicle through inadvertence, mistake, act of God, or other natural occurrence, OR
- b. Has had a rented motor vehicle stolen or otherwise converted from his or her possession and has filed the appropriate report with law enforcement authorities.

3. Classification:

See [28-518] below.

THEFT BY SHOPLIFTING: [28-511.01]

1 Elements:

It is unlawful for any person to:

- a. With intent to appropriate merchandise to his/her own use without paying for it, or to deprive the owner of possession of property or its retail value, in whole or part,
- b. Does any of the following:
 - (1) Conceals or takes possession of the goods or merchandise of any store or retail establishment;
 - (2) Alters the price tag or other price marking on goods or merchandise of any store or retail establishment;
 - (3) Transfers the goods or merchandise of any store or retail establishment from one container to another;
 - (4) Interchanges the label or price tag from one item of merchandise with a label or price tag for another item of merchandise;
 - (5) Causes a cash register or similar device to reflect less

than the retail price of the merchandise; or

- (6) Alters, bypasses, disables, shields, or removes any security or alarm device attached to or housing any goods or merchandise of any store, including the use or possession of a security device countermeasure as defined in section [28-511.03], prior to purchase of the goods or merchandise.

2. Photographs as Evidence:

In any prosecution for theft by shoplifting, photographs of the shoplifted property may be accepted as prima facie evidence as to the identity of the property. Such photograph shall be accompanied by a written statement containing the following:

- A description of the property;
- The name of the owner or owners of the property;
- The time, date, and location where the shoplift occurred;
- The time and date the photograph was taken;
- The name of the photographer; and
- Verification by the arresting officer.

3. Release of Shoplifted Property:

The use of photographs at trial is to allow the owner or owners of shoplifted property the use of such property during pending criminal prosecutions.

- Prior to releasing shoplifted property to the owner, there must be reasonable opportunity for the defendant's attorney to inspect and appraise the property, and possibly file a motion for retention of it, which will be granted if there is any reasonable basis to believe that the photographs and affidavit may be misleading.

4. Classification:

See [28-518] below.

SECURITY DEVICE COUNTERMEASURE, POSSESSION:

1. Elements: [28-511.03]

- a. It is unlawful for any person,
- b. Other than an authorized agent of a store or retail establishment,
- c. To possess, in that store,
- d. Any security device countermeasure.

2. Definitions:

Security device countermeasure means a device that bypasses, disables, or removes an electronic or magnetic theft alarm sensor.

3. Classification:

Class II Misdemeanor.

THEFT BY DECEPTION:

1. Elements: [28-512]

It is unlawful to:

- a. Intentionally obtain property of another,

- b. By deception.
- 2. **Definition:**

Deception means intentionally doing any of the following:

 - a. Creating or reinforcing a false impression:
 - Including false impressions as to law, value, intention, or other state of mind,
 - But deception as to a person's intention to perform a promise shall not be inferred from the fact alone that he did not subsequently perform the promise;
 - b. Preventing another from acquiring information that would affect his judgment of a transaction;
 - c. Failing to correct a false impression which the deceiver previously created or reinforced, or which the deceiver knows to be influencing another to whom he stands in a fiduciary or confidential relationship;
 - d. Using a credit card, charge plate, or any other instrument of payment, when either:
 - (1) It was stolen, forged, revoked, canceled, or for other reason its use is unauthorized, or
 - (2) The actor doesn't have the intention & ability to meet all obligations to the issuer arising out of such use.
- 3. **Exception:**

The word *deceive* does not include falsity as to matters having no pecuniary significance, or statements unlikely to deceive ordinary persons in the group addressed.
- 4. **Classification:**

See [28-518] below.

THEFT BY EXTORTION / THREATS:

- 1. **Elements:** [28-513]

A person commits theft if he obtains property of another by threatening to:

 - a. Inflict bodily injury on anyone or commit any other criminal offense; or
 - b. Accuse anyone of a criminal offense; or
 - c. Expose a secret tending to subject any person to hatred, contempt or ridicule, or impairment of credit or business repute; or
 - d. Take or withhold action as an official, or cause an official to take or withhold action; or
 - e. Bring about or continue a strike, boycott, or other collective unofficial action, if the property is not demanded or received for the benefit of the group in whose interest the actor purports to act; or
 - f. Testify, provide information, or withhold testimony or information as to another person's legal claim or defense.
- 2. **Affirmative Defense:**

It is an affirmative defense to prosecution based on subdivision (1)(b), (1)(c), or (1)(d) that the property obtained

by threat of accusation, exposure, lawsuit or other invocation of official action was honestly claimed as restitution or indemnification for harm done or as compensation for property or lawful services.

3. Classification:

See [28-518] below.

THEFT OF LOST OR MISLAID PROPERTY:

1. Elements: [28-514]

It is unlawful for any person to:

- a. Come into control of property of another,
- b. Knowing the property to have been lost, mislaid, or delivered under a mistake as to (1) the nature or amount of the property or (2) the identity of the recipient,
- c. To fail to take reasonable measures to restore the property to a person entitled to have it,
- d. With intent to deprive the owner thereof.

2. Classification:

- If the value of the property is more than \$500, the penalty is the next lower classification under [28-518] below the value of the item lost, mislaid, or delivered under a mistake.
- If the value of the property is \$500 or less, the penalty is:
 - (1) Class III Misdemeanor (first offense),
 - (2) Class II Misdemeanor (second offense),
 - (3) Class I Misdemeanor (third or subsequent offense).

THEFT OF SERVICES:

1. Elements: [28-515]

A person commits theft if he/she:

- a. Obtains services,
- b. Knowing such services are available only for compensation,
- c. By deception, threat, false token, or other means to avoid payment for the service,
- d. Or by diverting services to themselves or another when not entitled to such services.

2. Definition:

Services include labor, professional, telephone, electric, cable television, or other public service, accommodation in hotels, restaurants, or elsewhere, admission to exhibitions, and use of vehicles or other movable property.

- When compensation is ordinarily paid immediately (as in hotels or restaurants), refusing to pay or absconding without paying or offering to pay creates a presumption that the service was obtained by deception.

3. Classification:

See [28-518] below.

THEFT OF TELECOMMUNICATIONS SERVICE:

1. Elements: [28-515.01]

It is unlawful for any person to do any of the following:

- a. Knowingly make or possess any device designed to or commonly used to fraudulently obtain telecommunications service from a licensed cable television franchisee with the intent to use such device in the commission of theft of services under [28-515(1)];
- b. Knowingly tamper with, interfere with, or connect to any cables, wires, converters, or other devices used for the distribution of telecommunications service by any mechanical, electrical, acoustical, or other means without authority from the operator of the service with the intent of obtaining telecommunications service fraudulently;
- c. Sell, give, transfer, or offer or advertise for sale a device which such person knows or should know is intended to be used for the purpose of fraudulently obtaining telecommunications service.

2. Definition:

- ***Telecommunications Service*** includes, but is not limited to, telephone service and cable television service;
- ***Device*** includes, but is not limited to, instrument, apparatus, equipment, and plans or instructions for making or assembling the instrument, apparatus, or equipment.

3. Classification:

Class II Misdemeanor

THEFT OF UTILITY SERVICE:

1. Elements: [28-515.02]

It is unlawful for any person to do any of the following:

- a. Make any unauthorized connection of any instrument by or at which electricity, electric current, gas, or water may be consumed without passing through the meter made or provided for measuring or registering the amount or quantity thereof passing through it;
- b. Knowingly use or permit the use of electricity, electric current, gas, or water obtained unlawfully;
- c. Reconnect electrical, gas, or water service without the knowledge and consent of the supplier if the service has been disconnected under [70-1601] to [70-1615]; or
- d. To willfully injure, alter, or in any manner interfere with or obstruct any meter for measuring or registering electricity, electric current, gas, or water passing through it without the knowledge and consent of the supplier.

2. Presumption:

It is prima facie evidence of guilt of a person in charge of premises on which exists any wire, pipe, conduit connection/reconnection, or any injury, alteration,

interference, or obstruction of a meter.

3. **Connection:**
Class III Misdemeanor

UNAUTHORIZED USE OF A PROPELLED VEHICLE:

1. **Elements:** [28-516]
It is unlawful to:
 - a. Intentionally exert unauthorized control,
 - b. Over another's propelled vehicle,
 - c. By operating it without the owner's consent.
2. **Definition:**
Propelled vehicle means automobile, airplane, motorcycle, motorboat, or other motor-propelled vehicle.
3. **Affirmative Defense:**
It is not a crime if the actor reasonably believed the owner would have authorized the use had he or she known of it.
4. **Classification:**
 - Class III Misdemeanor for the first offense.
 - Class I Misdemeanor for the second offense.
 - Class IV Felony for the third or subsequent offense.

THEFT BY RECEIVING STOLEN PROPERTY:

1. **Elements:** [28-517]
It is unlawful for any person to
 - a. Receive, retain, or dispose of,
 - b. Stolen movable property of another,
 - c. Knowing or believing that it has been stolen,
 - d. Unless the property is received, retained, or disposed of with intention to restore it to the owner.
3. **Classification:**
See [28-518] below.

*NOTE: Mere possession of stolen property is not sufficient to prosecute the offense.

PENALTIES FOR THEFT: [28-518]

1. **General Considerations:**
The penalty for most theft offenses depends on the value of the thing involved.
 - Amounts taken pursuant to one scheme or course of conduct from one or more persons may be aggregated in determining the classification of the offense, but amounts may not be aggregated into more than one offense.
 - Value is an essential element of the offense that must be proved beyond a reasonable doubt.
2. **Theft Classifications:**
 - a. **\$500 or less:**
 - Class II Misdemeanor
 - Class I Misdemeanor for any second conviction

- Class IV Felony for any third or subsequent conviction
- b. **\$500 to \$1,500:**
 - c. Class I Misdemeanor
 - Class IV Felony for a second/subsequent offense
- c. **\$1,500 to \$5,000:**
 - Class IV Felony
- d. **\$5,000 or more:**
 - Class IIA Felony

FRAUD OFFENSES:

FORGERY FIRST DEGREE:

1. Elements: [28-602]

A person commits forgery in the first degree if he or she:

- a. Falsely makes, completes, endorses, alters, utters, or offers, with intent to deceive or harm,
- b. A written instrument,
- c. Which is, purports to be, or which is calculated to become or to represent if completed:
 - (1) Part of an issue of money, stamps, securities, or other valuable instruments issued by a government or governmental agency; or
 - (2) Part of an issue of stock, bonds, bank notes, or other instruments representing interests in or claims against a corporate or other organization or its property.

2. Classification:

Class III Felony

FORGERY SECOND DEGREE:

1. Elements: [28-603]

It is unlawful to:

- a. Falsely make, complete, endorse, alter, utter or offer,
- b. Any written instrument,
- c. To create, transfer, terminate, or otherwise affect a legal right, interest, obligation, or status,
- d. Or which purports to be, or is calculated to become or represent such a written instrument if completed,
- e. With intent to deceive or harm.

2. Classification:

The penalty classification depends on the amount of face value, or purported face value, or the amount of any proceeds wrongfully procured or intended to be procured by the use of such instrument:

- a. \$500 or less is a Class II Misdemeanor,
- b. \$500 to \$1,500 is a Class I Misdemeanor,
- c. \$1,500 to \$5,000 is a Class IV Felony,
- d. \$5,000 or more is a Class IIA Felony

*NOTE: Values or amounts may be aggregated if the instruments were part of the same scheme or course of conduct which took place within a 60 period and within one county; but may not be aggregated into more than one offense.

CRIMINAL POSSESSION OF A FORGED INSTRUMENT:

1. Elements: [28-604]

It is unlawful to:

- a. Possess any forged instrument covered in forgery first or second degree,
- b. With knowledge that it is forged,
- c. And with intent to deceive or harm.

2. Classification:

The penalty depends on the amount or value of the forged instrument:

- a. \$500 or less is a Class III Misdemeanor,
- b. \$500 to \$1,500 is a Class II Misdemeanor,
- c. \$1,500 to \$5,000 is a Class I Misdemeanor,
- d. \$5,000 or more is a Class IV Felony.

*NOTE: Values or amounts may be aggregated if the instruments were part of the same scheme or course of conduct which took place within a 60 period and within one county; but may not be aggregated into more than one offense.

MAKE OR POSSESS A WRITTEN INSTRUMENT FORGERY DEVICE:

1. Elements: [28-605]

It is unlawful to either:

- a. Make or possess any device, apparatus, equipment, or article:
 - (1) With knowledge that is specifically designed for use in counterfeiting, unlawfully simulating, or otherwise forging written instruments, or
 - (2) With knowledge that is capable or adaptable for use in counterfeiting, unlawfully simulating, or otherwise forging written instruments, and with intent to use it or aid or permit another to use it for forgery; OR
- b. Illegally possesses a genuine plate, die, or other device used in the production of written instruments, with intent to deceive or harm.

2. Classification:

Class IV Felony

CRIMINAL SIMULATION:

1. Elements: [28-606]

A person commits a criminal simulation if he/she either:

- a. Makes, alters, or represents an object:
 - (1) So that it appears to have an antiquity, rarity, source

or authorship, ingredient, or composition that it does not in fact have,

(2) With intent to deceive or harm, OR

b. Utters, misrepresents, or possesses any object so simulated:

(1) With knowledge of its true character,

(2) And with intent to use to deceive or harm.

2. Classification:

Class III Misdemeanor

UNLAWFUL USE OF SLUGS:

1. Elements: [28-607]

It is unlawful to:

d. Make, use, or utter a slug or slugs

e. With intent to deprive a supplier of property or service sold or offered by means of a coin machine,

f. Or with knowledge that he/she is facilitating such a deprivation by another person.

2. Classification:

- Class II Misdemeanor for making, using, or uttering of slugs with value of less than one hundred dollars.

- Class I Misdemeanor for making, using, or uttering slugs with value of one hundred dollars or more.

CRIMINAL IMPERSONATION:

1. Elements: [28-638]

It is unlawful to do any of the following:

a. Pretend to be a representative of a person or organization and act with intent to gain a pecuniary benefit for themselves or another and to deceive or harm another;

b. Carry on any profession, business, occupation without a license, certificate, or other authorization required by law;

c. Knowingly provide false personal identifying information or a false personal identification document to a court or a law enforcement officer; or

d. Knowingly provide false personal identifying information or a false personal identification document to an employer for the purpose of obtaining employment.

2. Classification:

a. The penalty under (1)(a) and (1)(b) depends on the value of the credit, money, goods, services, or other thing of value that was gained or was attempted to be gained:

- Class III Felony if \$5,000 or more. A second or subsequent conviction is a Class II Felony.

- Class IV Felony if \$1,500 or more but less than \$5,000. A 2nd or subsequent offense is a Class III Felony.

- Class I Misdemeanor if \$500 or more but less than \$1,500. Any second or subsequent conviction under this subdivision is a Class IV Felony.
 - Class II Misdemeanor if no value or less than \$500. Any second conviction is a Class I Misdemeanor, and any subsequent conviction is a Class IV Felony.
- b. Section (1)(c) is a Class IV Felony. Any second conviction is a Class III Felony, and any third or subsequent conviction is a Class II Felony.
 - c. Section (1)(d) is a Class II Misdemeanor. Any second or subsequent conviction is a Class I Misdemeanor.
- 3. Other:**
- An offender may also be ordered to make restitution pursuant to sections [29-2280] to [29-2289].
 - The statute of limitations for criminal impersonation is five years.

IDENTITY THEFT:

1. Elements: [28-639]

It is unlawful for anyone to:

- a. Knowingly take, purchase, manufacture, record, possess, or use any personal identifying information of another person or entity without the consent of that other person or entity, or
- b. Create personal identifying information for a fictional person or entity,
- c. With the intent to do one of the following :
 - (1) Obtain or use the other person's or entity's identity for any unlawful purpose, or
 - (2) Cause loss to a person or entity whether or not the person or entity actually suffers any economic loss as a result of the offense, or
 - (3) Obtain or continue employment or
 - (4) Gain a pecuniary benefit for themselves or another.

2. Exceptions:

The following are NOT Identity theft:

- a. The lawful obtaining of credit information in the course of a bona fide consumer or commercial transaction;
- b. The lawful, good faith exercise of a security interest or a right of setoff by a creditor or a financial institution;
- c. The lawful, good faith compliance with any warrant, levy, garnishment, attachment, court order, or other judicial or administrative order, decree, or directive; or
- d. The investigative activities of law enforcement.

3. Classification:

The penalty for Identity theft depends on the value of the credit, money, goods, services, or other thing of value that was gained or was attempted to be gained:

- Class IIA Felony if the credit, money, goods, services, or other thing of value that was gained or was attempted to be gained was \$5,000 or more. Any second or subsequent conviction under this subdivision is a Class II Felony.
- Class IV Felony if the credit, money, goods, services, or other thing of value that was gained or was attempted to be gained was \$1,500 or more but less than \$5,000. A 2nd or subsequent offense is a Class III Felony.
- Class I Misdemeanor if the credit, money, goods, services, or other thing of value that was gained or was attempted to be gained was \$500 or more but less than \$1,500. A 2nd or subsequent offense is a Class IV Felony.
- Class II Misdemeanor if nothing of value was gained or attempted to be gained, or if the value that was gained or was attempted to be gained was less than \$500. A 2nd conviction is a Class I Misdemeanor, and a 3rd or subsequent conviction is a Class IV Felony.
- In addition to the penalties under this subsection, an offender may be ordered to make restitution pursuant to sections [29-2280] to [29-2289].

*NOTE: The statute of limitations for identity theft is 5 years.

IDENTITY FRAUD:

1. Elements: [28-640]

It is unlawful to either:

- a. Make, counterfeit, alter, or mutilate any personal identification document:
 - (1) With the intent to deceive another, and
 - (2) Without lawful authority; or
- b. Willfully and knowingly:
 - (1) Obtains, possesses, uses, sells or furnishes a personal identification document,
 - (2) Or attempts to obtain, possess, or furnish to another person a personal identification document,
 - (3) For any purpose of deception.

2. Classification:

- Class I Misdemeanor,
- Class IV Felony for a second or subsequent offense,
- An offender may also be ordered to make restitution pursuant to sections [29-2280 to 29-2289].

*NOTE: The statute of limitations for identity fraud is 5 years

IMPERSONATING A PUBLIC SERVANT:

1. Elements: [28-609]

A person unlawfully impersonates a public servant by:

- a. Falsely pretending to be a public servant,

- b. Other than a peace officer,
- c. And performing any act in that pretended capacity.

2. Classification:

Class III Misdemeanor

- It is not a defense that the office the actor pretended to hold did not in fact exist.

IMPERSONATING A POLICE OFFICER:

1. Elements:

It is unlawful to falsely pretend to be a peace officer and perform any act in that pretended capacity.

2. Classification:

- Class I Misdemeanor [28-610].
- Class IV Felony if acting under color of the Motor Vehicle Operator's License Act [60-492].

ISSUING A BAD CHECK:

1. Elements: [28-611]

A person commits the offense of issuing a bad check if he/she:

- a. Obtains property, services, or present value of any kind,
- b. By issuing or passing a check, draft, assignment of funds, or similar signed order for the payment of money,
- c. Knowing there are not sufficient funds in or credit with the drawee for the payment in full upon presentation.

2. Presumption:

When the person has an account with the drawee, he or she shall be presumed to have known that he or she did not have sufficient funds or credit if,

- a. Within thirty days after issuance he/she was notified that the drawee refused payment for lack of funds and he/she failed to make it good within ten days after such notice; or
- b. In the absence of refused-payment notice, he or she failed to make it good within ten days after notice was sent by the county attorney to his or her last-known address.

3. Classification:

The penalty depends on the amount or value of the check, draft, assignment of funds, or order:

- a. \$500 or less is a Class II Misdemeanor (if first offense),
- b. \$500 to \$1,500 is a Class I Misdemeanor (if first offense),
- c. \$1,500 to \$5,000 is a Class IV Felony,
- d. \$5,000 or more is a Class IIA Felony,
- e. A second or subsequent misdemeanor offense of this section is a Class IV Felony,
- f. An offender may also be ordered to make restitution and to pay for reasonable bank handling fees.

ISSUING A NO-ACCOUNT CHECK:

1. Elements: [28-611.01]

It is unlawful for any person to:

- a. Issue or pass a check, draft, assignment of funds, or similar signed order for the payment of money,
- b. Knowing that he/she has no account at that time.

2. Classification:

The penalty depends on the amount or value of the check, draft, assignment of funds, or order:

- Less than \$500 is a Class II Misdemeanor (first offense),
- \$500 to \$1,500 is a Class I Misdemeanor (first offense),
- \$1,500 to \$5,000 is a Class IV Felony,
- \$5,000 or more is a Class IIA Felony.
- A second or subsequent offense with an amount of less than \$1,500 is a Class IV Felony,
- A second or subsequent offense with an amount of \$1,500 or more is a Class IV Felony,

*NOTE: The amounts of any series of checks, drafts, assignments, or orders issued or passed within a 60 day period in one county may be aggregated to determine the penalty for an offense but may not be aggregated into more than one offense.

ALTERED IDENTIFICATION NUMBERS:

1. Elements: [28-615 to 28-617]

It is unlawful to:

- a. Obscures an identification number,
- b. Or to sell or otherwise disposes of an article in the course of business, knowing that an identification number thereon is obscured,
- c. Or to buy or receive any article knowing that an identification number thereon is obscured, without first ascertaining that the person so selling or delivering it has a legal right to do so,
- d. With the intent to deceive or harm

2. Definitions:

- ***Identification number*** means a serial or motor number placed by a manufacturer upon an article as a permanent individual identifying mark;
- ***Obscure*** shall mean to destroy, remove, alter, conceal, or deface so as to render illegible by ordinary means of inspection; and
- ***Article*** shall mean any product made by a manufacturer and includes but is not limited to any appliance, radio, television, motor vehicle, tractor or other farm machinery.

3. Classification:

Class I Misdemeanor

INSURANCE FRAUD:

1. Elements: [28-631]

It is unlawful for any person or entity to do any of the following, knowingly and with intent to defraud:

- a. Present, cause to be presented, or prepare a statement containing a false, incomplete, or misleading information concerning any fact or thing material to a claim;
- b. Assist, abet, solicit, or conspire with another to prepare or make any statement containing any false, incomplete, or misleading information concerning any fact or thing material to an insurance claim.
- c. Make any false or fraudulent representations as to the death or disability of a covered person for the purpose of fraudulently obtaining money or benefit from an insurer;
- d. Knowingly and willfully transact any contract, agreement, or instrument that violates this section;
- e. Receive money for the purpose of purchasing insurance and converts the money to the person's own benefit;
- f. Willfully embezzle abstract, purloin, misappropriate, or convert money, funds, premiums, credits, or other property of an insurer or person engaged in the business of insurance;
- g. Issue fake or counterfeit insurance policies, certificates, identification cards, or insurance binders;
- h. Possess fake or counterfeit insurance policies, certificates, identification cards, or insurance binders;
- i. Make any false entry of a material fact in or pertaining to any document or statement filed with or required by the Department of Insurance;
- j. Provide false, incomplete, or misleading information to an insurer of the number, location, or classification of employees for the purpose of lessening or reducing the premium for workers' compensation;
- k. Remove, conceal, alter, divert, or destroy assets or records of an insurer or person engaged in the business of insurance or attempt to remove, conceal, alter, divert, or destroy assets or records of an insurer or person engaged in the business of insurance;
- l. Willfully operate or aids/abet another the operation of a discount medical plan in violation of [44-8306];
- m. Willfully collect fees for purported membership in a discount medical plan organization but purposefully fail to provide the promised benefits.

2. Classification:

- A violation of subdivisions (1)(a) through (f) is a Class III Felony when the amount involved is \$5,000 or more.
- A violation of subdivisions (1)(a) through (f) is a Class IV Felony when the amount involved is \$1,000 or more but less than \$5,000. A second or subsequent conviction

is a Class IV Felony.

- A violation of subdivisions (1)(a) through (f) is a Class I Misdemeanor when the amount involved is \$500 or more but less than \$1,500.
- A violation of subdivisions (1)(a) through (f) of this section is a Class II Misdemeanor when the amount involved is less than \$500.
- A violation of subdivisions (1)(g), (i), and (j) is a Class IV Felony.
- A violation of subdivision (1)(h) of this section is a Class I Misdemeanor.

FINANCIAL TRANSACTION DEVICE VIOLATIONS:

NOTE:

A complete list of all violations related to financial transactions is not within the scope of this handbook, but effort was made to include the most relevant ones.

DEFINITIONS:

- ***Financial transaction device*** means any instrument or device whether known as a credit card, credit plate, bank service card, banking card, check guarantee card, debit card, electronic funds transfer card, or account number representing a financial account. Such device shall affect the financial interest, standing, or obligation of the financial account for services or financial payments for money, credit, property, or services;
- A ***blank financial transaction device*** means a device that:
 - a. Has at least one or more, but not all, characteristics of a financial transaction device,
 - b. Including, but not limited to, a device which has not been embossed or magnetically encoded with the name of the account holder, personal identification code, expiration date, or other proprietary institutional information.

ISSUING A FALSE FINANCIAL STATEMENT:

1. Elements: [28-619]

It is unlawful to apply for a financial transaction device by:

- n. Knowingly making or causing to be made a material false statement regarding his or her name, occupation, financial condition, assets, or liabilities; OR
- o. Willfully and materially overvaluing any assets, OR
- p. Willfully omitting or materially undervaluing any indebtedness with the intent of influencing the issuer to issue a financial transaction device.

2. Classification:

- Class I Misdemeanor if the false statement was for the purposes of obtaining a financial transaction device that

is used to obtain money, property, or services.

- Class IV Felony if the false financial statement was made for purposes of obtaining two or more financial transaction devices, when such devices were used to obtain money, property, or services.

UNAUTHORIZED USE OF A FINANCIAL TRANSACTION DEVICE:

1. Elements: [28-620]

It is unlawful for any person to:

- a. Use a financial transaction in an automated banking device,
- b. To imprint a sales form, or in any other manner,
- c. For the purpose of obtaining money, credit, property, or services or for making financial payment,
- d. With intent to defraud,
- e. With notice that the financial transaction device is expired, revoked, or canceled, forged, altered, or counterfeited, OR
- f. When the use of the financial transaction device is unauthorized by the issuer or by the account holder.

2. Classification:

The penalty classifications are based on total value of the money, credit, property, or services obtained or the financial payments made within a six-month period from the date of the first unauthorized use:

- Class II Misdemeanor if the total value is less than \$500,
- Class I Misdemeanor if the total value is \$500 to \$1,500,
- Class IV Felony if the total value is \$1,500 to \$5,000,
- Class IIA Felony if the total value is \$5,000 or more.

*NOTE: Prosecution of an offender can happen in any county the offense was committed, or any one of a series of offenses to be aggregated. Once aggregated and filed, no separate prosecution for an offense arising out of the same series of offenses aggregated and filed shall be allowed in any county.

POSSESSION OF A FINANCIAL TRANSACTION DEVICE:

1. Elements: [28-621]

It is unlawful for any person to:

- a. With the intent to defraud,
- b. Have in his or her possession or control,
- c. Any financial transaction device:
 - (1) Issued to a different account holder, or
 - (2) Which he or she knows or reasonably should know to be lost, stolen, forged, altered, or counterfeited.

2. Classification:

- Class III Misdemeanor for possession of one financial transaction device;

- Class IV Felony for two or three financial transaction devices, each issued to different account holders;
- Class III Felony for four or more financial transaction devices, each issued to different account holders.

CIRCULATION OF A FINANCIAL TRANSACTION DEVICE:

1. Elements: [28-622], [28-623]

It is unlawful for any person to:

- Sell or have in his or her possession control,
- Two or more financial transaction devices,
- Which he or she knows or reasonably should know,
- To be lost, stolen, forged, altered, counterfeited, or delivered under a mistaken identity or address of the account holder,
- With the intent to deliver, circulate, or sell such devices.

2. Classification:

- Class III Felony for two or more financial transaction devices (First Degree Circulation);
- Class IV Felony for a single financial transaction device (Second Degree Circulation).

POSSESSION OF A BLANK FINANCIAL TRANSACTION DEVICE:

1. Elements: [28-624]

It is unlawful for any person to:

- Possess, control, or receive from another person,
- A blank financial transaction device,
- Without the authorization of the issuer or manufacturer,
- With intent to use or to cause the use of such device.

2. Classification:

- Class I Misdemeanor for possession of one blank device;
- Class IV Felony for possession of two or more devices.

SALE OF A BLANK FINANCIAL TRANSACTION DEVICE:

1. Elements: [28-625]

It is unlawful for any person to:

- Possess, control, or receive from another person,
- A blank financial transaction device,
- Without the authorization of the issuer or manufacturer,
- With intent to deliver, circulate, sell, or to cause the same.

2. Classification:

- Class IV Felony for criminal sale of one blank financial transaction device;
- Class III Felony for criminal sale of two or more blank financial transaction devices.

***POSSESSION OF A FINANCIAL TRANSACTION FORGERY
DEVICE:***

1. Elements: [28-626]

It is unlawful to possess any tool, photographic equipment, printing equipment, or other device or combination of devices:

- a. Adapted, designed, or commonly used,
- b. For the unauthorized manufacture, printing, embossing, or magnetic encoding of a financial transaction device,
- c. Or the altering or addition of any service mark or holographic image to a financial transaction device,
- d. With intent to use, or knowing that another intends to use.

2. Classification:

Class IV Felony

***MANUFACTURE OF A FINANCIAL TRANSACTION
DEVICE:***

1. Elements: [28-627]

It is unlawful to do any of the following with the intent to defraud:

- a. Falsely make or manufacture a financial transaction device by printing, embossing, or magnetically encoding;
- b. Falsely alter or add service marks, optical characters, or holographic images to a device which is, purports to be, or is circulated to become or represent if completed a financial transaction device; OR
- c. Falsely complete a financial transaction device by adding to an incomplete device to make it appear to be complete.

2. Classification:

Class IIA Felony

PAYMENT CARD SCANNING OR ENCODING DEVICES:

1. Elements: [28-634]

2018 Update

It is unlawful to intentionally or knowingly:

- a. Use a scanning device to access, read, scan, obtain, memorize, or store, temporarily or permanently, information encoded on a payment card without permission; OR
- b. Possess a scanning device with the intent to obtain, or knowing that someone else intends to obtain information encoded on a payment card without permission; OR
- c. Use an encoding machine to place information encoded on a payment card onto a different card without permission; OR
- d. Possess an encoding machine with intent to place information encoded on a payment card onto a different card without permission.

2. Classification:

- Class IV Felony for a first offense;
- Class IIIA Felony for a second or subsequent offense.

FRAUDULENT COMPUTER CRIMES:

[28-1341 TO 28-1348]

GENERALLY:

The Computer Crimes Act recognizes that important personal, financial, medical, and historical data is stored in computers, and that valuable data stored can be lost due to criminal action.

- Specific criminal statutes exist to criminalize the intentional destruction of data or use of a computer to commit fraud.
- Other provisions of the criminal code may still apply to acts described in this act too.

UNAUTHORIZED ACCESS:

1. Elements: [28-1347]

It is unlawful for any person to:

- a. Intentionally accesses any computer or computer system, software, network, program, or data,
- b. Without authorization, and with knowledge that such access was not authorized, or
- c. With authorization, knowingly and intentionally exceeding the limits of such authorization.

2. Classification:

- a. Class V Misdemeanor;
- b. Class II Misdemeanor for a second or subsequent offense.

PENETRATING A SECURITY SYSTEM:

1. Elements: [28-1343.01]

It is unlawful for any person to:

- a. Intentionally and without authority,
- b. Penetrates a computer security system.

2. Classification:

- a. Class II Misdemeanor if committed in a manner that compromises the security of data;
- b. Class I Misdemeanor if committed in a manner that creates a risk to public health and safety.
- c. Class IV Felony if committed in a manner that creates a grave risk of causing the death of a person.

OBTAINING OR DEPRIVING PROPERTY OR SERVICES USING A COMPUTER:

1. Elements: [28-1344]

It is unlawful for any person to:

- a. Intentionally access, or cause to be accessed,
- b. Directly or indirectly,
- c. Any computer or computer system, software, or network,
- d. Without authorization or knowingly and intentionally exceeding the limits of authorized access,
- e. And obtain property or services of another or deprive another of property or services.

2. Classification:

The penalty depends on the the value of the property or services involved:

- Class III Felony if the total value is \$5,000 or more.
- Class IV Felony if the total value is \$1,500 to \$5,000,
- Class I Misdemeanor if the total value is \$500 to \$1,500,
- Class II Misdemeanor if the total value is less than \$500.

HARMING OR DISRUPTING OPERATIONS (HACKING):

1. Elements: [28-1345]

It is unlawful for any person to:

- a. Access or cause to be accessed,
- b. Any computer, computer system, computer software, or computer network,
- c. Without authorization or knowingly and intentionally exceeding the limits of authorized access,
- d. Do any of the following:
 - (1) Alter, damage, delete, or destroy any computer, computer system, computer software, computer network, computer program, data, or other property;
 - (2) Disrupt the operation of any computer, computer system, computer software, or computer network; or
 - (3) Distribute a destructive computer program with intent to damage or destroy any computer, computer system, computer network, or computer software.

2. Classification:

The penalty depends on the value of the loss caused:

- Class III Felony if the total value is \$5,000 or more.
- Class IV Felony if the total value is \$1,500 to \$5,000,
- Class I Misdemeanor if the total value is \$500 to \$1,500,
- Class II Misdemeanor if the total value is less than \$500.

***OBTAINING CONFIDENTIAL PUBLIC INFORMATION
USING A COMPUTER:*** [28-1346]

1. Elements:

It is unlawful for any person to:

- a. Intentionally access or causes to be accessed,
- c. Any computer, computer system, computer software, or computer network,
- d. Without authorization or knowingly and intentionally exceeding the limits of authorized access,
- e. Thereby obtaining information filed by the public with the state or any political subdivision which is by statute required to be kept confidential.

2. Classification:

- a. Class II Misdemeanor;
- b. Class I Misdemeanor for any second or subsequent offense.

RACKETEERING OFFENSES

[28-1352 to 28-1356]

The *Public Protection Act* includes Nebraska's version of the Racketeering Influenced and Corrupt Organizations (RICO) statute to address organized criminal enterprises.

- The Act makes it illegal to use funds from racketeering activities in the operation of any legal or illegal enterprise.
- Essentially, this Act is intended to address the money laundering of illegally obtained proceeds. The Public Protection Act further addresses loan sharking, strong-arm protection and other traditional organized crime activities.
- Nothing in the Act supersedes any provision of federal, state, or other law imposing criminal penalties or affording civil remedies in addition to those provided for in the Act.

DEFINITIONS: [28-1354]

For purposes of the Public Protection Act:

- ***Racketeering Activity*** includes the commission or attempt or conspiracy to commit, or the aiding, consummation, accessory to commission, or the solicitation, coercion, or intimidation of another to commit or aid in the commission of offenses (1) against the person, (2) against property, (3) fraud offenses, (4) against governmental operations, (5) gambling offenses, (6) firearm, weapons, or explosives violations, (7) security act violations, (8) revenue act violations, (9) public health and moral offenses, or (10) violations of the computer crimes act.
- ***Enterprise*** means any individual, sole proprietorship, partnership, corporation, trust, association, or any legal entity, union, or group of individuals associated in fact although not a legal entity, and shall include illicit as well as licit enterprises as well as other entities;
- ***Pattern of racketeering activity*** means a cumulative loss for one or more victims or gains for the enterprise of not less than \$1,500 resulting from at least two acts of racketeering activity, one of which occurred after August 30, 2009, and the last of which occurred within ten years, excluding any period of imprisonment, after the commission of a prior act of racketeering activity;
- ***Person*** means any individual or entity, as defined in section [21-2014], holding or capable of holding a legal, equitable, or beneficial interest in property;
- ***Prosecutor*** includes the NE Attorney General of the State of Nebraska (and deputy and assistant AG), a County Attorney (or deputy), or any person designated to carry out the powers conferred by the act;
- ***State*** means the State of Nebraska or any political subdivision or any department, agency, or instrumentality thereof; and
- ***Unlawful Debt*** means a debt of at least \$1,500: (a) Incurred or

contracted in gambling activity that was unlawful or unenforceable under state or federal law, or (b) Incurred in connection with unlawful gambling under state or federal law or the business of lending money or a thing of value at a rate usurious under state law at least twice the enforceable rate.

USING RACKETEERING PROCEEDS:

1. Elements: 28-1355(1)]

It shall be unlawful for any person:

- a. To use or invest (directly or indirectly) any part of proceeds, or the proceeds from the investment or use,
- a. In the acquisition of any right, interest, or equity in real property or establishment or operation of any enterprise,
- b. Knowing the proceeds were derived (directly or indirectly),
- c. From a pattern of racketeering activity or through collection of an unlawful debt.

2. Classification:

- Class III Felony
- Class IB Felony if based upon racketeering activity punishable as a Class I, IA, or IB Felony.
- In lieu of the fine authorized by section [28-105], an offender may be sentenced to pay a fine up to three times the gross value gained or gross loss caused, plus the costs of investigation and prosecution reasonably incurred.

ACQUIRING CONTROL VIA RACKETEERING:

1. Elements: [28-1355(2)]

It shall be unlawful for any person:

- a. To acquire or maintain, directly or indirectly,
- b. Any interest in or control of any enterprise or real property,
- c. Or to conspire or attempt the same through a pattern of racketeering activity or collection of an unlawful debt.

2. Classification:

- Class III Felony
- Class IB Felony if the violation is based upon racketeering activity which is punishable as a Class I, IA, or IB Felony.
- In lieu of the fine authorized by section [28-105], an offender may be sentenced to pay a fine up to three times the gross value gained or gross loss caused, plus the costs of investigation and prosecution reasonably incurred.

PARTICIPATING IN RACKETEERING:

1. Elements: [28-1355(3)]

It is unlawful for any person:

- a. Who is employed by or associated with any enterprise,

- b. To conduct or participate in, directly or indirectly, the conduct of such enterprise's affairs,
 - c. Or to conspire or attempt to do the same,
 - d. By a pattern of racketeering activity or collection of unlawful debt.
- 2. Classification:**
- Class III Felony
 - Class IB Felony if based upon racketeering activity which is punishable as a Class I, IA, or IB Felony
 - In lieu of the fine authorized by section [28-105], an offender may be sentenced to pay a fine up to three times the gross value gained or gross loss caused, plus the costs of investigation and prosecution reasonably incurred.
- 3. Other:**
- It is not a violation of this section to purchase securities on the open market for purposes of investment, without the intention engaging in a pattern of racketeering.
 - Unlawful Gambling Debt Collection [28-1105.01], remains a separate criminal offense. See the Gambling Offenses section of this handbook.

UNLAWFUL MEMBERSHIP RECRUITMENT INTO AN ORGANIZATION OR ASSOCIATION:

- 1. Elements:** [28-1351]
- It is unlawful for a person to:
- a. Knowingly and intentionally,
 - b. Coerce, intimidate, threaten, or inflict bodily harm upon another person,
 - c. In order to entice that other person to join or prevent that other person from leaving,
 - d. Any organization, group, enterprise, or association whose members (individually or collectively) engage in or have engaged in specified criminal acts for the benefit of, at the direction of, or on behalf of the organization, group, enterprise, or association or any of its members.
- 2. Specified Criminal Acts:**
- Criminal acts that qualify are any of the following:
- Robbery, Arson, Burglary, Murder, Manslaughter, Assault first degree or second degree, Assault on an officer (any degree) or with a motor vehicle, Kidnapping, Pandering;
 - Controlled substance violations involving possession with intent to deliver, distribution, delivery, or manufacture;
 - Unlawful use, possession, or discharge of a firearm or other deadly weapon,
 - Unauthorized application of graffiti.
 - Theft by unlawful taking or disposition, Theft by receiving stolen property, Theft by deception;
 - Forgery, Criminal impersonation, Unauthorized use or

possession of a financial transaction device;

- Promoting gambling in the first degree, Tampering with a publicly exhibited contest, Dogfighting, cockfighting, bearbaiting, or pitting an animal against another;
- Bribery, Extortion, Bribery of a witness or juror, tampering with a witness, informant, juror, or jury.

3. Classification:

Class IV Felony

FAMILY RELATIONS VIOLATIONS:

BIGAMY:

1. Elements: [28-701]

It is unlawful:

- a. For any married person whose husband or wife is alive to marry another person, OR
- b. For any unmarried person to knowingly marry a person who is already married.

2. Affirmative Defense:

An accused who is already married may show that it appeared at the time of a subsequent marriage:

- a. The accused reasonably believes that the prior spouse is dead; or
- b. The prior spouse had been continually absent for a period of five years during which the accused did not know the prior spouse to be alive; or
- c. The accused reasonably believed that he was legally eligible to remarry.

3. Classification:

Class I Misdemeanor

INCESTUOUS MARRIAGE:

1. Elements: [28-702]

Incestuous marriage does not create a criminal offense, but it is such marriages lack any legal force or effect..

- Incestuous marriages are declared to be absolutely void.

2. Defined:

Incestuous marriages are marriages between parents and children, grandparents and grandchildren of every degree, between brothers and sisters of the half as well as the whole blood, and between uncles and nieces, aunts and nephews.

INCEST:

1. Elements: [28-703]

It is unlawful for any person to:

- a. Knowingly intermarry, OR
- b. Engage in sexual penetration with a person who is within the degrees of consanguinity set forth in section [28-702]:
 - parent/child, grandparent/grandchild, brother/sister

- (half or whole blood), uncle/niece, aunt/nephew; OR
- c. Engage in sexual penetration with his/her minor stepchild who is under 18 years of age.

2. Classification:

- Class III Felony.
- Class IIA Felony if victim is under 18 years of age.

ABANDONMENT:

1. Elements: [28-705]

It is unlawful to:

- a. Abandon and neglect or refuse to maintain or provide for his/her spouse, child under sixteen years of age, or dependent stepchild,
- b. Whether such child is born in or out of wedlock.

2. Classification:

Class I Misdemeanor

- Abandonment for three consecutive months is prima facie evidence of intent under this section.
- Failure to provide assets to a *spouse* may be allowed for low-income allowance for medical care – see [68-922].

CRIMINAL NONSUPPORT:

1. Elements: [28-706]

It is unlawful for any person to intentionally:

- a. Fail, refuse, or neglect to provide proper support,
- b. To a spouse, minor child, minor stepchild, or dependent,
- c. Which he/she knows or reasonably should know he/she is legally obliged to provide,
- d. *Support* includes, but is not limited to, food, clothing, medical care, and shelter.

2. Exception:

- A parent/guardian who refuses to pay costs, medical costs of an abortion procedure performed on a minor child if not consulted prior to the abortion procedure or if not necessary to preserve the minor's life or health.
- Failure to provide assets to a *spouse* may be allowed for low-income allowance for medical care – see [68-922].

3. Classification:

- Class II Misdemeanor.
- Class IV Felony if nonsupport violates a court order.

CONTRIBUTING TO THE DELINQUENCY OF A MINOR:

1. Elements: [28-709]

It is unlawful for any person to do any act,

- a. That encourages, causes, or contributes,
- b. To the delinquency or need for special supervision of a child under eighteen years of age,
- c. So that such child becomes, or will tend to become a delinquent child or a child in need of special supervision.

2. Definitions:

- ***Delinquent Child*** means any child under the age of eighteen years who has violated any law of the state or any city or village ordinance;
- ***Child in Need of Special Supervision*** means any child under the age of eighteen years who is any of the following:
 - (1) Uncontrolled by a parent, guardian, or custodian by being wayward or habitually disobedient; or
 - (2) Habitually truant from school or home; or
 - (3) A serious danger to the morals or health of themselves or others.

3. Classification:

Class I Misdemeanor

CHILD ABUSE AND NEGLECT:

[28-710 TO 28-727]

DEFINITIONS: [28-710]

- ***Child abuse or neglect*** means:
 - a. Knowingly, intentionally, or negligently,
 - b. Causing or permitting a minor child,
 - c. To be in any of the following situations:
 - (1) Placed in a situation that endangers his or her life or physical or mental health;
 - (2) Cruelly confined or cruelly punished;
 - (3) Deprived of necessary food, clothing, shelter, or care;
 - (4) Left unattended in a motor vehicle if such minor child is six years of age or younger;
 - (5) Sexually abused; or
 - (6) Sexually exploited by allowing, encouraging, or forcing such child to solicit for or engage in prostitution, debauchery, public indecency, obscene or pornographic photography, films, or depictions.
- ***Negligently*** means that a person knew or should have known of the danger involved and acted recklessly with respect to the safety or health of the minor child.
- ***Recklessly*** means acting to disregard a substantial and unjustifiable risk that a material element of the offense exists or will result from his or her conduct. The risk must be of such a nature and degree that its disregard involves a gross deviation from the standard of conduct that a law-abiding person would observe in the actor's situation considering the nature and purpose of the actor's conduct and the circumstances known to the actor, [28-109];
- ***Serious Bodily Injury*** means 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.

CHILD ABUSE:

1. Elements: [28-707]

A person commits child abuse if he/she:

- a. Knowingly, intentionally, or negligently,
- b. Causes or permits a child to be any of the following:
 - (1) Placed in a situation that endangers his or her life or physical or mental health;
 - (2) Cruelly confined or cruelly punished; or
 - (3) Deprived of necessary food, clothing, shelter, or care;
 - (4) Placed in a situation to be sexually exploited by allowing, encouraging, or forcing such minor child to solicit for or engage in prostitution, debauchery, public indecency, or obscene or pornographic photography, films, or depictions;
 - (5) Placed in a situation to be sexually abused as a victim of 1st Degree Sexual Assault [28-319] or Sexual Assault of a Child 1st, 2nd, or 3rd Degree [28-319.01, 28-320.01]; or
 - (6) Placed in a situation to be a trafficking victim as defined by [28-830].

2. Classification:

a. *If Done Negligently:*

- Class I Misdemeanor if abuse does not result in serious bodily injury or death;
- Class IIIA Felony if abuse does result in serious bodily injury;
- Class IIA Felony if abuse results in death.

b. *If Done Knowingly and Intentionally:*

- Class IIIA Felony if abuse does not result in serious bodily injury or death;
- Class II Felony if abuse results in serious bodily injury;
- Class IB Felony if abuse results in death.

*NOTE: The statutory privileges between patient/physician, client/counselor, and between husband/wife are not available to exclude or refuse testimony in a prosecution for child abuse.

REQUIRED REPORTING OF CHILD ABUSE: [28-711]

Any person who has reasonable cause to believe that a child has been subjected to child abuse or neglect or observes such child being subjected to conditions or circumstances which reasonably would result in child abuse or neglect, must report such incident or cause a report of child abuse or neglect to be made to the proper law enforcement agency or to the DHHS:

- Required reporters include any physician, medical institution, nurse, school employee, social worker, or other person.
- Report may be made by telephone with the caller giving his/her name and address, followed by a written report.
- Law enforcement agencies receiving any reports of child

abuse or neglect under this subsection shall notify the DHHS pursuant to section [28-718] on the next working day by telephone or mail.

- Reports of child abuse or neglect not previously made to or by a law enforcement agency shall be made immediately to such agency by the DHHS.

LAW ENFORCEMENT DUTIES IN CHILD ABUSE OR NEGLECT CASES: [28-713]

Upon the receipt of a call reporting child abuse and neglect as required by section [28-711]:

- a. It is the duty of the law enforcement agency to investigate the report, to take immediate steps to protect the child, and to institute legal proceedings if appropriate.
- b. The person or persons having custody each child victim shall be notified that a report has been made and information of the nature of the alleged child abuse or neglect.
- c. By the next working day, the hotline or the DHHS must be notified of the report, including whether or not an investigation is being undertaken. A copy of all reports, whether or not an investigation is being undertaken, shall be provided to the DHHS and law enforcement may request assistance from the Department during the investigation.
- d. DHHS may make a request for further assistance from the appropriate law enforcement agency or take such legal action as may be appropriate under the circumstances;
- e. A copy of all reports relative to a case of suspected child abuse or neglect will be provided by the Department upon request from the law enforcement agency.

INVESTIGATIVE ASSISTANCE FROM THE NEBRASKA STATE PATROL: [81-2010.02]

The Nebraska State Patrol shall provide immediate responses to inquiries from local law enforcement in rural areas regarding proper investigatory procedures related to child abuse and neglect.

- All calls shall be referred to an NSP investigator.
- The investigator shall maintain and make available to local law enforcement a list of psychiatrists, psychologists, mental health practitioners, or other qualified professionals in the particular area where the incident occurred.
- The investigator must have training and be knowledgeable in:
 - (1) Screening child abuse and neglect calls;
 - (2) Interviewing alleged child abuse and neglect victims at the appropriate developmental level necessary;
 - (3) Family dynamics, including ability to assess and handle child abuse and neglect and child sexual abuse cases
 - (4) Understanding the medical evidence and other physical evidence in child abuse and neglect and child sexual abuse cases and how to gather such evidence;

- (5) How to prepare evidence for prosecution; and
- (6) Evaluating the potential for false allegations

LAWFUL USE OF FORCE BY PARENT OR CAREGIVER OF A MINOR: [28-1413]

Using force upon or toward the person of a minor is justifiable if:

- a. The actor is the parent, guardian, or person similarly responsible for the general care and supervision of a minor or a person acting at the request of such parent, guardian, or other responsible person, and
- b. Such force is used for the purpose of safeguarding or promoting the welfare of the minor, including the prevention or punishment of his or her misconduct, and
- c. Such force is not designed to cause or known to create a substantial risk of death, serious bodily harm, disfigurement, extreme pain or mental distress, or gross degradation.

OFFENSES RELATING TO MORALS:

*NOTE: A witness may not avoid testifying based on self-incrimination for a case_under [28-801 to 28-804], but such testimony cannot be used against them unless given voluntarily.

PROSTITUTION:

1. Elements: [28-801]

A person commits prostitution by:

- a. Offering, or agreeing
- b. To perform any act of sexual contact or penetration,
- c. With any person not his or her spouse,
- d. In exchange for money or other thing of value.

2. Trafficking Victim Immunity:

- If an officer determines, after a reasonable detention for investigative purposes, that a person suspected of or charged was engaging in those acts as a direct result of being a trafficking victim, such person shall be immune from prosecution for a prostitution offense
- It is also an affirmative defense that such person was a trafficking victim as defined in section [28-830].

3. Juvenile Offender Immunity:

A suspected prostitute under age 18 shall be taken into temporary custody for disposition as a juvenile [43-248], but is immune from prosecution for prostitution.

- Officers shall immediately report the allegations to DHHS for investigation.

4. Classification:

- a. Class II Misdemeanor if such person has had no prior convictions or has had one prior conviction.
- b. Class I Misdemeanor if such person has had two or more prior convictions.

- c. Any order of probation for prostitution must include a mental health and substance abuse assessment.

SOLICITATION OF PROSTITUTION:

1. Elements: [28-801.01]

It is unlawful for any person to:

- a. Solicit another person who is not his or her spouse,
- b. To perform any act of sexual contact or sexual penetration,
- c. In exchange for money or other thing of value.

2. Affirmative Defense:

It is an affirmative defense that such person was a trafficking victim as defined in section [28-830]

3. Classification:

- a. Class I Misdemeanor for a first offense unless the person solicited is a juvenile.
 - The minimum fine is \$250,
 - Probation must include a minimum fine of \$250 with a mental health and substance abuse assessment and completion of an educational program on the effects of prostitution.
- b. Class IV Felony if the person solicited is under age 18 or the offender has had one or more prior convictions:
 - Minimum fine is five hundred dollars,
 - Probation includes a minimum \$500 fine , a mental health and substance abuse assessment, and an educational program on the effects of prostitution.

KEEPING A PLACE OF PROSTITUTION:

1. Elements: [28-804]

It is unlawful for any person:

- a. To knowingly grant or permit the use of any place that offers seclusion or shelter,
- b. For the purpose and practice of prostitution.

2. Classification:

- Class 4 Felony unless the prostitute was a juvenile,
- Class 3 Felony if the prostitute was under age 18.

PANDERING:

1. Elements: [28-802]

It is unlawful to do any of the following:

- a. Entice another person to become a prostitute, or
- b. Procure or harbor an inmate for a house of prostitution or any place where prostitution is practiced or allowed, or
- c. Inveigle, entice, persuade, encourage, or procure any person to enter or leave this state for the purpose of prostitution or debauchery, or
- d. Receive, give, or agree to receive or give any money or other thing of value for procuring or attempting to procure

any person to become a prostitute or commit an act of prostitution or come into or leave Nebraska for the purpose of prostitution or debauchery.

2. Classification:

- Class 2 Felony

*NOTE: Marriage is not a defense, and Pandering is an exception to the husband-wife privilege of [27-505].

DEBAUCHING A MINOR:

1. Elements: [28-805]

It is unlawful to debauch or deprave the morals of any boy or girl under the age of seventeen years by:

- a. Lewdly inducing such boy or girl carnally to know any other person; OR
- b. Soliciting any such boy or girl to visit a house of prostitution or other place where prostitution, debauchery, or other immoral practices are permitted or encouraged, for the purpose of prostitution or sexual penetration; OR
- c. Arranging or assisting in arranging any meeting for such purpose between any such boy or girl and any female or male of dissolute character or any inmate of any place where prostitution, debauchery, or other immoral practices are permitted or encouraged; OR
- d. Arranging or aiding or assisting in arranging any meeting between any such boy or girl and any other person for the purpose of sexual penetration.

2. Classification:

Class I Misdemeanor

PUBLIC INDECENCY:

1. Elements: [28-806]

It is unlawful for a person eighteen years of age or over,

- a. To perform or procure or assist another person to perform,
- b. In a public place and where the conduct may reasonably be expected to be viewed by members of the public:
 - (1) An act of sexual penetration; or
 - (2) An exposure of the genitals of the body done with intent to affront or alarm any person; or
 - (3) A lewd fondling or caressing of the body of another person of the same or opposite sex.

2. Classification:

Class II Misdemeanor

CHILD PORNOGRAPHY AND OBSCENITY
OFFENSES:

DEFINITIONS: [28-807 & 28-1463.02]

- ***Adult*** means a person eighteen years of age or older;
- ***Child***, in the case of a participant means any person under the age of eighteen years and, in the case of a portrayed observer, means any person under the age of sixteen years;
- ***Distribute*** shall mean to transfer possession, whether with or without consideration, by any means;
- ***Disseminate*** means to manufacture, issue, publish, sell, lend, distribute, transmit, exhibit, or present materials or to offer in person or through an agent or by placing an advertisement for the same, with or without consideration, or agree to do the same;
- ***Erotic Fondling*** means touching a person's clothed or unclothed genitals or pubic area, breasts of a female, or developing breast area of a female child, for the purpose of real or simulated overt sexual gratification or sexual stimulation of one or more persons involved;
- ***Erotic Nudity*** means the display of the human male or female genitals or pubic area, the human female breasts, or the developing breast area of the human female child, for the purpose of real or simulated overt sexual gratification or sexual stimulation of one or more of the persons involved;
- ***Harmful to Minors*** means that quality of any description or representation, in whatever form, of nudity, sexual conduct, sexual excitement, or sadomasochistic abuse, when it
 - (a) Predominantly appeals to the prurient, shameful, or morbid interest of minors,
 - (b) Is patently offensive to prevailing standards in the adult community as a whole with respect to what is suitable material for minors, and
 - (c) Lacks serious literary, artistic, political, or scientific value for minors;
- ***Material or Work*** means any book, magazine, newspaper, comic book, pamphlet, or other printed or written material or any picture, drawing, photograph, figure, image, motion picture (positive or negative) exhibited or screened, play, nightclub, live performance, television production, other pictorial representation or electric reproduction, recording transcription, mechanical or otherwise, or other articles, equipment, machines, or materials;
- ***Minor*** means an unmarried person age eighteen;
- ***Nudity*** means showing of post-pubertal male/female genitals, pubic area, or buttocks with less than a full opaque covering, the depiction of covered male genitals in a discernibly turgid state, or showing of a female breast with less than full opaque

covering of any portion below the top of the nipple;

- **Obscene** means that the work, material, conduct, or live exhibition meets the following criteria:
 - (a) The average person applying contemporary community standards would find the work as a whole goes substantially beyond contemporary limits of candor in description or presentation and predominantly appeals to the prurient, shameful, or morbid interest;
 - (b) The work depicts in a patently offensive way sexual conduct specifically referred to in [28-807] to [28- 829];
 - (c) The work as a whole lacks serious literary, artistic, political, or scientific value.
- **Person** means any individual, partnership, limited liability company, firm, association, corporation, trustee, lessee, agent, assignee, or other legal entity;
- **Performance**, whether with or without consideration, means any play, motion picture, dance, or other exhibition performed before an audience;
- **Promote** means to manufacture, issue, sell, give, provide, lend, mail, deliver, transfer, transmit, publish, distribute, circulate, disseminate, present, exhibit, or place an order for advertising or to knowingly offer in person or through an agent or agree to do the same;
- **Sexual conduct** means acts of masturbation, homosexuality, sodomy, sexual intercourse, or prolonged physical contact with a person's clothed or unclothed genitals, pubic area, or buttocks or, if such person is female, breast;
- **Sexual Excitement** means the condition of human male or female genitals when in a state of sexual stimulation or arousal;
- **Sexually Explicit Conduct** means:
 - a. Real or simulated intercourse, whether genital-genital, oral-genital, anal-genital, or oral-anal between persons of the same or opposite sex or between a human and an animal or with an artificial genital;
 - b. Real or simulated masturbation;
 - c. Real or simulated sadomasochistic abuse;
 - d. Erotic fondling;
 - e. Erotic nudity; or
 - f. Real or simulated defecation or urination for the purpose of sexual gratification or sexual stimulation of one or more of the persons involved;
- **Sadomasochistic Abuse** means flagellation or torture by or upon a nude person or a person clad in undergarments, a mask, or a bizarre costume or the condition of being fettered, bound, or otherwise physically restrained when performed to predominantly appeal to the shameful or morbid interest;
- **Visual depiction** means live performance or photographic representation, including undeveloped film or videotape or

stored data capable of conversion into a visual image and also includes any photograph, film, video, picture, digital image, or computer-displayed image, video, or picture, whether made or produced by electronic, mechanical, computer, digital, or other means.

SALE OR DELIVERY OF OBSCENE MATERIAL TO A MINOR:

1. Elements: [28-808]

It shall be unlawful for a person to knowingly sell, deliver, distribute, display for sale, or provide to a minor, OR possess with intent to do the same:

- a. Any picture, photograph, drawing, sculpture, motion picture film, or similar visual representation or image of a person or portion of the human body or any replica, article, or device having the appearance of either male or female genitals which predominantly, pruriently, shamefully, or morbidly depicts nudity, sexual conduct, sexual excitement, or sadomasochistic abuse and which, taken as a whole, is harmful to minors; OR
- b. Any book, pamphlet, magazine, printed matter however produced, or sound recording which contains any matter listed in section (1), or explicit and detailed verbal descriptions or narrative accounts of sexual excitement, sexual conduct, or sadomasochistic abuse of a predominantly prurient, shameful, or morbid nature and which, taken as a whole, is harmful to minors.

2. Classification:

Class I Misdemeanor

ADMISSION OF MINOR TO OBSCENE MOTION PICTURE SHOW OR PRESENTATION:

1. Elements: [28-809]

It shall be unlawful for any person to knowingly:

- a. Exhibit to a minor, or
- b. Admit or provide an admission ticket or pass to a minor,
- c. To premises whereon there is exhibited a motion picture, show, or other presentation which, in whole or in part, predominantly pruriently, shamefully, or morbidly depicts nudity, sexual conduct, or sadomasochistic abuse and which, taken as a whole, is harmful to minors.

2. Classification:

Class I Misdemeanor

OBSCENITY - FALSE REPRESENTATION OF AGE:

1. Elements: [28-811(1)]

It shall be unlawful for any minor:

- a. To falsely represent their age as being eighteen years of age or older,

- b. With the intent to either:
 - (1) Procure any materials set forth in section [28-808], or
 - (2) Procure admission to any motion picture, show, or other presentation as set forth in section [28-809].

2. Classification:

Class II Misdemeanor

OBSCENITY - FALSE REPRESENTATIONS BY OTHERS:

1. Elements: [28-811(2)]

It shall be unlawful for any person to:

- a. Knowingly make a false representation,
- b. That he or she is the parent or guardian of any minor, or that a minor is eighteen years or older,
- c. With the intent to procure any material set forth in section [28-808], Or with the intent to procure such minor's admission to any motion picture, show, or other presentation as set forth in section [28-809].

2. Classification:

Class II Misdemeanor

SALE OF OBSCENE MATERIAL - UNLAWFUL EMPLOYMENT OF A MINOR:

1. Elements: [28-811(3)]

It shall be unlawful for

- a. Any person to hire as an employee,
- b. A minor whose duties it will be to assist in any manner
- c. The sale, delivery, distribution, or exhibition of material declared obscene by sections [28-807] to [28-829],
- d. Without written consent a parent or legal guardian.

2. Classification:

Class II Misdemeanor

CREATING OBSCENE MATERIAL:

1. Elements: [28-813(1)]

It shall be unlawful for a person knowingly to:

- a. Print, copy, manufacture, prepare, produce, or reproduce obscene material for the purpose of sale or distribution, OR
- b. Publish, circulate, sell, rent, lend, transport in interstate commerce, distribute, or exhibit any obscene material, OR
- c. Have in his/her possession with intent to sell, rent, lend, transport, or distribute any obscene material, OR
- d. Promote any obscene material or performance.

2. Classification:

Class I Misdemeanor

- Property used or intended for use in furtherance of the violation is subject to seizure and both criminal and civil forfeiture – see [28-1601], [25-21,302].

ADVERTISING OBSCENE MATERIAL:

1. Elements: [28-813(2)]

It shall be unlawful for a person to place an order for any advertising promoting the sale or distribution of material:

- a. That is represented or held out to be obscene,
- b. Whether or not such material exists in fact or is obscene.

2. Classification:

Class I Misdemeanor

- Property used or intended for use in furtherance of the violation is subject to seizure and both criminal and civil forfeiture – see [28-1601], [25-21,302].

PROMOTING OBSCENE MATERIAL:

1. Elements: [28-813(3)]

It is unlawful for any person to:

- a. Disseminate any obscene material,
- c. Produce, present, or direct an obscene performance, or
- d. Participate in that part of a performance that makes it obscene,
- d. For monetary consideration,
- e. Knowing the content and character of such material or performance.

2. Classification:

Class I Misdemeanor

- Property used or intended for use in furtherance of the violation is subject to seizure and both criminal and civil forfeiture – see [28-1601], [25-21,302].

*NOTE: The executive authority of Nebraska may demand extradition of such person from another state.

OBSCENITY DEFENSES: [28-810] & [28-815]

Any of the following may be a defense to a prosecution under sections [28-808], [28-809], and [28-813] that:

- a. Defendant had reasonable cause to believe the minor was 18 years of age or older (such as reliance on a driver's license, birth certificate, or other apparently official document);
- b. The minor was accompanied by his parent or guardian and defendant had reasonable cause to believe that was the case;
- c. The activity consists of any of the following:
 - (1) Teaching or materials in regularly established and recognized educational institutions, galleries or libraries,
 - (2) The practice of licensed practitioners of medicine or of pharmacy in their regular business or profession,
 - (3) Possession by established schools teaching art, or by public art galleries, or artists or models in the necessary line of their art, or
 - (4) Relevant references to, or accounts or portrayal of, nudity, sex, or excretion in religion, art, literature, history,

- science, medicine, public health, law, the judicial process, law enforcement, education, public libraries, or news reports and news pictures by any form of news media of general circulation;
- d. Defendant has no financial interest in an activity, product, or event entitling such person to participate in the promotion, management, proceeds, or profits of the activity, product, or event, and such person's only connection with the activity, product, or event entitles such person to a reasonable salary or wages for services actually rendered; and
 - e. The sections regarding the exhibition or possession with the intent to exhibit an obscene film do not apply to a projectionist, usher, or ticket taker acting within the scope of employment, so long as that person has no financial interest in the place of employment. Such person must testify regarding such employment in all judicial proceedings brought under sections [28-807] to [28-829] when granted immunity by the trial judge.

POSSESSION OF CHILD PORNOGRAPHY:

1. Elements: [28-813.01]

It shall be unlawful for a person to:

- a. Knowingly possess,
- a. Any visual depiction of *sexually explicit conduct* (defined in [28-1463.02]),
- b. That has a child as one of its participants or portrayed observers.

2. Affirmative Defenses:

It is an affirmative defense to possessing child porn that either:

- a. The visual depiction portrays nobody except the defendant; or
- b. All of the following are true:
 - The defendant was less than nineteen years of age;
 - The visual depiction of sexually explicit conduct portrays a child who is fifteen years of age or older;
 - The visual depiction was knowingly and voluntarily generated by the child depicted therein;
 - The visual depiction was knowingly and voluntarily provided by the child depicted in the visual depiction;
 - The visual depiction contains only one child;
 - The defendant has not provided or made available the visual depiction to another person except the child depicted who originally sent the visual depiction to the defendant; and
 - The defendant did not coerce the child in the visual depiction to either create or send the visual depiction.

3. Classification:

- Class IV Felony for each offense by any person who is under nineteen years of age at the time he or she violates this section.
- Class IIA Felony for each offense by any person who is nineteen years of age or older at the time he or she violates this section.
- Class IC Felony for each offense by any person who violates this section and has previously been convicted of a violation of this section or Assault (any degree), Child Enticement, Electronic Child Enticement, Kidnapping, False Imprisonment (first or second degree), Sexual Assault, Child Sexual Assault, or Child Pornography.

*NOTE: Any commercial film/photo print processor who participates in an investigation or report of child pornography will be immune from any liability, civil or criminal, except for malicious statements.

POSSESSION OF CHILD PORNOGRAPHY WITH INTENT:

1. Elements: [28-1463.05]

It shall be unlawful for a person to:

- a. Knowingly possess with intent to rent, sell, deliver, distribute, trade, or provide to any person,
- b. Any visual depiction of sexually explicit conduct,
- c. That has a child as a participant or portrayed observer.

2. Classification:

- Class IIIA Felony for each offense by an offender who is under nineteen years of age at the time of the violation.
- Class IIA Felony for each offense by an offender who is nineteen years of age or older at the time of the violation.
- Class IC Felony for each offense by an offender who has previously been convicted of a violation of this section.
- Class IC Felony for each offense by an offender who has previously been convicted of Assault, Child Enticement, Kidnapping, False Imprisonment 1st or 2nd Degree, Sexual Assault 1st or 2nd Degree, Sexual Assault of a Child, Electronic Child Enticement, or Creating, Distributing, Engaging in, or Consenting to Child Pornography.
- Property used or intended for use in furtherance of the violation is subject to seizure and both criminal and civil forfeiture – see [28-1601], [25-21,302]

CREATING CHILD PORNOGRAPHY:

1. Elements: [28-1463.03(1)]

It shall be unlawful for a person to knowingly

- a. Make, publish, direct, create, provide, or in any manner generate,
- b. Any visual depiction of sexually explicit conduct,
- c. That has a child as a participant or portrayed observer.

2. Affirmative Defense:

It is an affirmative defense that the defendant was less than 18 years of age at the time and the visual depiction of sexually explicit conduct includes nobody other than the defendant.

3. Classification:

See Below

DISTRIBUTION OF CHILD PORNOGRAPHY:

1. Elements: [28-1463.03(2)]

It shall be unlawful for a person to:

- a. Knowingly purchase, rent, sell, deliver, distribute, display for sale, advertise, trade, or provide to any person,
- b. Any visual depiction of sexually explicit conduct,
- c. That has a child as one of its participants or portrayed observers.

2. Affirmative Defense:

It shall be an affirmative defense if all of the following are true:

- a. The defendant was less than eighteen years of age,
- b. The visual depiction of sexually explicit conduct includes no person other than the defendant,
- c. The defendant had a reasonable belief at the time the visual depiction was sent to another that it was being sent to a willing recipient, and
- d. The recipient was at least fifteen years of age at the time the visual depiction was sent.

3. Classification:

See Below

FORCING, INDUCING, OR AUTHORIZING A CHILD TO ENGAGE IN PORNOGRAPHY:

1. Elements: [28-1463.04(3)]

It shall be unlawful for a person to:

- a. Knowingly employ, force, authorize, or induce,
- b. Or otherwise cause a child to engage in any visual depiction of sexually explicit conduct,
- c. Which has a child as one of its participants or portrayed observers.

2. Classification:

See Below

CONSENTING TO CHILD PORNOGRAPHY:

1. Elements: [28-1463.03(4)]

It shall be unlawful for a parent, stepparent, legal guardian, or any person with custody and control of a child:

- a. To consent to such child engaging in any visual depiction of sexually explicit conduct,
- b. Which has a child as one of its participants or portrayed observers,

c. Knowing the content thereof.

2. Classification:

See Below

PENALTIES FOR CHILD PORN VIOLATIONS:

- Class III Felony for any offense by an offender who is under nineteen years of age at the time of the violation.
- Class ID Felony for any offense by an offender who is nineteen years of age or older at the time of the violation.
- Class IC Felony for each offense by an offender who has previously been convicted of any violation of section [28-1463.03] or section [28-308], [28-309], [28-310], [28-311], [28-313], [28-314], [28-315], [28-319], [28-319.01], [28-320.01], [28-813], [28-833], or [28-1463.05] or subsection (1) or (2) of section [28-320].
- Property used or intended for use in furtherance of the violation is subject to forfeiture as part of the criminal proceeding. Such property also remains subject to civil forfeiture – see [28-1601], [25-21,302].

**HUMAN TRAFFICKING AND
FORCED LABOR VIOLATIONS:**

DEFINITIONS: [28-830]

The following definitions apply to [28-830] and [28-832]:

- ***Actor*** means a person who solicits, procures, or supervises the services or labor of another person;
- ***Commercial sexual activity*** means any sex act on account of which anything of value is given, promised to, or received by any person;
- ***Debt bondage*** means inducing another person to provide:
 - (a) Commercial sexual activity in payment toward or satisfaction of a real or purported debt; or
 - (b) Labor or services in payment toward or satisfaction of a real or purported debt if:
 - (1) The reasonable value of the labor or services is not applied toward the liquidation of the debt; or
 - (2) The length of the labor or services is not limited and the nature of the labor or services is not defined;
- ***Financial Harm*** means theft by extortion [28-513];
- ***Forced Labor or Services*** means labor or services that are performed or provided by another person and are obtained or maintained through:
 - (a) Inflicting or threatening to inflict serious personal injury to the another person,
 - (b) Physically Restraining or threatening to physically restrain the other person,

- (c) Abusing or threatening to abuse the legal process against another person to cause arrest or deportation for violation of federal immigration law,
- (d) Controlling or threatening to control another person's access to a Schedule 1, 2, or 3 controlled substance,
- (e) Exploiting another person's substantial functional impairment [28-368] or substantial mental impairment [28-369],
- (f) Knowingly destroying, concealing, removing, confiscating, or possessing any actual or purported passport, immigration document or any other government identification document of the other person; or
- (g) Causing or threatening to cause financial harm to another person, including debt bondage.
- ***Labor or Services*** means work or activity of economic or financial value;
- ***Maintain*** means, in relation to labor or services, to secure continued performance thereof, regardless of any initial agreement by the victim to perform such type of service;
- ***Minor*** means a person younger than eighteen years of age;
- ***Serious Personal Injury*** means great bodily injury or disfigurement, extreme mental anguish or mental trauma, pregnancy, disease, or loss or impairment of a sexual or reproductive organ;
- ***Services*** means an ongoing relationship between the actor and another person in which a person performs activities under the supervision of or for the benefit of the actor. Commercial sexual activity and sexually explicit performances are forms of services, but nothing here is meant to legalize prostitution;
- ***Sexually-Explicit Performance*** means a live or public play, dance, show, or other exhibition intended to arouse or gratify sexual desire or to appeal to prurient interests; and
- ***Trafficking Victim*** means a person subjected to any act or acts prohibited by section [28-831].

LABOR TRAFFICKING:

1. Elements: [28-830(7)]

Labor trafficking means to:

- a. Knowingly recruit, entice, harbor, transport, provide, or obtain by any means or attempting the same,
- b. A person eighteen years of age or older,
- c. Intending or knowing that the person will be subjected to either forced labor or services.

2. Classification: [28-831]

- Class II Felony
- Property used or intended for use in the violation is subject to seizure and both criminal and civil forfeiture.

LABOR TRAFFICKING OF A MINOR:**Elements:** [28-830(8)]

Labor trafficking of a minor means to:

- a. Knowingly recruit, entice, harbor, transport, provide, or obtain by any means or attempting the same,
- b. A minor younger than eighteen years of age,
- c. Intending or knowing that the minor will be subjected to forced labor or services.

1. Classification: [28-831]

- Class IB Felony.
- Property used or intended for use in the violation is subject to seizure and both criminal and civil forfeiture.

*NOTE, It is not a defense that consent was given by the minor victim, that the defendant believed that the minor victim gave consent, or that the defendant believed that the minor victim was an adult.

SEX TRAFFICKING:**1. Elements:** [28-830], [28-831]

Sex trafficking means to:

- a. Knowingly recruit, entice, harbor, transport, provide, solicit, or obtain by any means,
- b. Or knowingly attempt the same,
- c. A person eighteen years of age or older,
- d. To engage in any of the following without consent:
 - (1) Commercial sexual activity, or
 - (2) Sexually explicit performance, or
 - (3) The production of pornography.

2. Classification:

- Class II Felony
- Class IIA Felony for anyone other than a trafficking victim who knowingly benefits from or participates in a venture which has, as part of the venture, an act that is in violation of this section.
- Property used or intended for use in furtherance of the violation is subject to seizure and both criminal and civil forfeiture – see [28-1601], [25-21,302].

SEX TRAFFICKING OF A MINOR:**1. Elements:** [28-830], [28-831]

Sex Trafficking of a minor means to:

- a. Knowingly recruit, entice, harbor, transport, provide, solicit, or obtain by any means,
- b. Or knowingly attempt the same,
- c. A minor less than eighteen years of age,
- d. To engage in any of the following:
 - (1) Commercial sexual activity, or
 - (2) Sexually explicit performance, or
 - (3) The production of pornography.

2. Classification:

- Class IB Felony.
- Property used or intended for use in furtherance of the violation is subject to seizure and both criminal and civil forfeiture – see [28-1601], [25-21,302].

*NOTE, It is not a defense that consent was given by the minor victim, that the defendant believed that the minor victim gave consent, or that the defendant believed that the minor victim was an adult.

RECRUITING OR PROFITING FROM HUMAN TRAFFICKING:

1. Elements: [28-831(3)]

It is unlawful for any person to knowingly:

- a. Recruit, entice, harbor, transport, provide, obtain by any means, or attempt the same of a person eighteen years of age or older, intending or knowing that the person will be subjected to forced labor or services; OR
- b. Benefit financially or by receiving anything of value from participation in a venture that includes an act that is in violation of this section.

2. Classification:

Class IV Felony

- Property used or intended for use in furtherance of the violation is subject to seizure and both criminal and civil forfeiture – see [28-1601], [25-21,302].

OFFENSES INVOLVING THE INTEGRITY AND EFFECTIVENESS OF GOVERNMENT:

OBSTRUCTING GOVERNMENT OPERATIONS:

1. Elements: [28-901]

It is unlawful for any person to:

- a. Intentionally obstruct, impair, or pervert,
- b. The administration of law or other governmental functions,
- c. By force, violence, physical interference or obstacle, breach of official duty, or any other unlawful act.

2. Exceptions:

This section does not apply to flight by a person charged with crime, refusal to submit to arrest, failure to perform a legal duty other than an official duty, or other means of avoiding compliance without affirmative interference with governmental functions.

3. Classification:

Class I Misdemeanor

***REQUIRED REPORTING OF INJURIES CAUSED BY
VIOLENCE:***

1. Elements: [28-905]

Everyone in the practice of medicine and surgery, or in charge of an emergency room or first-aid station shall report:

- a. Every case, in which he/she treats or is consulted for treatment,
- b. A wound or injury of violence,
- c. That appears to have been received in connection with the commission of a criminal offense.

2. Reporting Requirements:

Reports are to be made immediately to the chief of police of the municipality or to the sheriff of the county wherein the consultation or treatment occurs.

- Report must include the injured person's name, residence if ascertainable, and a brief description of the injury.
- Any law or rule of evidence regarding confidential communications is suspended for such reporting.

3. Classification:

Class III Misdemeanor.

REFUSING TO AID A PEACE OFFICER:

1. Elements: [28-903]

It is unlawful for a person to:

- a. Unreasonably refuse or fail to aid a peace officer,
- b. Upon request by a person known to him to be a peace officer,
- c. When such peace officer is:
 - (1) Apprehending any person charged with or convicted of any offense in Nebraska, OR
 - (2) Conveying such offender to the jail of the county.

2. Classification:

Class II Misdemeanor

OBSTRUCTING A POLICE OFFICER OR POLICE ANIMAL:

1. Elements: [28-906]

It is unlawful for any person to:

- a. Use or threaten to use,
- b. Violence, force, physical interference, or obstacle,
- c. To intentionally obstruct, impair, or hinder:
 - (1) Enforcement of the law or the preservation of the peace by a peace officer or judge acting under color of his or her official authority, or
 - (2) A police animal assisting a peace officer acting pursuant to the peace officer's official authority.

2. Classification:

Class I Misdemeanor

RESISTING ARREST:

1. Elements: [28-904]

A person commits the offense of resisting arrest by:

- a. Intentionally preventing or attempting to prevent,
- b. A peace officer, acting under color of official authority,
- c. From effecting an arrest of the actor or another,
- d. By doing any of the following:
 - (1) Using or threatening physical force or violence against the peace officer or another; OR
 - (2) Using any other means that creates a substantial risk of physical injury to the officer or another; OR
 - (3) Employing means requiring substantial force to overcome resistance to effecting the arrest.

2. Affirmative Defense:

It is an affirmative defense to prosecution for resisting arrest that 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. Classification:

- Class I Misdemeanor for the first such offense.
- Class IIIA Felony for any second /subsequent offense, or if resisting was done using a deadly or dangerous weapon.

HARASSMENT OF A POLICE ANIMAL:

1. Elements: [28-1009]

It is unlawful for any person to:

- (a) Knowingly and intentionally tease or harass a police animal in order to distract, agitate, or harm the animal,
- (b) For the purpose of preventing such animal from performing its legitimate official duties.

2. Definition:

Police Animal means a horse or dog used by the State or any county, city, or village for the purpose of assisting a peace officer acting pursuant to his or her official authority.

3. Classification:

- Class IV Misdemeanor;
- Class IIIA Felony if the harassment is the proximate cause of the death of the police animal;
- A felony offender shall be ordered not to own, possess, or reside with any animal for five to fifteen years;
- A misdemeanor offender may be ordered not to own, possess, or reside with an animal for up to 5 years.

FLEEING IN A MOTOR VEHICLE TO AVOID ARREST:

1. Elements: [28-905]

It is unlawful for the operator of any motor vehicle to:

- a. Flee in such vehicle,
- b. In an effort to avoid arrest or citation for any felony, misdemeanor, infraction, or traffic violation in Nebraska.

2. Classification:

- a. Class I Misdemeanor plus a revocation of the offender's driving privilege for up to one year.
- b. Class IV Felony and a two-year revocation of the offender's driving privilege if any of the following are true:
 - (1) The flight results in the death or injury of any person,
 - (2) The flight includes the willful reckless operation of a motor vehicle, or
 - (3) It is the second or subsequent violation.

FALSE REPORTING:

1. Elements: [28-907]

A person commits the offense of false reporting if he/she:

- a. Furnishes material information to any peace officer or other official, knowing it to be false, with the intent to instigate or impede a criminal investigation;
- b. Furnishes information, knowing it to be false, alleging the need for emergency medical assistance service or an emergency in which human life or property are in jeopardy to any hospital;
- c. Furnishes or causes information to be furnished or conveyed by electric, electronic, telephonic, or mechanical means, knowing the same to be false concerning the need for assistance of a fire department or any personnel or equipment of such department;
- d. Furnishes any information he or she knows to be false concerning the location of any explosive in any building or other property to any person; or
- e. Furnishes material information he or she knows to be false to any governmental department or agency with the intent to instigate or impede an investigation and which actually results in causing or impeding such investigation.

2. Classification:

- Class I Misdemeanor under (a) through (d);
- False reporting pursuant to (e) is an Infraction.

INTERFERING WITH A FIREMAN:

1. Elements: [28-908]

A person commits the offense of interfering with a fireman if at any time and place where any firefighter is discharging or attempting to discharge any official duties, he/she willfully:

- a. Resists or interferes with the lawful efforts of any fireman to discharge an official duty; or
- b. Disobeys the lawful orders given by any fireman while performing his duties; or
- c. Engages in any disorderly conduct which delays or prevents a fire from being extinguished within a reasonable time; or

- d. Forbids or prevents others from assisting or extinguishing a fire or exhorts another who he/she has no legal right or obligation to protect or control, not to assist in extinguishing a fire.

2. Definition:

- **Fireman** shall mean an officer, employee, or member of a fire department or fire-protection or firefighting agency of a federal, state, or local agency.
- This law applies to either paid or volunteer firefighters.

3. Classification:

Class I Misdemeanor

ABUSE OF PUBLIC RECORDS:

1. Elements: [28-911]

A person commits abuse of public records, if he/she:

- a. Knowingly makes a false entry in or falsely alters any public record; or
- b. Knowingly lacking authority to do so, he/she intentionally destroys, mutilates, conceals, removes, or impairs the availability of any public record; or
- c. Knowingly lacking authority to retain the record, he/she refuses to deliver up a public record in his possession upon proper request of any person lawfully entitled to receive such record; or
- d. Makes, presents, or uses any record, document, or thing, knowing it to be false, and with the intention that it be taken as a genuine part of the public record.

2. Classification:

Class II Misdemeanor

*NOTE: A **public record** includes all official books, papers, or records created, received, or used by or in any governmental office or agency.

ESCAPE:

1. Elements: [28-912]

A person commits escape by unlawfully:

- a. Removing themselves from official detention, OR
- b. Failing to return to official detention following temporary leave granted for a specific purpose or limited period.

2. Definition:

Official detention means arrest, detention in or transportation to any facility for custody of persons under charge or conviction of crime or contempt or who are alleged or found to be delinquent, detention for extradition or deportation, or any other detention for law enforcement purposes.

- Official detention is not supervision of probation or parole or constraint incidental to release on bail.

3. Classification:

- Class IV Felony;
- Class III Felony if:
 - (1) The detainee was under arrest or detained for a felony or following conviction; or
 - (2) A public servant concerned in detention of persons purposely facilitates or permits an escape from a detention facility or from transportation thereto.
- Class IIA Felony
If the detainee uses force, threat, deadly weapon, or other dangerous instrumentality to effect escape.

PERMITTING ESCAPE:

1. **Elements:** [28-912]
It is unlawful for:
 - a. A public servant concerned in detention,
 - b. To knowingly permit an escape.
2. **Classification:**
Class IV Felony

JUVENILE ESCAPE:

1. **Elements:** [28-912.01]
It is unlawful for any person to:
 - a. Entice or attempt to entice a juvenile away from a facility or program when the juvenile has been legally placed with or committed to the Office of Juvenile Services; OR
 - b. To knowingly harbor, transport, conceal, or aid the same, for a juvenile who has escaped from the custody of OJS.
2. **Classification:**
Class IV Felony

PROVIDING AN INMATE WITH IMPLEMENTS FOR ESCAPE:

1. **Elements:** [28-913]
It is unlawful for any person to
 - a. Unlawfully provide an inmate with or introduce within a detention facility,
 - b. Any weapon, tool, or other thing that may be useful for escape.
2. **Classification:**
Class I Misdemeanor

*NOTE: *Unlawfully* means surreptitiously or contrary to law, regulation, or order of the detaining authority.

INMATE POSSESSION OF IMPLEMENTS FOR ESCAPE:

1. **Elements:** [28-913]
An inmate commits this offense if he/she:
 - a. Unlawfully procures, makes, or otherwise provides themselves with,

- b. Or has in his/her possession,
- c. Any such implement of escape.

2. Classification:

Class I Misdemeanor.

*NOTE: *Unlawfully* means surreptitiously or contrary to law, regulation, or order of the detaining authority.

LOITERING ABOUT A PENAL INSTITUTION:

1. Elements: [28-914]

It is unlawful for any person to:

- a. Loiter about a penal institution in Nebraska,
- b. And engage in unauthorized conversation with an inmate,
- c. Or pass any unauthorized message to an inmate,
- d. Or fail or refuse to leave the immediate vicinity of the penal institution when ordered to do so by a peace officer or correctional official.

2. Classification:

Class III Misdemeanor

*NOTE: A *penal institution* includes a jail, prison, penitentiary, house of correction, or other place of penal detention.

PERJURY:

1. Elements: [28-915(1)]

It is unlawful for any person:

- a. To make a false statement in any official proceeding,
- b. When the statement is material and he or she does not believe it to be true.
- c. In an official proceeding:
 - (2) Under oath or affirmation, or
 - (3) By swearing or affirming the truth of a statement previously made, or
- d. In an unsworn declaration meeting the requirements of the Uniform Unsworn Foreign Declarations Act under penalty of perjury, [49-1801] to 49-1807].

2. Other:

- A false statement is material if it could have affected the course or outcome of the proceeding.
- For non-material false statements see false statements under oath below.
- A material false statement may not be perjury if retracted in the course of the proceeding in which it was made.
- Proof of falsity cannot be proven solely by contradicting testimony of a single person other than the defendant.

4. Classification:

Class III Felony

SUBORNATION OF PERJURY:**1. Elements:** [28-915(2)]

It is unlawful for any person:

- a. To persuade, procure, or suborn,
- b. Any other person to commit perjury.

2. Classification:

Class III Felony

FALSE STATEMENT UNDER OATH:**1. Elements:** [28-915.01]

It is unlawful for any person to do any of the following:

- a. Make a false statement under oath or equivalent, or
- b. Swear/affirm the truth of a statement previously made, or
- c. Make a false statement in an unsworn declaration that meets the requirements of the Uniform Unsworn Foreign Declarations Act, [49-1801] to 49-1807].
- d. When he/she does not believe the statement to be true.

2. Exceptions:

- A false statement may be retracted before it affected the proceedings.
- This section shall not apply to reports, statements, affidavits, or other documents made or filed pursuant to the Campaign Finance Limitation Act or the Nebraska Political Accountability and Disclosure Act.
- A false statement cannot be proven solely by the testimony of one other person of its falsehood.

3. Classification:

- Class I misdemeanor if the falsification occurs in an official proceeding, or is intended to mislead a public servant in performing his or her official function;
- Class II misdemeanor if the statement was required by law to be sworn/affirmed to a notary or authorized person.

BRIBERY:**1. Elements:** [28-917]

A person commits bribery if he/she:

- a. Offers, confers, or agrees to confer
- b. Any benefit upon a public servant or peace officer
- c. With the intent to influence that public servant or peace officer to violate his public duty or oath of office,
- d. Thereby influencing the public servant or peace officer's vote, opinion, judgment, exercise of discretion, or other action or inaction in his/her official capacity.

2. Classification:

Class IV Felony

ACCEPTING A BRIBE:**1. Elements:** [28-917]

It is unlawful for any public servant or peace officer:

- a. Who is solicited with a bribe,
- b. To accept, or agree to accept any benefit
- c. Upon an agreement or understanding to violate a public duty or oath of office,
- d. By changing/amending an official vote, opinion, judgment, exercise of discretion, or other action/ inaction.

2. Classification:

Class IV Felony

*NOTE: It is not a defense that the person sought to be influenced was not qualified to act in the desired way.

COMPOUNDING A FELONY:

1. Elements: [28-301]

It is unlawful to:

- a. Accept or agree to accept any pecuniary benefit or other reward or promise,
- b. As consideration for refraining from either:
 - (1) Seeking prosecution of an offender; or
 - (2) Reporting the commission of any felony or information relating to a felony to law enforcement.

2. Classification:

- Class I Misdemeanor.
- It is an affirmative defense that the benefit was less than the amount that the defendant reasonably believed to be due as restitution for harm caused by the crime.

GIFTS TO PUBLIC OFFICIALS (Misdemeanor Bribery):

1. Elements: [49-14,101]

It is unlawful for any person to offer or give anything of value:

- a. To a public (elected) official, public employee, candidate, to a member of the immediate family of such persons, or a business with which such individual is associated,
- b. Or for such a person, family member, or business to solicit or accept anything of value,
- c. Including a gift, loan, contribution, reward, or promise of future employment,
- d. Based on an agreement that the vote, official action, or judgment of any public official, public employee, or candidate would be influenced thereby.

2. Classification:

Class III Misdemeanor

- No vote by any member of the Legislature shall subject such member to a criminal sanction under this section.

BRIBERY OF A WITNESS:

1. Elements: [28-918]

A person commits bribery of a witness if he/she:

- a. Offers, confers, or agrees to confer any benefit,
- b. Upon a witness or a person he/she believes is about to be

called as a witness in any official proceeding,

- c. With intent to:
 - (1) Influence the witness to testify falsely or unlawfully withhold any testimony; or
 - (2) Induce the witness to avoid legal process summoning that person to testify; or
 - (3) Induce the witness to be absent from an official proceeding that they have been legally summoned to.

2. Classification:

Class IV Felony

ACCEPTING A WITNESS BRIBE:

1. Elements: [28-918]

It is unlawful for a witness or one who has been called as a witness in any official proceeding:

- a. To accept or agree to accept any benefit,
- b. For any of the purposes that made the bribe itself illegal.

2. Classification:

Class IV Felony

TAMPERING WITH A WITNESS, INFORMANT, OR JUROR:

1. Elements: [28-919]

It is unlawful for any person to:

- a. Believing that an official proceeding or investigation of a criminal or civil matter is pending or about to be instituted,
- b. Attempt to induce or cause a witness or informant to:
 - (1) Testify or inform falsely; or
 - (2) Withhold any testimony, information, document, or thing; or
 - (3) Elude legal process summoning him or her to testify or supply evidence; or
 - (4) Be absent from any proceeding or investigation to which he or she has been legally summoned.

2. Classification:

Class IV Felony

JURY TAMPERING:

1. Elements: [28-919]

It is unlawful for any person to:

- a. Attempt, directly or indirectly,
- b. To communicate with a juror,
- c. With intent to influence a juror's vote, opinion, decision, or other action in a case,
- d. Other than as a part of the proceedings in the trial.

2. Classification:

Class IV Felony

BRIBERY OF A JUROR:

1. Elements: [28-920]

It is unlawful for any person to:

- a. Offer, confer, or agree to confer any benefit upon a juror,
- b. With the intent to influence the juror's vote, opinion, decision, or other action as a juror.

2. Classification:

Class IV Felony

ACCEPTING A JUROR BRIBE:

1. Elements: [28-920]

It is unlawful for any person to:

- a. Accept or agree to accept any benefit from another person,
- b. For the purpose of influencing his vote, opinion, decision, or other action as a juror.

2. Classification:

Class IV Felony

TAMPERING WITH PHYSICAL EVIDENCE:

1. Elements: [28-922]

It is unlawful for any person:

- a. Believing that an official proceeding is pending or about to be instituted,
- b. And acting without legal right or authority, to either:
 - (1) Destroy, mutilate, conceal, remove, or alter physical evidence with the intent to impair its verity or availability in the such official proceeding; OR
 - (2) Knowingly make, present, or offer any false physical evidence with intent that it be introduced in the pending or prospective official proceeding.

2. Definition:

The term *Physical Evidence* means any article, object, document, record, or other thing of physical substance.

3. Classification:

Class IV Felony

SIMULATING LEGAL PROCESS:

1. Elements: [28-923]

It is unlawful for any person to:

- a. Send, deliver, or mail any paper or document, or in any manner cause the same,
- b. Simulating or intended to simulate,
- c. A summons, complaint, writ, or any other court process,
- d. To any person, firm, company, or corporation,
- e. For the purpose and intent of forcing payment of any alleged claim, debt, or legal obligation.

2. Classification:

Class III Misdemeanor

OFFICIAL MISCONDUCT BY A PUBLIC SERVANT:

1. Elements: [28-924]

It is unlawful for a public servant to:

- a. Knowingly violate any statute or lawfully adopted rule or regulation relating to his/her official duties.

2. Classification:

Class II Misdemeanor

MISUSE OF OFFICIAL INFORMATION BY A PUBLIC SERVANT:

1. Elements: [28-925]

It is unlawful for any public servant to do any of the following in contemplation of official action, or in reliance on non-public information accessed in an official capacity:

- a. Acquire a pecuniary interest in any property, transaction, or enterprise which may be affected by such information or official action; or
- b. Speculate or wager on the basis of such information or official action; or
- c. Aid, advise, or encourage another to do the same with intent to confer on any person a special pecuniary benefit.

2. Classification:

Class III Misdemeanor

OPPRESSION UNDER COLOR OF OFFICE:

1. Elements: [28-926]

It is unlawful for any public servant or peace officer to:

- a. Designedly, willfully, or corruptly,
- b. Injure, deceive, harm, or oppress any person,
- c. Or attempt the same,
- d. By color of or in the execution of his/her office.

2. Classification:

- The offender is also answerable to the party so injured, deceived, or harmed or oppressed in treble damages.

NEGLECTING TO SERVE A WARRANT:

1. Elements: [28-927]

It is unlawful for any sheriff or other officer to:

- a. Neglect or delay to immediately serve any warrant legally issued by any Nebraska judge in any criminal case,
- b. When it is in his or her power to serve the same, either alone or by calling upon assistance according to law.

2. Classification:

- Class II Misdemeanor if the offense charged for which the warrant was issued is a felony.
- Class III Misdemeanor if the offense charged for which the warrant was issued is a misdemeanor.
- Any sheriff or other officer who is convicted under this section shall immediately forfeit his or her office.

ASSAULT ON AN A PEACE OFFICER, EMERGENCY RESPONDER, PROBATION OFFICER, OR CORRECTIONS EMPLOYEE:

1. Elements: [28-929] to [28-931]

It is unlawful for any person to

a. Assault any of the following persons:

- (1) A Peace Officer, or
- (2) A Probation Officer,
- (3) A Firefighter,
- (4) An out-of-home emergency care provider (emergency medical responder or technician or a paramedic), or
- (5) An Employee of the Dept. of Correctional Services,

b. While such person is performing official duties.

2. Classification:

- Class ID Felony if done intentionally or knowingly causing *serious bodily injury* (1st Degree);
- Class II Felony if done intentionally, knowingly or recklessly causing *bodily injury* with a *dangerous instrument* (2nd Degree);
- Class IIIA Felony if done intentionally, knowingly, or recklessly causing *bodily injury* (3rd Degree).

ASSAULT ON A HEALTH CARE PROFESSIONAL:

1. Elements: [28-929] to [28-931]

It is unlawful for any person to:

- a. Assault a Health Care Professional,
- b. While the victim is on duty at a hospital or a health clinic.

2. Definition:

- *Health care professional* means a physician or other health care practitioner who is licensed, certified, or registered to lawfully perform specified health services at a hospital or a health clinic;

3. Classification:

- Class ID Felony if done intentionally or knowingly causing *serious bodily injury* (1st Degree);
- Class II Felony if done intentionally, knowingly or recklessly causing *bodily injury* with a *dangerous instrument* (2nd Degree);
- Class IIIA Felony if done intentionally, knowingly, or recklessly causing *bodily injury* (3rd Degree).
- See 29-924 if the assault was done with a bodily fluid.

ASSAULT ON A DHHS EMPLOYEE BY A DANGEROUS SEX OFFENDER:

1. Elements: [28-929] to [28-931]

It is unlawful for any dangerous sex offender under the Sex Offender Commitment Act to

- a. Assault An employee of DHHS,

- b. While such employee is engaged in the performance of official duties.

2. Classification:

- Class ID Felony if done intentionally or knowingly causing *serious bodily injury* (1st Degree);
- Class II Felony if done intentionally, knowingly or recklessly causing *bodily injury with a dangerous instrument* (2nd Degree);
- Class IIIA Felony if done intentionally, knowingly, or recklessly causing *bodily injury* (3rd Degree).

ASSAULT ON A PEACE OFFICER, EMERGENCY RESPONDER, PROBATION OFFICER, OR CORRECTIONS EMPLOYEE WITH A MOTOR VEHICLE:

1. Elements: [28-931.01]

A person commits this offense by:

- a. Intentionally and knowingly causes *bodily injury*,
- b. By using a motor vehicle to run over or to strike,
- c. A peace officer, a probation officer, a firefighter, or an out-of- hospital care provider (emergency medical responder or technician or a paramedic),
- d. Or by using a motor vehicle to collide with such person's motor vehicle,
- e. While the victim is engaged in performing official duties.

4. Classification:

Class IIIA Felony.

ASSAULT ON A HEALTH CARE PROFESSIONAL WITH A MOTOR VEHICLE:

1. Elements: [28-931.01]

A person commits this offense by:

- a. Intentionally and knowingly causes *bodily injury* by using a motor vehicle to run over or to strike a physician or other health care practitioner,
- b. Or by using a motor vehicle to collide with such person's motor vehicle,
- c. While the victim is on duty at a hospital or a health clinic.

2. Classification:

Class IIIA Felony.

ASSAULT BY A DANGEROUS SEX OFFENDER ON A DHHS EMPLOYEE WITH A MOTOR VEHICLE:

1. Elements: [28-931.01]

It is unlawful for a committed dangerous sex offender to:

- a. Intentionally and knowingly causes *bodily injury*,
- b. By using a motor vehicle to run over or to strike an employee of DHHS,
- c. Or by using a motor vehicle to collide with such person's motor vehicle,

d. While the victim is engaged in performing official duties.

3. Classification:

Class IIIA Felony.

ASSAULT ON A PUBLIC SAFETY OFFICER WITH BODILY FLUID: ***2018 Update***

1. Elements: [28-934]

It is unlawful for any person to:

- a. Knowingly and intentionally,
- b. Strike any public safety officer,
- c. With any bodily fluid.

2. Definitions:

- ***Bodily fluid*** means any naturally produced secretion or waste product generated by the human body including, any quantity of human blood, urine, saliva, mucus, vomitus, seminal fluid, or feces;
- ***Public safety officer*** includes any of the following persons who are engaged in official duties at the time::
 - (1) A peace officer;
 - (2) A probation officer;
 - (3) A firefighter
 - (4) An out-of-hospital emergency care provider (emergency medical responder or technician or a paramedic),
 - (5) A health care professional
 - (6) An employee of a county, city, or village jail;
 - (7) An employee of the Dept. of Correctional Services;
 - (8) An employee of the secure youth confinement facility operated by the Dept. of Correctional Services, if the offender is committed to such facility;
 - (9) An employee of the Youth Rehabilitation and Treatment Center at Geneva or Kearney; or
 - (10) An employee of the DHHS if the defendant is committed as a dangerous sex offender.

3. Court Order to Obtain Evidence:

[28-934] authorizes a warrant based on probable cause to obtain any evidence, including bodily fluid and medical records, to determine if the bodily fluid used in the offense was infected.

4. Classification:

- Class I Misdemeanor,
- Class IIIA Felony if the offender strikes the eyes, mouth, or skin of a public safety officer and knew the source of the bodily fluid was infected with HIV, or hepatitis B or C at the time the offense was committed.

*NOTE: The bodily fluid used in the commission of this crime need not have come from the offender's own body.

ASSAULT BY A CONFINED PERSON:

1. Elements: [28-932]

It is unlawful for:

- a. Any person who is legally confined in a jail or correctional or penal institution,
- b. To intentionally, knowingly, or recklessly,
- c. Cause bodily injury to another person.

2. Classification:

- Class IIIA Felony;
- Class IIA Felony if a deadly or dangerous weapon is used to commit such assault

COMPELLING OR INDUCING AN ACT OF ANOTHER BY A CONFINED PERSON:

1. Elements: [28-933]

It is unlawful for:

- a. Any person who is legally confined in a jail or correctional or penal institution,
- b. To commit any of the following crimes against any person: Assault, Terroristic threats, Kidnapping, or False imprisonment 1st or 2nd degree.
- c. For the purpose of compelling or inducing the performance of any act by such person or another person.

2. Classification:

Class II Felony

WEAPON AND FIREARM VIOLATIONS:

DEFINITIONS: [28-1201]

For [28-1201] to [28-1212], unless the context otherwise requires:

- **Firearm** means any weapon which is designed to or may readily be converted to expel any projectile by the action of an explosive or frame or receiver of any such weapon;
- **Fugitive From Justice** means any person who has fled or is fleeing from any peace officer to avoid prosecution or incarceration for a felony;
- **Handgun** means any firearm with a barrel less than sixteen inches in length or any firearm designed to be held and fired by the use of a single hand;
- **Juvenile** means any person under the age of eighteen years;
- **Knife** means any dagger, dirk, knife, or stiletto with a blade over three and one-half inches long, OR any other dangerous instrument capable of inflicting cutting, stabbing, or tearing wounds, and which, in the manner it is used or intended to be used, is capable of causing death or serious bodily injury.
- **Knuckles** and **Brass or Iron Knuckles** means any instrument that consists of finger rings or guards made of a hard substance and that is designed, made, or adapted for the purpose of inflicting serious bodily injury or death by striking a person with a fist enclosed in the knuckles;

- **Machine Gun** means any firearm, whatever its size and usual designation, that shoots automatically more than one shot, without manual reloading, by a single function of the trigger;
- **School** means a public, private, denominational, or parochial elementary, vocational, or secondary school, a private postsecondary career school as defined in section [85-1603], a community college, a public or private college, a junior college, or a university;
- **Short Rifle** means a rifle having a barrel less than sixteen inches long or an overall length of less than twenty-six inches; and
- **Short Shotgun** means a shotgun having a barrel or barrels less than eighteen inches long or an overall length of less than twenty-six inches.

FIRARMS FOUND IN MOTOR VEHICLES: [28-1212].

Unless the firearm is found on the person of one of the occupants, *all* occupants of a motor vehicle are deemed to carry and be in possession of a firearm found in a motor vehicle for purposes of prosecution for:

- Possession or Transportation of a machine gun, short shotgun, or short rifle; Possession of a deadly weapon by a prohibited person; or Possession of a defaced or stolen firearm.

CARRYING CONCEALED WEAPONS:

1. Elements: [28-1202]

A person commits this offense if he/she:

- Carries a deadly weapon or weapons,
- Concealed on or about his or her person,
- Such as a handgun, knife, brass or iron knuckles, or any other deadly weapon.

2. Affirmative Defense:

It is an affirmative defense that:

- The defendant was engaged in any lawful business, calling, or employment at the time he or she was carrying any weapon or weapons,
- AND, the circumstances would justify a prudent person in carrying the weapon or weapons for the defense of his or her person, property, or family.

3. Exception:

This section does not apply to a CCW permit holder if the weapon is a handgun.

4. Classification:

- Class I misdemeanor
- Class IV Felony for a second or subsequent conviction

*NOTE: A *deadly weapon* may be any object or weapon, based on evidence of the use or intended use of it.

POSSESSING OR TRANSPORTING PROHIBITED WEAPONS:

1. Elements: [28-1203]

It is unlawful for any person or person:

- a. To possess or transport,
- b. Any machine gun, short rifle, or short shotgun.

2. Exceptions:

- The Lawful discharge by peace officers, members of the United States military or Nebraska National Guard,
- Persons qualified under the provisions of federal law relating to the short rifle, short shotgun, or machine gun.

3. Classification:

Class IV Felony

POSSESSION OF A HANDGUN BY A MINOR:

1. Elements: [28-1204]

It is unlawful for:

- a. Any person under the age of eighteen years,
- b. To possess a handgun.

2. Exceptions:

This section does not apply to:

- Handguns issued to active or reserve members of the armed forces of the United States, active Nebraska National Guard, or Reserve Officers Training Corps, when on duty or training;
- The temporary loan of handguns for instruction under immediate supervision of a parent, guardian, or adult instructor.

2. Classification:

Class I Misdemeanor

- The law enforcement officer shall confiscate such firearm to be held by the agency employing such officer until it no longer is required as evidence.

TRANSFERRING A FIREARM TO A JUVENILE:

1. Elements: [28-1204.01]

It is unlawful for any person to:

- a. Knowingly and intentionally,
- b. Sell, provide, loan, deliver, or in any other way transfer possession, of a firearm to a juvenile,
- c. Or attempt to do the same.

2. Exceptions:

This section does not apply to the transfer of a firearm, other than a handgun, to a juvenile under the following conditions:

- a. From a relative of a juvenile within the second degree of consanguinity or affinity if the transfer of physical possession does not occur until express permission was obtained from the juvenile's parent or guardian;
- b. For a legitimate and lawful sporting purpose; or

- c. To a juvenile who is under direct adult supervision in an appropriate educational program.

3. Classification:

Class III Felony

- The officer shall confiscate the firearm to be held until it no longer is required as evidence.

*NOTE: This section applies to the transfer of a *handgun* to a juvenile, except as specifically provided in [28-1204].

POSSESSION OF A FIREARM AT A SCHOOL:

1. Elements: [28-1204.04]

It is unlawful for any person:

- a. To possess a firearm,
- b. In a school, on school grounds, in a school-owned vehicle, or at a school-sponsored activity or athletic event.

2. Exceptions:

This section shall not apply to:

- a. Active or reserve members of the military, Nebraska National Guard, Reserve Officers Training Corps, or law enforcement officers when on duty or training;
- b. Law enforcement officers when contracted by a school to provide school security or school event control services
- c. Firearms lawfully possessed for instruction under the immediate supervision of an adult instructor;
- d. Firearms lawfully possessed by a member of a college or university rifle team, within the scope of team duties;
- e. Firearms lawfully possessed by an employee of a college or university as part of an agriculture or a natural resources program, within the scope of such person's employment;
- f. Unloaded firearms contained within a private vehicle operated by a non-student adult, which are either:
 - (1) Encased, meaning enclosed in a case expressly made for containing a firearm and is completely zipped, snapped, buckled, tied, or otherwise fastened with no part of the firearm exposed,
 - (2) Or are in a locked firearm rack on a motor vehicle;
- g. Firearms lawfully possessed for the purpose of school-approved historical reenactment, hunter education program, or as part of an honor guard.
- h. A concealed handgun carried in a vehicle or on the person of a valid holder of a conceal carry permit if:
 - (1) The permit holder is in a vehicle on any parking area that is open to the public and used by a school, and
 - (2) Prior to exiting the vehicle, the handgun is locked inside the glove box, trunk, or other compartment of the vehicle, a storage box securely attached to the

vehicle, or a hardened compartment securely attached to a motorcycle.

3. Classification:

Class II Misdemeanor

- Any firearm possessed in violation of this section shall be confiscated without warrant by a peace officer, school administrator, or teaching personnel.
- Any firearm confiscated by school administrative or teaching personnel shall be delivered to a peace officer as soon as practicable to be held for evidence.

OFFICER REQUIRED TO PETITION FOR DESTRUCTION OF A CONFISCATED FIREARM: [28-12.04.04(4)]

Any firearm confiscated pursuant to sections [28-1204], [28-1204.02], or [28-1204] shall be held by the officer for delivery to property division of the officer's law enforcement agency and then held for as long as the firearm is needed as evidence.

- The officer who receives such firearm shall cause to be filed in district court a petition for destruction of such firearm within ten days after the confiscation.
- The petition shall include a description of the firearm, the name of the owner (if known), the essential elements of the violation that caused the confiscation, and a request for a disposition and destruction order by the court.
- A firearm with significant antique value or historical significance as determined by the Nebraska State Historical Society is not to be destroyed, but will be sold at auction and the proceeds remitted to the Nebraska State Treasurer.

USE OF A DEADLY WEAPON TO COMMIT A FELONY:

1. Elements: [28-1205(1)]

It is unlawful for any person:

- a. To use a firearm, knife, brass or iron knuckles, or any other deadly weapon,
- b. To commit any felony that may be prosecuted in NE.

2. Classification:

- Class IC Felony if the deadly weapon is a firearm.
- Class II Felony if the deadly weapon was not a firearm.

*NOTE: Use of a deadly weapon includes the discharge, employment, or visible display of any part of a deadly weapon or destructive device during, immediately prior to, or immediately after the commission of a felony or communication to another indicating the presence of a weapon or device (regardless of whether it was actually discharged, employed, or displayed).

- This offense is a separate and distinct from the felony itself.

***POSSESSION OF A DEADLY WEAPON DURING
THE COMMISSION OF A FELONY:***

1. Elements: [28-1205(2)]

It is unlawful for any person to possess:

- a. A firearm, knife, brass/iron knuckles, or destructive device,
- b. During the commission of any felony which may be prosecuted in a court of Nebraska.

2. Classification:

- Class II Felony if the deadly weapon is a firearm.
- Class III Felony if the deadly weapon is not a firearm.
- This is a separate/distinct offense from the felony itself.

*NOTE: Possession may be proved by evidence of actual or constructive possession during, immediately prior to, or immediately after the commission of a felony.

POSSESSION OF A DEADLY WEAPON BY A PROHIBITED PERSON:

1. Elements: [28-1206(1)(a)]

It is unlawful for a person to:

- a. Possess a firearm, a knife, or brass or iron knuckles,
- b. If such person:
 - (1) Has been previously been convicted of a felony, OR
 - (2) Is a fugitive from justice, OR
 - (3) Is knowingly violating a current and validly issued domestic violence, harassment, or sexual assault protection order.

2. Classification:

- Class III Felony if the deadly weapon is not a firearm.
- Class ID Felony for a first offense if the deadly weapon is a firearm.
- Class IB Felony for a second or subsequent offense and if the deadly weapon is a firearm.

2. Exceptions:

- A knife for butchering, dressing, or otherwise processing or harvesting game, fish, or furs.
- Archery equipment possessed for a lawful purpose.

POSSESSION OF A DEADLY WEAPON BY A PROHIBITED PERSON WITH A MISDEMEANOR DV CONVICTION:

1. Elements: [28-1206(1)(b)]

It is unlawful for any person:

- a. Who has been convicted of a misdemeanor crime of domestic violence,
- b. Within the past seven years,
- c. To possess any firearm or brass or iron knuckles.

2. Definition:

A misdemeanor crime of domestic violence means:

- a. A conviction for:
 - (1) Assault 3rd degree [28-310], Stalking [28-311.04(1)], False Imprisonment 2nd degree [28-315], , Domestic Assault third degree 1st offense [28-323], or any attempt or conspiracy to commit one of these offenses; OR
 - (2) A law of the U.S., D.C., or any state, territory, possession, or tribe that has as an element the use or attempted use of physical force or the threatened use of a deadly weapon
 - b. Committed against the offender's spouse, former spouse, a person that he/she has a child in common with whether or not they have been married or lived together at any time, or a person with whom he or she is or was involved in a dating relationship as defined in section [28-323],
 - c. And the person convicted was represented by counsel or waived that right and the case was tried to a jury (if entitled) or the offender waived that right
- 3. Classification:**
Class III Felony

POSSESSION OF A FIREARM BY A PROHIBITED JUVENILE OFFENDER: ***2018 Update***

- 1. Elements: [28-1204.05]**
It is unlawful for any person:
- a. Who is under age 25
 - b. To knowingly possesses a firearm,
 - c. If such person had a juvenile adjudication for any felony or a misdemeanor crime of domestic violence,
- 2. Exceptions:**
- Active or reserve members of the US military, NE National Guard, ROTC, Peace Officers or other law enforcement when on duty or training.
 - A person granted a court-ordered exemption from the firearm prohibition.
- 3. Classification:**
- Class IV Felony for a first offense,
 - Class IIIA Felony for a 2nd or subsequent offense.

POSSESSION OF A DEFACED FIREARM:

- 1. Elements: [28-1207]**
It is unlawful for any person to:
- a. Knowingly possess, receive, sell, or lease any firearm
 - b. Other than by delivery to law enforcement officials,
 - c. With the manufacturer's identification mark or serial number removed, defaced, altered, or destroyed.
- 2. Classification:**
Class III Felony

DEFACING A FIREARM:

1. Elements: [28-1208]

It is unlawful for any person to intentionally:

- a. Remove, deface, cover, alter, or destroy,
- b. The manufacturer's identification mark or serial number or other distinguishing numbers,
- c. On any firearm.

2. Classification:

Class III Felony

FAILURE TO REGISTER A TRANQUILIZER GUN:

1. Elements: [28-1209]

It is unlawful for any person to:

- a. Fail or neglect to register any owned gun or other device,
- b. Designed, adapted or used to project darts/missiles with tranquilizers, chemicals, or compounds to cause unconsciousness or temporary disability in live animals.

2. Classification:

Class III Misdemeanor

- Such guns must be registered with the county sheriff.

SALE OF A TRANQUILIZER GUN MUST BE REPORTED:

1. Elements: [28-1210]

The seller of a tranquilizer gun or device must immediately report the sale to the sheriff including the name and address of the purchaser and the make and number of the gun or device.

2. Classification:

Failure to immediately notify the sheriff of the sale of a tranquilizer gun is a Class III Misdemeanor.

DISCHARGE OF A FIREARM AT AN OCCUPIED OR INHABITED STRUCTURE OR VEHICLE:

1. Elements: [28-1212.02]

It is unlawful for any person to:

- a. Unlawfully and intentionally,
- b. Discharge a firearm,
- c. At an inhabited dwelling house, motor home, or camper unit, or at an occupied building, motor vehicle, or aircraft.

2. Definitions:

- ***Inhabited*** means currently used for dwelling purposes;
- ***Occupied*** means that a person is physically present in the building, motor vehicle, or aircraft.

3. Classification:

Class ID Felony

DISCHARGING ANY FIREARM OR WEAPON FROM ANY PUBLIC HIGHWAY, ROAD, OR BRIDGE

1. Elements: [28-1335]

It is unlawful for any person to discharge:

- a. Any firearm or any weapon using any form of compressed gas as a propellant,
- b. From any public highway, road, or bridge in Nebraska,
- c. Unless otherwise allowed by statute.

2. Classification:

Class III Misdemeanor

- The mandatory minimum fine is one hundred dollars.

DISCHARGING A FIREARM AT A PERSON, BUILDING OR VEHICLE:

1. Elements: [28-1212.04]

It is unlawful for any person:

- a. To knowingly, and intentionally or recklessly,
- b. Discharge a firearm,
- c. While in any motor vehicle or in the proximity of any motor vehicle that such person has just exited,
- d. At or in the general direction of any person, dwelling, building, structure, occupied motor vehicle, occupied aircraft, inhabited motor home, or inhabited camper unit,
- e. Within any city of the first class or county containing a city of the metropolitan class or primary class.

2. Definitions:

- *Cities of the first class* have a population between 5,000 and 100,000 inhabitants [16-101];
- *Cities of the primary class* have a population between 100 -300 thousand inhabitants [15-101];
- *Cities of the metropolitan class* have a population of three hundred thousand inhabitants or more [14-101].

3. Classification:

Class IC Felony

DISCHARGING FIREARM OR WEAPON FROM A HIGHWAY:

1. Elements: [28-1335]

It is unlawful for any person to:

- a. Discharge any firearm or any weapon that uses any form of compressed gas as a propellant,
- b. From any public highway, road, or bridge,
- c. Unless otherwise allowed by statute.

2. Classification:

Class III Misdemeanor

STOLEN FIREARMS, POSSESSION:

1. Elements: [28-1212.03]

It is unlawful for any person to:

- a. Possess, receive, retain, or dispose of,
- b. A stolen firearm,
- d. Knowing or believing that it has been stolen,
- e. Unless the firearm is possessed, received, retained, or

disposed of with intent to restore it to the owner.

2. Classification:
Class IIA Felony

HANDGUN TRANSFER CERTIFICATES:

1. Elements: [69-2401] to [69-2449]

- a. No person shall purchase, lease, rent, or receive transfer of a handgun until he or she has obtained a certificate from the chief of police or sheriff of the purchaser's place of residence;
- b. No person shall sell, lease, rent or transfer a handgun to a person who does not have a certificate.

2. Exemptions:[69-2403]

The acquisition or transfer of a handgun is exempt from the certificate requirements under the following circumstances:

- a. The handgun is acquired by a licensed firearms dealer under federal law,
- b. The person acquiring the handgun is authorized to do so on behalf of a law enforcement agency,
- c. The transfer is temporary and transferee remains (a) in the line of sight of the transfer or (b) within the premises of an established shooting facility,
- d. The transfer is between a person and his or her spouse, sibling, parent, child, aunt, uncle, niece, nephew, or grandparent,
- e. The person acquiring the handgun is a holder of a valid permit under the Concealed Handgun Permit Act, or
- f. The person acquiring the handgun is a peace officer as defined in section [69-2429].

3. Violations and Classification:

- a. Any person who willfully provides false information on an application shall be guilty of a Class IV felony.
- b. Any person who intentionally causes the Nebraska State Patrol to request information pursuant to this section without reasonable belief that the named individual has submitted a written application or consent form shall be guilty of a class II misdemeanor in addition to other civil or criminal liability under state or federal law.
- c. Any other violation is a Class I Misdemeanor.

CONCEALED CARRY HANDGUN PERMITS: [69-2429]

1. Definitions:

- ***Concealed Handgun*** means the handgun is totally hidden from view. If any part of the handgun is capable of being seen, it is not a concealed handgun;
- ***Emergency Services Personnel*** means a volunteer or paid firefighter or rescue squad member or a person certified to provide emergency medical services pursuant to the Emergency Medical Services Act;

- **Handgun** means any firearm with a barrel less than sixteen inches in length or any firearm designed to be held and fired by the use of a single hand;
- **Peace Officer** means any town marshal, local police chief or officer, sheriff or deputy, the Superintendent of Law Enforcement and Public Safety, any officer of the Nebraska State Patrol, any member of the National Guard on active service by direction of the Governor during periods of emergency or civil disorder, any Game and Parks Commission conservation officer, and all other persons with similar authority to make arrests;
- **Permitholder** means an individual holding a current and valid permit to carry a concealed handgun issued pursuant to the Concealed Handgun Permit Act;
- **Proof of Training** means an original document or certified copy of a document, supplied by an applicant, that certifies that he or she either:
 - (1) Has successfully completed a handgun training and safety course within the previous three years, OR
 - (2) Is a member of the active or reserve U.S. military or National Guard and has had handgun training within the previous three years that meets the minimum safety and training requirements of [69-2432].

2. Eligibility for Permit: [69-2433]

To qualify for a permit, an applicant must:

- Be at least twenty-one years of age;
- Be a citizen of the United States;
- Have been a resident of Nebraska (including voting and paying taxes in Nebraska) for at least 180 days;
- Not be prohibited from purchasing or possessing a handgun by federal law – see [18 U.S.C. 922];
- Not have been convicted of any felony;
- Not have been convicted of a misdemeanor crime of violence within the previous ten years;
- Have no convictions relating to firearms, use of a weapon, or controlled substances in the past 10 years;
- Not be on parole, probation, house arrest, or work release;
- Not been found mentally ill and dangerous in the last 10 years or be currently mentally incompetent;
- Meet vision requirements similar to driver's license;
- Provide proof of training.

3. Officer Duty to Report Ineligibility: [69-2439]

It is the duty of any Peace Officer to bring an application for revocation if the officer has probable cause to believe that a permit holder is no longer meets the eligibility requirements.

- One conviction of [69-2441] for a concealed handgun on prohibited *private* property is not a disqualifier, but a *public* property violation or 2nd offense could be.

- The County Attorney of the jurisdiction prosecutes the case for revocation (or the Attorney General if the county attorney is unable or unwilling to do so).
- 4. Offenses Related to Conceal/Carry Permits:**
Any time a peace officer personally stops, detains, questions, or addresses a permitholder for an official purpose or in the course of his or her official duties, a permitholder has certain duties, any violation of which is a criminal offense.

FAILURE TO INFORM OFFICER OR EMS OF CONCEALED HANDGUN:

1. Elements: [69-2440]

When a permitholder has a concealed handgun and is contacted by a peace officer or by emergency services personnel:

- a. The permitholder shall immediately inform the peace officer or emergency services personnel,
- b. That the permitholder is carrying a concealed handgun

2. Classification:

- Class III Misdemeanor for the first violation
- Class I Misdemeanor for a 2nd or subsequent violation
- The permit may also be revoked

FAILURE TO CARRY AND DISPLAY BOTH HANDGUN PERMIT AND IDENTIFICATION:

1. Elements: [69-2440]

A permitholder who carries a concealed handgun shall:

- a. Display both the permit to carry a concealed handgun
- b. And his or her Nebraska motor vehicle operator's license, Nebraska-issued state identification card, or military identification card
- c. When asked to do so by a peace officer or by emergency services personnel.

2. Classification:

- Class III Misdemeanor for the first violation
- Class I Misdemeanor for any second or subsequent violation
- The permitholder may also have his or her permit revoked

DUTY TO SURRENDER HANDGUN:

1. Elements: [69-2440]

It is unlawful for a permitholder to:

- a. Fail to surrender or secure a handgun,
- b. Upon the direction of the peace officer or emergency personnel who has determined that it is necessary for the safety of any person present, including the peace officer or emergency services personnel.

2. Handgun to be Returned to Permitholder, When:

The officer shall return the handgun before releasing the

permitholder from the scene and breaking contact when it has been determined that:

- a. The permitholder is not a threat to the safety of any person present, including the peace officer,
- b. AND the permitholder has not committed any other violation that would result in his or her arrest or the suspension or revocation of his or her permit.

3. Classification:

- Failure to surrender a handgun when ordered is a Class I Misdemeanor.
- The permit may also be revoked.

CONCEALED HANDGUNS IN PROHIBITED PLACES:

The general rule is that a permitholder may carry a concealed handgun *anywhere* in Nebraska, except in certain prohibited places.

1. Elements: [69-2441]

It is unlawful for any permitholder:

- a. To carry a concealed handgun,
- b. In a prohibited place.

2. Prohibited Places:

A permitholder may carry a concealed handgun anywhere in Nebraska, except any:

- Police, Sheriff, or State Patrol station or office;
- Detention facility, prison, or jail;
- Courtroom or building which contains a courtroom;
- Polling place during a bona fide election;
- Meeting of the governing body of a county, city, public school district, or other political subdivision;
- Meeting or committee of the State Legislature;
- Financial institution (except authorized security);
- Professional or semiprofessional athletic event;
- Building, grounds, vehicle, or sponsored activity or athletic event of any public, private, denominational, or parochial elementary, vocational, or secondary school, a private postsecondary career school as defined in section [85-1603], a community college, or a public or private college, junior college, or university;
- Place of worship (except authorized security);
- Hospital, emergency room, or trauma center;
- Political rally or fundraiser;
- Establishment having a liquor that derives over half its income from alcohol sales;
- Place where the possession or carrying of a firearm is prohibited by state or federal law;
- Any place or premises that has prohibited the carrying of concealed handguns and either (1) has posted conspicuous notice of the prohibition or (2) has asked a

permit holder to remove the concealed handgun from the place or premises;

- Any other place or premises where State law prohibits handguns.

3. Parking Areas of Prohibited Places and Vehicles:

It is not a violation for a permitholder to carry a concealed handgun in a vehicle or on his or her person while riding in or on a vehicle into or onto any public parking area of a prohibited place if prior to exiting the vehicle, the handgun is locked inside the glove box, trunk, or other compartment of the vehicle, a storage box securely attached to the vehicle, or a hardened compartment securely attached to the motorcycle.

- This subsection does not apply to any parking area used by such location when the carrying of a concealed handgun into or onto such parking area is prohibited by federal law.
- An employer may prohibit employees or other persons who are permit holders from carrying concealed handguns in vehicles owned by the employer.

4. Classification:

- Class III Misdemeanor
- Class I Misdemeanor for any 2nd or subsequent violation
- The permit may also be revoked

CONCEALED HANDGUNS, ALCOHOL OR DRUGS:

1. Elements: [69-2441]

A permitholder shall not carry a concealed handgun:

- a. While he or she is consuming alcohol, OR
- b. While the permitholder has remaining in his/her blood, urine, or breath any previously consumed alcohol or any controlled substance as defined in section [28-401].

2. Exception:

A permitholder does not violate this subsection if the controlled substance in his or her blood, urine, or breath was lawfully obtained and was taken in therapeutically prescribed amounts.

3. Classification:

- Class III Misdemeanor for the first violation.
- Class I Misdemeanor for any 2nd or subsequent violation.
- The permit may also be revoked.

DISCHARGE OF A CONCEALED HANGUN, DUTY TO REPORT INJURY OR DAMAGE:

1. Elements: [69-2442]

- a. Any time a discharge of a concealed handgun carried by a permitholder results in injury to a person or property,
- b. The permitholder must report it to the Nebraska State Patrol on a form designated and maintained by NSP.

OUT OF STATE CARRY/CONCEAL PERMITS:

A valid license or permit to carry a concealed handgun issued by any other state or the District of Columbia shall be recognized as valid in Nebraska under the Concealed Handgun Permit Act if:

- a. The holder of the license or permit is not a resident of Nebraska. AND
- b. The Nebraska Attorney General has determined that the standards for issuing such license or permit are equal to or greater than the standards imposed by the Act.
 - The Attorney General shall maintain and publish a list of jurisdictions have been determined to have standards equal to or greater than the standards imposed by the Act.

CRIMES INVOLVING EXPLOSIVES OR DESTRUCTIVE DEVICES:

TERMS DEFINED: [28-1213]

- ***Person*** means any individual, corporation, company, association, firm, partnership, limited liability company, society, or joint-stock company;
- ***Business Enterprise*** means any corporation, partnership, limited liability company, company, or joint-stock company;
- ***Explosive Materials*** means explosives, blasting agents, and detonators;
- ***Explosives*** means any chemical compound, mixture, or device, the primary or common purpose of which is to function by explosion, not including common fireworks, gasoline, kerosene, naphtha, turpentine, benzine, acetone, ethyl ether, benzol, fixed ammunition and primers for small arms, safety fuses, or matches;
- ***Blasting Agent*** means any material or mixture, intended for blasting which meets the requirements of 49 C.F.R. part 173, subpart C, as such subpart existed on Jan 1, 2010;
- ***Detonator*** means any device containing an initiating or primary explosive that is used for initiating detonation.;
- ***Destructive device*** means:
 - (1) Any explosive, incendiary, chemical or biological poison, or poison gas device, the primary or common purpose of which is to explode and to be used as a weapon against any person or property (including a bomb, grenade, rocket, missile, mine, booby trap, molotov cocktail, bottle bomb, vessel or container caused to rupture or explode by expanding pressure, or any similar device).
 - (2) Any combination of parts either designed or intended for use in converting any device into a destructive device from which a destructive device may be readily assembled.
 - (3) The term destructive device does not include (i) any device which is not designed or redesigned for use as a

weapon to be used against person or property, (ii) any device, although originally designed for use as a weapon, that is redesigned for use as a signaling, pyrotechnic, line-throwing, safety, or similar device, (iii) surplus ordnance sold, loaned, or given by the Secretary of the Army pursuant to federal law, (iv) any other device which the Nebraska State Patrol finds is not likely to be used as a weapon or is an antique, or (v) any other device possessed under circumstances negating an intent that the device be used as a weapon against any person or property;

- ***Federal permittee*** means any lawful user of explosive materials who has obtained a federal user permit under 18 U.S.C. chapter 40, as such chapter existed on Jan 1, 2010;
- ***Federal licensee*** means any importer, manufacturer, or dealer in explosive materials who has obtained a federal importers', manufacturers', or dealers' license under 18 U.S.C. chapter 40, as such chapter existed on Jan 1, 2010; and
- ***Smokeless propellants*** means solid propellants commonly called smokeless powders, used in small arms ammunition.

POSSESSION OF EXPLOSIVE MATERIALS 1ST DEGREE:

1. Elements: [28-1215]

It is unlawful for:

- a. Any person who is not eligible to obtain a permit from the Nebraska State Patrol,
- b. To possess or store explosive materials.

2. Exception:

This section does not apply to the transportation of explosive materials in accordance with section [28-1235] or to any person who has obtained a permit from the Nebraska State Patrol to store or use such explosive materials or, in the case of a business enterprise, a permit to purchase such explosive materials.

3. Classification:

Class IV Felony

POSSESSION OF EXPLOSIVE MATERIALS 2ND DEGREE:

1. Elements: [28-1215]

It is unlawful for:

- a. Any person who is eligible to obtain a permit from the Nebraska State Patrol,
- b. Or who has valid educational, industrial, commercial, agricultural, or other legitimate need for a permit,
- c. To possess or store explosive materials without a permit.

2. Exception:

The same exclusions of section [28-1215] apply.

3. Classification:

Class I Misdemeanor

SALE OF EXPLOSIVES:

1. Elements: [28-1217]

It is unlawful for any person to:

- a. Intentionally sell, transfer, issue, or give any explosive materials,
- b. To any person who does not display a valid permit issued by the Nebraska State Patrol authorizing the storage or use of such explosive materials,
- c. Or, in the case of a business enterprise, does not display a permit to purchase such explosive materials.

2. Classification:

Class IV Felony

USE OF EXPLOSIVES WITHOUT PERMIT:

1. Elements: [28-1218]

It is unlawful for any person to:

- a. Use any explosive materials,
- b. For any purpose whatsoever,
- c. Without a permit from the Nebraska State Patrol,
- d. Or under the supervision of another who has a permit.

2. Classification:

- a. Class I Misdemeanor
- b. Class II Misdemeanor if the offender was eligible for a permit or had a valid educational, industrial, commercial, agricultural, or other legitimate need for a permit.

*NOTE: Federal licensees and permittees must obtain permits from the Nebraska State Patrol to use explosive materials.

FALSE REPRESENTATIONS TO GET AN EXPLOSIVE PERMIT:

1. Elements: [28-1219]

It is unlawful for any person to:

- a. Withhold information, or
- b. Make any false, fictitious, or misrepresented statement, or
- c. Furnish or exhibit any false, fictitious, or misrepresented identification,
- d. For the purpose of obtaining a permit,
- e. Or for the purpose of obtaining relief from disability under the provisions of sections [28-1213] to [28-1239],
- f. Or knowingly makes any false entry in a record which such person is required to keep pursuant to such sections or the regulations promulgated pursuant to such sections.

2. Classification:

Class IV Felony

POSSESSION OF A DESTRUCTIVE DEVICE:

1. Elements: [28-1220]

It is unlawful for any person to:

- a. Have possession of a destructive device.

2. Definition:

Destructive devices means:

- a. Any explosive, incendiary, chemical or biological poison gas, or any similar device, the primary or common purpose of which is to explode and to be used as a weapon against any person or property; or
- b. Any combination of parts either designed or intended for use in converting any device into a destructive device from which a destructive device may be readily assembled.
- c. The term does not include a device that is neither designed nor redesigned for use as a weapon, a weapon that is redesigned for use as a signaling, pyrotechnic, line-throwing, safety, or similar device, authorized surplus military ordnance pursuant to federal law, any device which the Nebraska State Patrol finds is not likely to be used as a weapon or is an antique, or any other device possessed under circumstances negating an intent that the device be used as a weapon against any person or property.

3. Classification:

Class IV Felony

*NOTE: It is not a defense to have a permit or license issued under any state or federal law to possess, own, use, distribute, sell, manufacture, store, or handle explosive materials.

THREATENING THE USE OF EXPLOSIVES:

1. Elements: [28-1221]

It is unlawful for any person to:

- a. Convey any threat,
- b. Or maliciously convey to any other person false information knowing the same to be false,
- c. Concerning an attempt or alleged attempt being made or to be made,
- d. To kill, injure, or intimidate any individual,
- e. Or to unlawfully damage or destroy any building, vehicle, or other real or personal property,
- f. By means of any explosive material or destructive device.

2. Classification:

Class IV Felony

PLACING A FALSE BOMB:

1. Elements: [28-1221]

It is unlawful for any person to:

- a. Place or cause to be placed,
- b. Any device or object that by its design, construction, content, or character appears to be or contain a bomb, destructive device, or explosive, but is in fact an

- inoperative facsimile or imitation of a bomb, destructive device, or explosive,
- c. And such person knows, intends, or reasonably believes is likely to cause public alarm or inconvenience.

2. Classification:
Class IV Felony

USING EXPLOSIVES TO COMMIT FELONY:

1. Elements: [28-1222]

It is unlawful for any person to:

- a. Use an explosive material or destructive device,
- b. To commit any felony that may be prosecuted in Nebraska,
- c. Or to possess an explosive during the commission of any felony which may be prosecuted in Nebraska.

2. Classification:

- a. Class IIA Felony;
- b. Class II Felony for a second or subsequent conviction

USING EXPLOSIVES TO DAMAGE PROPERTY:

1. Elements: [28-1223]

It is unlawful for any person to:

- a. Maliciously damage or destroy, or attempt to damage or destroy,
- b. Any building, structure, vehicle, or other real or personal property,
- c. By means of an explosive material or destructive device.

2. Classification:

- a. Class III Felony;
- b. Class II Felony if a personal injury results;
- c. If death results, using explosives to damage or destroy property shall be punished as for conviction of murder in the first degree.

USE OF EXPLOSIVES TO KILL OR INJURE:

1. Elements: [28-1224]

It is unlawful for any person to:

- a. Intentionally kill, injure or intimidate any individual
- b. Using explosive material or a destructive device.

2. Classification:

- a. Class IIA Felony;
- b. Class II Felony if personal injury results;
- c. If death results, using explosives to kill or injure any person shall be punished as for murder in the first degree.

IMPROPER OR UNSAFE STORING OR USE OF EXPLOSIVES:

1. Elements: [28-1225]

It is unlawful for any person to:

- a. Store or use any explosive materials in legitimate blasting operations in a manner not in conformity with safety regulations of the Nebraska State Patrol or the U.S. Secretary of the Treasury,
- b. Or to store any explosive materials at a place not designated in a permit to store such explosive materials issued to such person by the Nebraska State Patrol.

2. Classification:

Class III Misdemeanor

THEFT OR LOSS OF EXPLOSIVES, REQUIRED REPORTING:

1. Elements: [28-1226]

- a. It is unlawful for any person who has knowledge of the theft or loss of explosive materials from his or her stock,
- b. To fail to report such theft or loss within twenty-four hours of discovery to the Nebraska State Patrol.

2. Classification:

Class III Misdemeanor

EXPLOSIVE MATERIAL OR DESTRUCTIVE DEVICES FOUND IN A VEHICLE: [28-1228]

Any explosive material or destructive device in a vehicle is deemed to be in the possession of *all* persons occupying such vehicle at the time such explosive material or destructive device is found.

- Unless is found upon the person of one of the occupants;
- This presumption does not apply to the driver of a vehicle for hire, acting in the lawful course of business.
- This presumption does not apply to the occupants of a vehicle being operated in compliance with state and federal permit and safety requirements and if explosive material but no destructive device is found therein.

**CIVIL DISORDER INVOLVING
EXPLOSIVES OR FIREARMS:**

TERMS DEFINED:

- ***Civil Disorder*** shall mean any public disturbance involving acts of violence that causes an immediate danger of or results in damage or injury to persons or property;
- ***Explosive or Incendiary Device*** means any of the following:
 - (1) Dynamite and all other forms of high explosives,
 - (2) Any explosive bomb, grenade, missile, or similar device,
 - (3) Any incendiary bomb or grenade, firebomb, or similar

device, including a molotov cocktail.

- **Firearm** shall mean any weapon that is designed to or may readily be converted to expel any projectile by the action of an explosive or the frame or receiver of any such weapon.

TEACHING OR DEMONSTRATING UNLAWFUL USE OF EXPLOSIVES OR FIREARMS:

1. Elements: [28-1481]

It is unlawful to teach or demonstrate to any other person:

- a. The use, application, or making of any firearm, explosive, or incendiary device capable of causing injury or death to persons,
- b. Knowing or with reason to know, or with the intent that such information or ability will be unlawfully employed for use in or in furtherance of a civil disorder.

2. Classification:

Class IV Felony

TRAINING OR PRACTICING UNLAWFUL USE OF EXPLOSIVES OR FIREARMS:

1. Elements: [28-1481]

It is unlawful for any person to:

- a. Assemble with one or more persons,
- b. For the purpose of training, practicing, or being instructed in the use of any firearm or explosive or incendiary device capable of causing injury or death to persons,
- c. With intent to unlawfully employ such training, practice, or instruction for use in or in furtherance of a civil disorder.

2. Classification:

Class IV Felony

FIREWORKS VIOLATIONS:

FIREWORK DEFINITIONS: [28-1241]

As used in sections [28-1239.01] and [28-1241] to [28-1252], unless the context otherwise requires:

Consumer fireworks means:

Any of the following devices that meet the requirements of federal law and are approved by a nationally recognized testing facility or by the State Fire Marshal:

- Any small firework device designed to produce visible effects by combustion and which is required to comply with the construction, chemical composition, and labeling regulations of federal law;
- Any small device designed to produce audible effects such as a whistling device;
- Any ground device or firecracker containing fifty milligrams or less of explosive composition;

- Any aerial device containing one hundred thirty milligrams or less of explosive composition;
- Class C explosives as classified by the United States Department of Transportation.

Consumer fireworks do not include:

- Rockets that are mounted on a stick or wire and project into the air when ignited, with or without report;
- Wire sparklers;
- Nighttime parachutes;
- Fireworks that are shot into the air and after coming to the ground cause automatic ignition due to sufficient temperature;
- Firecrackers that contain more than fifty milligrams of explosive composition; and
- Fireworks deemed to be unsafe by the State Fire Marshal.

Distributor means any person engaged in the business of making sales of fireworks at wholesale in this state to any person engaged in the business of making sales of fireworks either as a jobber or as a retailer or both;

Fireworks means any composition or device designed for the purpose of producing a visible or audible effect by combustion, deflagration, or detonation and which meets the definition of consumer or special fireworks under federal law;

Jobber means any person engaged in the business of making sales of fireworks at wholesale to any other person engaged in the business of making sales at retail;

Retailer means any person engaged in the business of making sales of fireworks at retail to consumers or to persons other than distributors or jobbers;

Sale includes barter, exchange, or gift or offer therefor and each such transaction made by any person, whether as principal, proprietor, agent, servant, or employee;

NON-CONSUMER FIREWORKS RESTRICTIONS:

1. Elements: [28-1244]

It is unlawful for any person to:

- a. Possess, discharge, sell, offer to sell, or bring into NE,
- b. Any fireworks other than consumer fireworks.

2. Exceptions: [28-1245]

The prohibition of this section does not apply to:

- a. Display fireworks purchased from a licensed distributor OR by the holder of a display permit; or
- b. Fireworks brought into Nebraska for storage by a licensed distributor and held for sale outside of this state; or
- c. Any fireworks furnished for agricultural purposes with written authorization from the State Fire Marshal to any holder of a distributor's license; or
- d. Toy cap pistols or toy caps, each with no more than twenty-five hundredths of a grain of explosive material.

3. Classification:

Class III Misdemeanor

- Any distributor or jobber convicted shall be subject to a one-year revocation of his or her license.
- The fireworks shall be destroyed upon conviction.

*NOTE: Local laws may limit the use or possession of fireworks to certain days/times, etc.

THROWING FIRECRACKERS:

1. Elements: [28-1242]

It is unlawful for any person to throw any firework, or any object that explodes upon contact with another object:

- From or into a motor vehicle; or
- Onto any street, highway, or sidewalk; or
- At or near any person; or
- Into any building; or
- Into or at any group of persons.

2. Classification:

Class III Misdemeanor

FLYING LANTERN-TYPE DEVICES PROHIBITED:

1. Elements: [28-1255]

It is unlawful to:

- Sell, possess, or use,
- A flying lantern-type device in this state.

2. Defined:

A flying lantern-type device requires a flame to produce heated air trapped in a balloon-type covering allowing the device to float in the air.

2. Classification:

Class IV Misdemeanor

*NOTE, A hot air balloon used to transport people is not a flying lantern-type device.

DISPLAY FIREWORKS:

These are manufactured exclusively for use in public exhibitions or displays (exceeding the limits for consumer fireworks).

- Display fireworks are explosives under [28-1213] and are subject to sections [28-1213] to [28-1239], but may be purchased, received, and discharged by the holder of an approved display permit issued by the State Fire Marshall.

OTHER FIREWORK VIOLATIONS:

1. Elements: [28-1248]

It shall be unlawful:

- For any person not licensed as a distributor or as a jobber to bring any fireworks into this state, OR
- For any retailer or jobber to sell any fireworks which have not been purchased from a licensed distributor.

2. Classification:

Class III Misdemeanor

- Any distributor or jobber convicted shall be subject to a one-year revocation of his or her license.
- The fireworks shall be destroyed upon conviction.

*NOTE: A copy of each purchase invoice for fireworks must be available for inspection. Such invoice shall show the license number of the distributor or jobber.

RETAIL FIREWORK SALES:

1. Elements: [28-1249]

The following restrictions apply to retail sales:

- a. Consumer fireworks may not be sold at retail outside the limits of any incorporated city or village;
- b. Consumer fireworks may be sold at retail only between June 24 and July 5, and December 28 and January 1.

2. Classification:

Class III Misdemeanor

- Any distributor or jobber convicted shall be subject to a one-year revocation of his or her license.
- The fireworks shall be destroyed upon conviction.

WARRANTS FOR FIREWORK VIOLATIONS: [28-1250]

A warrant may be issued for the seizure of illegally held fireworks.

- Seized fireworks shall be safely kept by the magistrate to be used as evidence and destroyed after conviction.

MISCELLANEOUS OFFENSES:

DISCOVERY OF HUMAN REMAINS:

1. Elements: [12-1205]

- a. Any person who encounters or discovers human skeletal remains or burial goods associated with an unmarked human burial in or on the ground,
- b. Shall immediately cease any activity that may cause further disturbance of the unmarked human burial.
- c. And report such discovery to local law enforcement within forty-eight hours.

2. Law Enforcement Duty: [12-1206]

Law enforcement shall promptly notify the owner of the land where human skeletal remains or burial goods were discovered, the county attorney, and the Nebraska State Historical Society.

3. Classification:

- It is a Class III Misdemeanor to knowingly fail to report the discovery of human skeletal remains or burial goods to law enforcement.
- Remains or burial goods discovered in conjunction with

highway construction must be reported within 48 hours, and construction must stop until the remains or goods are removed by the appropriate agency.

REMOVING OR CONCEALING DEAD HUMAN REMAINS:

1. Elements: [28-1301]

A person commits the offense of removing, abandoning, or concealing human skeletal remains or burial goods if he/she:

- a. Knowingly digs up, disinters, removes, or carries away any remains or goods from its place of deposit/burial; or
- b. Knowingly throws away or abandons any such remains or goods in any place other than a regular place for burial and under a proper death certificate; or
- c. Receives, conceals, purchases, sells, transports, trades, or disposes of any remains or goods, knowing or with reason to know that they have been dug up, disinterred, or removed from their place of deposit or burial or have not been reported in a proper death certificate; or
- d. Attempts, aids, incites, assists, encourages, or procures any of the same to be done;

2. Exceptions:

This section shall not apply to:

- A body lawfully authorized or directed to be delivered for lawful dissection;
- The lawfully removal of human remains or burial goods within a cemetery or to another cemetery.
- The lawful scholarly excavation by a professional archaeologist of a nonburial site that was unintentionally encountered.
- Any lawful archaeological excavation by the Nebraska State Historical Society.

3. Classification:

Class IV Felony

CONCEALING THE DEATH OF A PERSON:

1. Elements: [28-1302]

It is unlawful for any person to:

- a. Conceal the death of another person,
- b. And thereby prevent a determination of the cause or circumstances of death.

2. Classification:

Class I Misdemeanor

DANGEROUS ARTIFICIAL POND OR STAGNANT WATER:

1. Elements: [28-1303]

It is unlawful for any person to:

- a. Build, erect, continue, or keep up a dam or other obstruction,
- b. In any river or stream of water in Nebraska, to raise an

- artificial pond, or produce stagnant waters,
- c. That is manifestly injurious to the public health and safety.

2. Classification:

Class III Misdemeanor

- The court shall order such nuisance abated or removed.

POLLUTING RUNNING WATER:

1. Elements: [28-1304]

It is unlawful for any person to:

- a. Put a dead animal, carcass or part, or other filthy substance,
- b. Into any well, spring, brook or branch of running water that is for domestic use.

2. Classification:

Class IV Misdemeanor

EXPOSING OFFENSIVE (SLAUGHTERHOUSE) MATTER:

1. Elements: [28-1305]

It is unlawful to:

- a. Put the carcass of any dead animal, the offals from any slaughter house, butcher's establishment, packing house, or fish house, any spoiled meats, spoiled fish, or putrid animal substance, or the contents of any privy vault,
- b. Upon or into any river, bay, creek, pond, canal, road, street, alley, lot, field, meadow, public ground, market space, or common,
- c. Or to permit the same to remain in any of the aforesaid situations, to the annoyance any person,
- d. Or neglect or refuse to remove or abate the nuisance within twenty-four hours after knowledge of such nuisance or after notice in writing from the proper authority in which the nuisance exists.

2. Classification:

Class V Misdemeanor

- If the nuisance is not abated within twenty-four hours thereafter, it shall be deemed a second offense.
- Every neglect of each twenty-four hours thereafter shall be considered an additional offense.

RAILROAD POLLUTION:

1. Elements: [28-1306]

It shall be unlawful for:

- a. Any railroad company operating in this state to bring or cause to be brought into Nebraska from an adjoining state,
- b. Any empty car used for transporting hogs or sheep, or for grain and stock that has any filth of any kind in such car.

2. Classification:

Class V Misdemeanor

A railroad car must be thoroughly cleaned before it is allowed to pass into Nebraska.

SELLING DISEASED MEAT:

1. Elements: [28-1307]

It shall be unlawful for any person to:

- a. Sell or offer for sale the flesh of a diseased animal,
- c. Whether such animal died of disease or was butchered when in a diseased condition.

2. Classification:

Class IV Felony

INTIMIDATION BY TELEPHONE OR ELECTRONIC COMMUNICATION: ***2018 Update***

1. Elements: [28-1310]

It is unlawful for any person to:

- a. Telephone or transmit an electronic communication,
- b. Directly to an individual,
- c. With the intent to intimidate, threaten, or harass such individual,
- d. And do any of the following:
 1. Use obscene language or suggests any obscene act;
 2. Threaten to inflict physical or mental injury to such individual or any other person;
 3. Threaten to inflict physical injury to the property of such individual or any other person; or
 4. Attempt to extort money or other thing of value from such individual or any other person.

2. Proving the Offense:

- The offense is committed, whether or not conversation or an electronic response ensues;
- The offense is committed either at the place where the call or electronic communication was initiated or where it was received;
- Electronic communication means any writing, sound, visual image, or data of any nature that is received or transmitted by an electronic communication device as defined in section [28-833].

3. Classification:

- Class III misdemeanor.

INTERFERING WITH A PUBLIC SERVICE COMPANY:

1. Elements: [28-1311]

It is unlawful to:

- a. Willfully and purposely interrupt or interfere with
- c. The transmission of telegraph or telephone messages or the transmission of light, heat and power in this state.

2. Classification:

Class II Misdemeanor

INTERFERING WITH THE POLICE RADIO SERVICE

1. Elements: [28-1312]

It is unlawful for a person to possess, have in a motor vehicle, or to equip or install in a motor vehicle a police radio set that:

- a. In any way intentionally interferes with transmission or reception of radio messages by any law enforcement agency and hinders any fulfillment of its duties; or
- b. Intercepts such radio signals to evade or assist others in evading arrest; or
- c. Results in the use of such communication for monetary or personal gain.

2. Definition:

Police Radio Set shall mean any radio set or apparatus capable of either receiving or transmitting radio frequency signals within the wavelength or channel which is or may hereafter be allocated by the FCC for the police radio service.

3. Exceptions:

This section does not apply to:

- d. Peace officers and members of a law enforcement agency;
- e. Any person with written permission from the head of a law enforcement agency to possess and use any radio set or apparatus within the agency's assigned wavelength or channel; or
- f. Legal newspapers [25-523], or radio, television or cable antenna television stations licensed pursuant to law, monitoring messages of signals for news purposes only without rebroadcasting or republishing verbatim.

4. Officer Duty to Seize:

It shall be the duty of any and all peace officers to seize and hold for evidence any and all equipment possessed or used in violation of this section.

- Upon conviction the court shall order such equipment destroyed or forfeited to the State of Nebraska.

5. Classification:

Class I Misdemeanor

UNLAWFUL USE OF A WHITE CANE OR GUIDE DOG:

1. Elements: [28-1313]

It is unlawful for a person to:

- a. Carry, display, or otherwise make use of a white cane or guide dog,
- b. If he/she is not blind as defined by law.

2. Classification:

Class III Misdemeanor

*NOTE: Use of a white cane or guide dog is officially recognized as an indication that the bearer is blind.

FAILURE TO OBSERVE A BLIND PERSON:

1. Elements: [28-1314]

It is unlawful for the operator of any vehicle or other conveyance to fail to:

- a. Give special consideration to the bearer of a white cane or user of a guide dog; and
- b. Stop and remain when approaching such bearer until such bearer has safely reached a position well outside the course normally used by the vehicle or other conveyance.

2. Classification:

Class III Misdemeanor

UNLAWFUL USE OF LOCKS AND KEYS:

1. Elements: [28-2316]

It is unlawful to:

- a. Possess, sell, offer to sell, or give any try-out key, manipulation key, wiggle key, or any other device designed to be used in place of the normal change key of any motor vehicle, or
- b. Duplicates a master key for anyone unless written permission has been granted by the person who has legal control of the master key,
- c. Unless one of the exceptions applies.

2. Exceptions:

- Keys or devices sold, given, or possessed by law enforcement, a licensed dealer, vehicle manufacturer, or locksmith;
- For the owner of two or more vehicles to possess a *change key* that can be used on multiple owned vehicles, or for such an owner to change the locks on owned vehicles so that they are keyed alike, or to make or duplicate the original change keys for such an owner.

3. Classification:

Class III Misdemeanor

*NOTE: All *master keys* and all duplications of them shall be stamped with the words "DO NOT DUPLICATE".

- But, it is not illegal to stamp other keys with such words.

INTERFERING WITH HUNTING, TRAPPING, OR FISHING:

1. Elements: [37-564]

It is unlawful to:

- a. Knowingly and intentionally
- b. Interfere, attempt to interfere, or aid/assist in the interference with another person
- c. Who is not trespassing, and
- d. Is *lawfully* hunting, trapping, fishing, or engaged in activity associated with hunting or trapping, or fishing.

2. Classification:

Class III Misdemeanor.

- In addition, any person who damages property with any aircraft, vessel, vehicle, snowmobile, or other conveyance is liable to the property owner.

3. Defenses:

- a. It is an affirmative defense that the alleged offender was not trespassing and was engaged in a lawful activity in conflict with hunting, trapping, or fishing activity.
- b. Interfering does not include releasing a non-fur-bearing animal, except a coyote, from a trap.

SHOOTING WILDLIFE FROM A ROAD OR HIGHWAY:

1. Elements: [37-513]

It is unlawful to:

- c. Shoot at any wildlife,
- d. From any highway or roadway

2. Classification:

Class III Misdemeanor

- The fine shall be at least \$500.

HUNTING THROUGH THE INTERNET:

1. Elements:

It is unlawful for any person to:

- a. Hunt living wildlife in real time,
- b. Using Internet services to remotely control actual firearms and to remotely discharge live ammunition,
- c. Or to host or otherwise enable another person to hunt through the Internet.

2. Classification:

Class II Misdemeanor

- Minimum \$250 for a first offense, minimum \$500 for any subsequent offense.
- An offender will be ordered not to hunt, fish, or trap for not less than one year from the date of sentencing.
- Any firearm, computer, equipment, appliance, or conveyance used in violation of this section is contraband and shall be confiscated and forfeited to the state upon seizure by law enforcement authorities.

*NOTE: A conservation officer may offer to host or enable others to hunt through the Internet for the sole purpose of obtaining evidence of a violation of this section.

MAINTAINING A NUISANCE:

1. Elements: [28-1321]

It is unlawful to:

- a. Erect, continue, use, maintain, or cause,
- b. Any nuisance,

- c. To the injury of any part of the citizens of Nebraska.

2. Specific Illegal Nuisances:

The following shall be deemed nuisances:

- A place of business that is injurious and dangerous to the health, comfort, or property of a person or the public by noxious exhalations, or noisome or offensive smells;
- The unauthorized obstructing or impeding of passage on any navigable river, harbor, or collection of water;
- The corrupting or rendering unwholesome or impure of any watercourse, stream, or water;
- Unlawfully diverting any watercourse from its natural course or state to the injury or prejudice of others;
- The obstructing or encumbering by fences, building, structures or otherwise of any of the public highways or streets or alleys of any city or village.

3. Classification:

Class III Misdemeanor

- The offense is committed in any county whose inhabitants have been injured or aggrieved by the nuisance.
- The court shall order the nuisance abated or removed.

DISTURBING THE PEACE:

1. Elements: [28-1322]

It is unlawful for any person to:

- a. Intentionally,
- b. Disturb the peace and quiet,
- c. Of any person, family, or neighborhood.

2. Classification:

Class III Misdemeanor

DECEPTIVE OR MISLEADING ADVERTISING:

1. Elements: [28-1476]

It is unlawful for any person, firm, corporation, or association,

- a. To make, published, disseminate, circulate, place before the public, or cause the same,
- b. In a newspaper, publication, handbill, poster, bill, circular, pamphlet, or letter, or in any other way,
- c. An advertisement of any merchandise for sale at retail at less than original actual or replacement cost, whichever is lower,
- d. If the merchant does not have a sufficient quantity of merchandise to meet the reasonable expected demand,
- e. Or if the advertisement either:
 - (1) Fails to state the quantity of merchandise available for sale, or
 - (2) Fails to state that the advertiser is discontinuing the item.

2. Classification:

Class III Misdemeanor

IRRIGATION SYSTEMS AND PUBLIC ROADS:

1. Elements: [39-302]

- b. A sprinkler irrigation system that due to location or design,
- c. Diverts, or is capable of diverting, water onto or across a public road so as to saturate, wash, or impair the maintenance, construction, or passability of such public road; or allows water to accumulate on the road,
- c. Shall be equipped with a device which will automatically shut off the endgun of the irrigation system causing such diversion or accumulation of water.

2. Classification:

Class IV Misdemeanor.

- There is no crime if the water obstruction is due to mechanical failure of an otherwise lawful irrigation system, unless it the second such mechanical failure in one calendar year.

OPEN BURNING BAN:

1. Elements: [81-520.01]

There is a statewide open burning ban on all bonfires, outdoor rubbish fires, and fires for the purpose of clearing land.

2. Permits and Waiver:

The fire chief of a local fire department or designee may issue an open burning permit or may waive the ban.

- Permits must be in writing, signed by the fire chief or designee, and on a form prescribed by the State Fire Marshal. The permit fee shall not exceed ten dollars.
- Waiver of the ban may occur when conditions are acceptable to the chief designee.
- Anyone burning in such jurisdiction when the open burning ban has been waived shall notify the fire department of his or her intention to burn.

3. Classification:

Class IV Misdemeanor.

OFFENSES RELATED TO PICKETING:

*NOTE: Officers should contact their county attorney or legal advisor before enforcing sections [28-1317] to [28-1320].

PICKETING SIGNS REQUIRED: [28-1318(4)]

Any person who *legally* picketS by any means or methods other than those forbidden in this section or in section 28-1317 shall visibly display on his or her person a sign showing the name of the protesting organization he or she represents.

The composition of the sign shall be uppercase lettering of not less than two and one-half inches in height.

UNLAWFUL PICKETING:

1. Elements: [28-1317]

A person commits the offense of unlawful picketing if he/she:

- a. Either singly or by conspiring with others,
- b. Interferes, or attempts to interfere with any other person's lawful right to work or right to enter upon or pursue any lawful employment, in any lawful occupation, self-employment, or business carried on in Nebraska,
- c. By engaging in one of the acts prohibited by this section,
- d. For the purpose of :
 - (1) Inducing or influencing,
 - (2) Or attempting to induce or influence,
 - (3) Such person to quit his or her employment, or to refrain from seeking or freely entering into employment.

2. Prohibited Acts:

Unlawful picketing acts are:

- a. Using threatening language toward another or in the presence/hearing of such person or a member of his/her immediate family; or
- b. Following or intercepting such person to or from their work, home, or lodging, or about the city, against the will of such person; or
- c. Menacing, threatening, coercing, intimidating, or frightening in any manner; or
- d. Assaulting such person; or
- e. Picketing or patrolling the place of residence of such person, or any street, alley, road, highway, or any other place, where such person may be, or in the vicinity thereof, against the will of such person.

3. Classification:

Class III Misdemeanor

- Each violation shall constitute a separate offense.

MASS PICKETING:

1. Elements: [28-1318]

A person commits the offense of mass picketing if he/she:

- a. Either singly or in concert with others,
- b. Engages in or aids/abets any form of picketing activity,
- c. That constitutes an obstacle (obstruction by persons, placing of vehicles, or other physical obstructions),
- d. To the free ingress and egress:
 - (1) To and from the premises being picketed, or
 - (2) To any other premises, or
 - (3) Upon the public roads, streets, or highways.

2. Classification:

Class III Misdemeanor

INTERFERING WITH PICKETING:

1. Elements: [28-1319]

It is unlawful for any person:

- a. Acting separately or with others,
- b. Interfere with any picketing, other than mass picketing,
- c. This provision does not apply to police or court action.

2. Classification:

Class III Misdemeanor

INTIMIDATING PICKETING WORKERS:

1. Elements: [28-1320]

It is unlawful for any person to:

- a. Intimidate or attempt to intimidate any striker,
- b. By threatening of loss of any right or condition of employment,
- c. That directly or indirectly would affect the lawful conduct of said stiker in any way.

2. Classification:

Class III Misdemeanor

PICKETING / PROTESTING RESTRICTIONS NEAR A FUNERAL: [28-1320.03]

1. Legislative Findings – A Balance of Rights:

- a. Nebraska law recognizes the right to peacefully organize and attend funerals and privately mourn the death of relatives. Such rights are violated when funerals are targeted for picketing or protest activities.
- b. The law also recognizes the right to free speech, and allows picketers and protestors to communicate their message at a time and place that minimizes interference with the rights of funeral participants.

2. Definition:

The term ***Funeral*** means ceremonies and memorial services held in connection with the burial or cremation of the dead but not processions on public streets or highways.

3. Elements:

It is unlawful for any person:

- b. To engage in protest activities,
- c. Within five hundred feet of a cemetery, mortuary, church, or other place of worship,
- c. From one hour prior to through two hours following the commencement of a funeral.

4. Classification:

Unlawful picketing a funeral is a Class III Misdemeanor

GAMBLING OFFENSES:

PROMOTING GAMBLING FIRST DEGREE:

1. Elements: [28-1102]

It is unlawful to knowingly advance or profit by:

- a. Engaging in bookmaking to the extent that he or she receives or accepts in any one day one or more bets totaling \$1,500 or more; or
- b. Receiving, in connection with any unlawful gambling scheme or enterprise, more than \$1,500 played in the scheme or enterprise in any one day.

2. Classification:

- Class I Misdemeanor,
- Class IV Felony for the second offense,
- Class III Felony for a third or subsequent offense

PROMOTING GAMBLING SECOND DEGREE:

1. Elements: [28-1103]

It is unlawful for any person to advance or profit from any unlawful gambling activity by:

- a. Engaging in bookmaking to the extent that he or she receives or accepts in any one day one or more bets totaling less than \$1,500;
- b. Receiving less than \$1,500 played in a gambling scheme or enterprise in any one day; or
- c. Betting something of value in an amount of \$500 or more with one or more persons in one day.

2. Classification:

Class II Misdemeanor

PROMOTING GAMBLING THIRD DEGREE:

1. Elements: [28-1104]

It is unlawful for any person to:

- a. Knowingly participate in unlawful gambling as a player,
- b. Betting less than \$500 in any one day.

2. Classification:

Class IV Misdemeanor

POSSESSION OF GAMBLING RECORDS:

1. Elements: [28-28-1105]

It is unlawful for any person who is not a player to knowingly possess any writing, paper, instrument, or article which is:

- a. Used in the operation or promotion of a bookmaking scheme, or
- b. Used in the unlawful operation, promotion, or playing of a lottery or mutual scheme or enterprise or other scheme not conducted pursuant Nebraska law.

2. Classification:

Class II Misdemeanor

GAMBLING DEBT COLLECTION:

1. Elements: [28-1105.01]

It is unlawful for any person to:

- a. Employ any force or intimidation or threat of the same,
- b. In order to collect any debt,
- c. That results from gambling.

2. Classification:

Class III Felony

POSSESSION OF A GAMBLING DEVICE:

1. Elements: [28-1107]

It is unlawful for any person to:

- a. Manufacture, sell, transport, place, or possess any gambling device,
- b. Knowing that it shall be used in the advancement of unlawful gambling activity,
- c. Or conduct or negotiates any transaction affecting or designed to affect ownership, custody, or use of the same.

2. Classification:

Class II Misdemeanor

BINGO AND LOTTERY CONTROL ACT: [9-1101]

Violations related to bingo, pickle cards, lottery, raffles, etc should be referred to the Charitable Gaming Division.of the Department of Revenue. Such regulations exist for several purposes:

- To promote the health and welfare of the public;
- To protect the economic welfare and require accurate record keeping so that the revenue-raising potential be fully exposed;
- To ensure that the profits are used for legitimate purposes; and
- To prevent the subversion by improper elements of any profits gained for legitimate purposes.

TAMPERING WITH A PUBLICLY EXHIBITED CONTEST:

1. Elements: [28-614]

It is unlawful to:

- a. Confer, offer or agrees to confer, (directly or indirectly), or solicit, accept, or agree to accept any benefit,
- b. With intent to:
 - (1) Influence a participant to not give his/her best effort, or to be influenced as a participant,
 - (2) Influence a contest official not to properly perform his/her duties, or to be influenced as an official,
- c. Or to tamper with or substitute any contest participant, official, animal, equipment, or other thing involved with intent to influence the outcome.

2. Definition:

A publicly exhibited contest is any publicly viewed professional or amateur sport, athletic game or contest, or race or contest involving machines, persons, or animals, but is not an exhibition that does not purport to be and which is not represented as being such a sport, game, contest, or race.

3. Classification:

Class II Misdemeanor.

SEIZURE AND FORFEITURE:

Property used or intended for use in furtherance of the violation is subject to seizure and civil forfeiture.

- Property related to gambling or gambling debt collection may also be subject to forfeiture as part of the criminal proceeding at sentencing. See [28-1601], [25-21,302].

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ALCOHOL VIOLATIONS:

OFFICER DUTY - ALCOHOL VIOLATIONS: [53-197(1)]

Every sheriff, deputy sheriff, police officer, marshal, or deputy marshal who knows or who is credibly informed that any offense has been committed against any law of this state relating to the sale of alcoholic liquor shall make complaint against the person so offending within their respective jurisdictions to the proper court.

- An officer that neglects or refuses so make such complaint shall be guilty of a Class V Misdemeanor.

OFFICER MUST REPORT SALE VIOLATIONS: [53-197(2)]

An officer who knows or who is credibly informed that any offense has been committed against any law of this state relating to the sale of alcoholic liquor shall report such offense in writing to the Nebraska Liquor Control Commission:

- a. Within thirty days after such offense is committed,
- b. Within thirty days after being informed of such offense,
- c. Within thirty days after the conclusion of an ongoing police investigation, or
- d. Within thirty days after the verdict in a prosecution related to such an ongoing police investigation if the prosecuting attorney determines that reporting such violation prior to the verdict would jeopardize such prosecution, whichever is later.

PROOF OF AGE: [53-180.06]

To establish proof of age to buy or consume alcohol, a person shall present or display one of the following:

- a. A valid driver or operator's license,
- b. Nebraska State ID card,
- c. Military ID card,
- d. Alien registration card,
- e. Passport.

CREATING OR ALTERING IDENTIFICATION FOR A MINOR:

1. Elements: [53.180.05(2)]

It is unlawful for any person to:

- a. Knowingly manufacture, create, or alter,
- b. Any form of identification,
- c. For the purpose of sale or delivery of such form of identification,
- d. To a person under the age of twenty-one years of age.

2. Parent Notification:

When the minor is arrested by a peace officer under this section, that peace officers agency shall make reasonable attempt to notify such minors parent or guardian.

3. Classification:

Class I Misdemeanor

MINOR MISREPRESENTING AGE:

1. Elements: [53-180.01]

It is unlawful for a minor:

- a. To obtain or attempt to obtain,
- b. Alcoholic liquor,
- c. By misrepresentation of age or any other method,
- d. In any tavern or other place where alcohol is sold.

2. Parent Notification:

When the minor is arrested by a peace officer, that peace officers agency shall make reasonable attempt to notify such minors parent or guardian.

3. Classification:

Class III Misdemeanor

PROCURING ALCOHOLIC LIQUOR TO MINORS OR INCOMPETENTS:

1. Elements: [53-180]

It is unlawful for any person to:

- a. Sell, furnish, give away, exchange or deliver,
- b. Or permit the sale, gift, or procuring of,
- c. Any alcoholic liquors,
- d. To or for any minor under 21 years of age, or
- e. To or for any person who is mentally incompetent.

2. Defenses: [53-180.07]

Proof of either of the following shall be an absolute defense to the charge of selling alcohol to a minor:

- (1) The purchaser falsely represented his/her age in writing, with supporting documentary proof, and:
 - a. An ordinary and prudent person would believe that the appearance of the purchaser conformed to the false proof shown by the purchaser, and
 - b. The seller was acting in good faith and in the belief the purchaser was of legal age to purchase alcohol; or

- (2) The seller was acting with knowledge of and in cooperation with an authorized law enforcement officer.
- 3. Parent Notification:**
When the minor is arrested by a peace officer under this section, the officer's agency shall make reasonable attempt to notify such minors parent or guardian.
- 4. Classification:** [53-180.05]
- Class I Misdemeanor
 - Class IIIA Felony with a mandatory minimum of at least thirty days' imprisonment if serious bodily injury or death to any person resulted and was proximately caused by a minor's (a) consumption of the alcoholic liquor provided or (b) impaired condition which, in whole or in part, can be attributed to the alcoholic liquor provided.

MINOR IN POSSESSION OF ALCOHOL:

- 1. Elements:** [53-180.02]
It is unlawful for any minor under twenty-one years of age to:
- a. Sell, dispense, consume, or have in his/her possession or physical control,
 - b. Any alcoholic liquor,
 - c. In any place.
- 2. Immunity from Prosecution:** [53-181(3)] **2018 Update**
An person is immune from prosecution for MIP if he/she:
- (1) Made a good faith request for emergency medical assistance in response to the possible alcohol overdose of themselves or another person as soon as the emergency situation was apparent,
 - (2) Made the request for medical assistance as soon as the emergency situation was apparent, and
 - (3) When emergency medical assistance was requested for the possible alcohol overdose of another person, he/she:
 - (a) Remained on the scene until the medical assistance arrived; and
 - (b) Cooperated with medical assistance and law enforcement personnel.
 - (4) Immunity does not apply to the minor who experienced the alcohol overdose if someone else called to report it.
- 3. Exceptions:**
- A minor may consume, possess, or have physical control of alcoholic liquor as a part of a *bona fide* religious rite/ritual/ceremony or in his/her permanent place of residence [53-180.02];
 - Persons who are sixteen years old or older may legally carry alcoholic liquor from licensed establishments when accompanied by a person who is not a minor [53-168.06];
 - Persons who are sixteen years old or older may legally handle (but not sell or serve) alcoholic liquor containers

- and alcoholic liquor in the course of their employment [53-168.06];
 - Persons who are nineteen years old or older may legally serve or sell alcoholic liquor in the course of their employment [53-168.06].
4. **Local Authority:**
Counties, cities, and villages may pass local laws regarding transportation, consumption, or knowing possession or control of alcoholic liquor in a motor vehicle, by any person under twenty-one years of age.
5. **Parent Notification:**
When the minor is arrested by a peace officer, that peace officers agency shall make reasonable attempt to notify such minors parent or guardian.
6. **Classification:** [53-180.05]
- a. **General Penalty for an offender older than 18:**
Class III Misdemeanor
 - b. **Special Penalties for an offender age 18 or younger:**
The penalty for MIP by a person eighteen years of age or younger shall be as follows:
Class III Misdemeanor, and:
 - For the first offense the court may impound any motor vehicle operator's license or permit (or prohibit the offender from getting a license or permit) for thirty days and require such person to attend alcohol education;
 - For a second offense the court may impound any motor vehicle operator's license or permit (or prohibit the offender from getting a license or permit) for ninety days, and require such person to complete twenty to forty hours of community service and to attend an alcohol education class;
 - For a third or subsequent offense the court may impound any motor vehicle operator's license or permit (or prohibit the offender from getting a license or permit) for twelve months and require such person to complete at least sixty hours of community service, to attend an alcohol education class, and to submit to an alcohol assessment.

POWDERED ALCOHOL [53-173]

1. Elements: [28-303]

It is unlawful for any person to:

- a. Purchase,
- b. Use,
- c. Sell, offer to sell, or possess with intent to sell,
- d. Powdered alcohol.

2. Defined:

Powdered alcohol means alcohol prepared in a powdered form for either direct use or consumption after the powder is combined with a liquid.

3. Exceptions:

Research at a hospital, state institution, private college or university, pharmaceutical company or biotechnology company

4. Classification:

- a. *Selling* a powdered alcohol product is a Class I Misdemeanor.
- b. *Possessing* powdered alcohol knowingly or intentionally:
 - Infraction for the first offense (citation) with a fine of three hundred dollars;
 - Class IV misdemeanor (citation) for a second offense, with a fine of four hundred dollars and may be imprisoned not to exceed five days.
 - Class IIIA misdemeanor for a third and all subsequent offenses (citation) with a fine of five hundred dollars, and be imprisoned not to exceed seven days.
 - An offender holding a liquor license shall be subject to having the license suspended, canceled, or revoked.

PURCHASE AND IDENTIFICATION OF KEGS:

1. Elements: [53-167.02]

A licensee that sells a container of alcohol with 5 or more gallons or 18 and 92/100 or more liters shall:

- a. Record the date of sale, the keg ID number,
- b. Record the purchaser's name, address, the number of the purchaser's driver's license, state ID. card, or military ID card (if a picture ID), with the purchaser's signature.
- d. Affix an approved label with an ID number registered with the Liquor Control Commission.
- e. Keep the records for at least 6 months,

2. Classification:

Class III misdemeanor

TAMPERING, ALTERING, OR REMOVING KEG I.D. NUMBER:

1. Elements: [53-167.03]

- a. No person shall tamper, alter or remove a Keg ID number,
- b. OR Have possession of an alcohol container with an altered or removed Keg identification number,
- c. After such container has been sold at retail and taken from the licensed premises.

2. Classification:

Class III Misdemeanor

CONSUMPTION OF ALCOHOL ON PUBLIC PROPERTY:

1. Elements: [53-186]

It shall be unlawful for any person:

- a. To consume alcoholic liquor,
- b. Upon property owned or controlled by the state or any governmental subdivision,
- c. Unless authorized by the governing authority.

2. Classification:

- Class IV Misdemeanor,
- Class II Misdemeanor for a 2nd or Subsequent offense.

**CONSUMPTION OF ALCOHOL IN A MOTOR VEHICLE
OR ON A PUBLIC PARKING AREA:**

1. Elements: [60-6,211.08]

Unless authorized by a liquor license, it is unlawful to:

- a. Consume an alcoholic beverage,
- b. In a public parking area,
- c. Or on any highway,
- d. Or inside a motor vehicle while in a public parking area or on any highway.

OPEN ALCOHOL CONTAINERS IN VEHICLES:

1. Elements: [60-6,211.08]

It is unlawful for any person to:

- a. Possess an open alcoholic beverage container,
- b. Or consume an alcoholic beverage,
- c. In the passenger area of a motor vehicle,
- d. While the motor vehicle is located in a public parking area or on any highway.

2. Exceptions for Limousines and Charter Buses:

This section does not apply to passengers of a limousine or bus being used in a charter or special party service as defined by the Public Service Commission.

- The driver of the limousine or bus is prohibited from consuming alcoholic liquor;
- Alcoholic liquor may not be present in any area readily accessible to the driver while in the driver's seat, including any compartments.

3. Definitions:

Alcoholic beverage means:

- Beer, ale porter, stout, and other similar fermented beverages, including sake or similar products, of any name or description containing one-half of one percent or more of alcohol by volume, brewed or produced from malt, wholly or in part, or from any substitute therefor,
- Wine of not less than one-half of one percent of alcohol by volume, or Distilled spirits, which is that substance known as ethyl alcohol, ethanol, or spirits of wine in any form, including all dilutions and mixtures thereof from

whatever source or by whatever process, produced.

- Alcoholic beverage does not include trace amounts not readily consumable as a beverage.

Highway means a road or street including the entire area within the right-of-way;

Limousine means a luxury vehicle used for prearranged passenger transportation on a dedicated basis at a premium fare with seating capacity between five and fourteen persons behind the driver with a physical partition separating the driver seat from the passenger compartment. Limousine does not include taxicabs, hotel or airport buses or shuttles, or buses.

Open alcoholic beverage container means any bottle, can, or other receptacle that contains any amount of alcoholic beverage and that is open or has a broken seal or the contents of which are partially removed.

Passenger area means the area designed to seat the driver and passengers while the motor vehicle is in operation and any area that is readily accessible to the driver or a passenger while in their seating positions, including any compartments in such area. Passenger area does not include the area behind the last upright seat of such motor vehicle if the area is not normally occupied by the driver or a passenger and the motor vehicle is not equipped with a trunk.

PEDAL-PUB VEHICLES: [53-103.10], [53-138]

a. Defined:

A Pedal-pub vehicle is a multi-passenger, human-powered vehicle.

b. Operation Restrictions:

- Operation requires the vendor to have a license from the NE Liquor Control Commission,
- Only one license is required by a single vendor for multiple vehicles and such license is good throughout the state.
- Each owner shall keep a duplicate of such license posted in each pedal-pub vehicle where alcoholic liquor is sold or consumed.

c. Alcohol Restrictions:

- A pedal-pub licensee may sell alcohol in individual drinks to customers on or in the pedal-pub vehicle.
- Alcohol must be served in opaque plastic containers that prominently display the licensee's trade name or logo or unique mark under the pedal-pub vehicle license.
- Riders may consume alcoholic while on or in the pedal-pub vehicle, but only from the required opaque containers, whether purchased from the licensee or not.
- Alcohol purchased from the licensee may not be taken from the pedal-pub vehicle or be consumed after leaving.

- Riders may take *unopened* containers of alcoholic liquor not purchased from the licensee from the pedal-pub vehicle, but open containers of alcohol may not leave the pedal-pub vehicle.
 - The licensee shall be responsible for picking up and disposing of any litter or other waste or any personal property that originates from the pedal-pub vehicle and lands on public or private property.
- d. **Classification:** [53-1,100], [53-1,101], [53-1,102]
- Class IV Misdemeanor for a first offense.
 - Class II Misdemeanor for a second or subsequent offense.
 - A licensee, employer, owner, or agent who permits, assents, or is a party to a violation may be prosecuted if such person has knowledge of the violation, which could be an act or omission of an employee.

CONSUMPTION OF LIQUOR ON PRIVATE PROPERTY OPEN TO THE PUBLIC; LICENSE REQUIRED:

1. Elements: [53-186.01]

It shall be unlawful for any person:

- a. To consume or allow the consumption of alcoholic liquor in any dance hall, restaurant, cafe, or club,
- b. Or any place open to the general public,
- c. Except as permitted by a license.

2. Exception:

This section shall not apply to a retail licensee while lawfully engaged in the catering of alcoholic beverages.

3. Classification:

- Class III Misdemeanor to consume alcohol in violation,
- Class IV Misdemeanor to allow the illegal consumption,
- Class II Misdemeanor to allow the illegal, unlicensed consumption for a second or subsequent offense.

*NOTE: Failure to produce a liquor license by a person who owns, operates, manages, or conducts a business or any place open to the public produce shall constitute prima facie proof that a license has not been issued.

REMOVAL OF INTOXICATED PERSONS; CIVIL PROTECTIVE CUSTODY: [53-1121]

- An officer may take a person who is intoxicated and in the judgment of the officer dangerous to himself, herself, or others, or who is otherwise incapacitated, from any public or quasi-public property.
- Taking someone into civil protective custody is not an arrest.
- An officer who acts in compliance with this section shall be deemed to be acting in the course of official duties and shall not be criminally or civilly liable for such actions.
- The officer shall make a reasonable effort to take such

intoxicated person home or to place such person in any hospital, clinic, alcoholism center, or with a medical doctor as may be necessary to preserve life or to prevent injury.

- Such effort at placement shall be deemed reasonable if the officer contacts those facilities or doctors that have previously represented a willingness to accept and treat such individuals and which regularly do accept such individuals.
- If such efforts are unsuccessful or are not feasible, the officer may then place such intoxicated person in civil protective custody, if necessary to preserve life or to prevent injury, and under no circumstances for longer than twenty-four hours.
- The placement of such person in civil protective custody shall be recorded at the facility or jail to which he or she is delivered and communicated to his or her family or next of kin, if they can be located, or to such person designated by the person taken into civil protective custody.

OFFENSES AGAINST ANIMALS

[28-1004 to 28-1017] & [54-901 to 54-912]

DEFINITIONS:

- ***Animal*** means any vertebrate member of the animal kingdom except man. It does not include an uncaptured wild creature;
- ***Animal welfare practice*** means veterinarian practices and animal husbandry practices common to the livestock animal industry, including transport of livestock animals;
- ***ianBear Baiting*** mean pitting of any animal against a bear;
- ***Bovine*** means a cow, an ox, or a bison;
- ***Cockfighting*** means pitting of a fowl against another;
- ***Dogfighting*** means pitting of a dog against another dog;
- ***Equine*** means a horse, pony, donkey, mule, hinny, or llama;
- ***Humane killing*** means destruction of an animal by a method that causes the animal a minimum of pain and suffering;
- ***Law enforcement officer*** means any member of the Nebraska State Patrol, any county or deputy sheriff, any police force of any city or village, or any other public official authorized by a city or village to enforce state or local laws, rules, regulations, or ordinances. It also includes any inspector under the Commercial Dog and Cat Operator Inspection Act acting under the authority of a law enforcement officer under section [28-1012] while performing inspection activities;
- ***Mutilation*** means intentionally causing permanent injury, disfigurement, degradation of function, incapacitation, or imperfection to an animal. Mutilation does not include conduct performed by a veterinarian licensed to practice veterinary medicine and surgery in this state or conduct that conforms to accepted veterinary practices;

- **Owner or custodian** means a person owning, keeping, possessing, harboring, or knowingly permitting an animal to remain on/about premises owned or occupied by such person;
- **Pitting** means bringing animals together in combat;
- **Serious Injury or Illness** includes any injury or illness to any animal or livestock animal which creates a substantial risk of death or which causes prolonged impairment of health or prolonged loss or impairment of any bodily organ;
- **Repeated Beating** means intentional successive strikes to an animal by a person resulting in serious bodily injury or death;
- **Serious Injury Or Illness** includes any injury or illness to any animal or livestock which creates a substantial risk of death or causes broken bones, prolonged impairment of health, or prolonged loss or impairment of the any bodily organ;
- **Torture** means intentionally subjecting an animal to extreme pain, suffering, or agony. Torture does not include conduct performed by a licensed veterinarian or conduct that conforms to accepted veterinary practices.

ENFORCEMENT, WARRANT, AND SEIZURE: [28-1012]

a. Warrants

An officer who believes an animal has been abandoned, cruelly neglected, or cruelly mistreated may seek a warrant to inspect, care for, or impound the animal.

b. Citation

An officer who believes an animal has been abandoned, cruelly neglected, or cruelly mistreated may issue a citation to the owner or custodian under [29-422] to [29-429].

c. Seizure

- Any equipment, device, or other property or things involved in a violation of section 28-1009 or 28-1010 shall be subject to seizure. Distribution or disposition is to be made as the court may direct.
- Any animal involved in a violation of section 28-1009 or 28-1010 (abandonment, cruel neglect, indecency) is subject to seizure. Distribution or disposition shall be made under section [28-1012.01] as the court may direct.
- Any law enforcement officer acting under this section shall not be liable for damage to property if such damage is not the result of the officer's negligence.

d. Disposition of Seized Animals: [28-1012.01]

1. Any seized animal may be kept on the property of the owner or custodian by the law enforcement officer seizing the animal.
2. When a criminal complaint has been filed in connection with a seized animal, the court in which such complaint was filed shall have exclusive jurisdiction for disposition of the animal.

3. Within seven days after the date an animal has been seized, the county attorney shall file an application with the court for a hearing to determine the disposition and the cost for the care of the animal.
4. Notice of such hearing shall be served on the owner or custodian from whom such animal was seized and to any holder of a lien or security interest of record in such animal.
5. The hearing shall be held as soon as practicable and not more than ten business days after the date of application for the hearing unless otherwise ordered by the court.
6. If the court finds that probable cause exists that an animal has been abandoned or cruelly neglected or mistreated, the court may:
 - (i) Order immediate forfeiture of the animal to the agency that took custody of the animal and authorize appropriate disposition of the animal including adoption, donation to a suitable shelter, humane destruction, or any other manner of disposition approved by the court.
 - The court may consider adoption alternatives through licensed humane societies or comparable institutions and the protection of such animal's welfare.
 - The court may prohibit an adopting or purchasing party from selling such animal for a period not to exceed one year;
 - (ii) Issue an order to the owner or custodian setting forth the conditions under which custody of the animal shall be returned to the owner or custodian from whom the animal was seized or to any other person claiming an interest in the animal.
 - Such order may include any management actions deemed necessary and prudent by the court, including reducing the number of animals harbored or owned by the owner or custodian by humane destruction or forfeiture and securing necessary care, including veterinary care, sufficient for the maintenance of any remaining animals; or
 - (iii) Order the owner or custodian from whom the animal was seized to post a bond or other security or to otherwise order payment in an amount that is sufficient to reimburse all reasonable expenses, as determined by the court, for the care of the animal including veterinary care incurred by the agency from the date of seizure and necessitated by the possession of the animal.

- Payments shall be for a succeeding thirty-day period with the first payment due on or before the tenth day following the hearing.
 - The county attorney may apply for a subsequent hearing at any time.
 - When all expenses covered by the bond or security are exhausted or if a person becomes delinquent in his or her payment, the animal shall be forfeited to the agency.
7. Nothing in this section shall prevent the humane destruction of a seized animal at any time as determined necessary by a licensed veterinarian or as authorized by court order.
 8. If the owner or custodian is found not guilty in an associated criminal proceeding, all funds paid for the expenses of the animal remaining after the actual expenses incurred by the agency have been paid shall be returned to the owner or custodian.
 9. Local rules may apply to the disposition of seized animals in a Metropolitan or Primary Class city.

PENALTIES APPLY TO PARENTS OF A MINOR: [28-1015]

A parent or legal guardian with whom a minor child resides is subject to the penalties under [28-1008] to [28-1017], [28-1019], and [28-1020] if an animal owned by such child is abandoned or cruelly neglected.

VIOLENCE TO A SERVICE DOG:

1. Elements: [28-1009.01]

It shall be unlawful to Intentionally:

- a. Injure or harass a dog or threaten or attempt the same,
- b. Knowing or with reason to believe the dog is:
 - (1) A dog guide for a blind or visually impaired person,
 - (2) A hearing aid dog for a deaf or hearing impaired, or
 - (3) A service dog for a physically limited person.

2. Classification:

Class III Misdemeanor

INTERFERENCE WITH A SERVICE DOG

1. Elements: [28-1009.01]

It shall be unlawful to:

- a. Intentionally impede or interfere with a dog, or threaten or attempt the same,
- b. Knowing or with reason to believe it is a dog guide for a blind or visually impaired person, a hearing aid dog, or a service dog for a physically limited person.

2. Classification:

Class III Misdemeanor

ANIMAL FIGHTING PROHIBITED

1. Elements: [28-1004 to 28-1006]

No person shall *knowingly*:

- a. Promote, engage in, or be employed at, or
- b. Knowingly and willingly be present at and witness as a spectator,
- c. To dogfighting, cock-fighting, bear baiting, or pitting an animal against another, or
- d. Receive money for the admission of another person to a place kept for such purpose, or
- e. Own, use, train, sell, or possess an animal for such purpose, or
- f. Permit any act as described to occur on any premises owned or controlled by him or her.

2. Enforcement & Seizure:

- a. It shall be the duty of the sheriff, a police officer, or the Nebraska State Patrol to make prompt investigation of and arrest for any violation.
- b. Any animal, equipment, device, property or things involved in any violation of this act is subject to seizure,

3. Exceptions:

This act does not change the authority of the Game and Parks Commission, nor does it prohibit the training of dogs for any purpose not prohibited by law.

4. Classification and Enforcement:

Class IV Felony

- The animal is subject to seizure by law enforcement, and disposition shall be made by a court under [29-818].
- A felony offender may be ordered not to own, possess, or reside with any animal five to fifteen years. Violation of that court order is a Class I Misdemeanor.

ANIMAL FIGHTING PARAPHERNALIA; OWNERSHIP OR POSSESSION OF:

1. Elements: [28-1005.01]

No person shall knowingly or intentionally

- a. Own or possess animal fighting paraphernalia
- b. With the intent to commit a violation of animal fighting under section [28-1005].

2. Definitions:

- a. Animal fighting paraphernalia means equipment, products, and materials of any kind that are used, intended for use, or designed for use in the training, preparation, conditioning, or furtherance of the pitting of an animal against another as defined in section [28-1004].
- b. Animal fighting paraphernalia includes, but is not limited to, the following:
 - A *breaking stick*, which is a device designed for insertion behind the molars of a dog for the purpose of breaking the dog's grip on an animal or object,

A cat mill, which means a device that rotates around a central support with one arm designed to secure a dog and one arm designed to secure a cat, rabbit, or other small animal beyond the grasp of the dog;

- *A treadmill*, which means an exercise device consisting of an endless belt on which the animal walks or runs without changing place;
- *A fighting pit*, which means a walled area designed to contain an animal fight;
- *A springpole*, which means a biting surface attached to a stretchable device, suspended at a height sufficient to prevent a dog from reaching the biting surface while touching the ground;
- *A heel*, which means any edged or pointed instrument designed to be attached to the leg of a fowl;
- *A boxing glove or muff*, which means a fitted protective covering for the spurs of a fowl; and
- Any other instrument commonly used in the furtherance of pitting an animal against another.

3. Exceptions:

Animal fighting paraphernalia does not include equipment, products, or materials of any kind used by a veterinarian licensed to practice veterinary medicine and surgery in Nebraska.

4. Classification

Class I misdemeanor.

ABANDONMENT OF AN ANIMAL:

1. Elements: [28-1008], [28-1009]

It is unlawful for any person whether as owner or custodian:

- a. To intentionally, knowingly, or recklessly,
- b. Leave any animal that is in one's care,
- c. For any length of time,
- c. Without making effective provision for food, water, or other care as is reasonably necessary for the animal's health.

2. Classification:

- Class I Misdemeanor
- Class IV Felony if the animal was abandoned intentionally, knowingly, or recklessly so as to cause *serious injury or illness or death* of the animal.
- The animal shall be subject to seizure by law enforcement.
- The court shall order a felony offender not to own, possess, or reside with any animal for five to fifteen years.
- The court may order a misdemeanor offender not to own, possess, or reside with any animal for up to five years.

CRUEL NEGLECT:

1. Elements: [28-1009]

It is unlawful for any person to:

- a. Fail to provide any animal that is in one's care, whether as owner or custodian,
- b. With food, water, or other care as is reasonably necessary for the animal's health.

2. Classification:

- Class I Misdemeanor;
- Class IV Felony if cruelly neglect is done intentionally, knowingly, or recklessly so as to cause *serious injury or illness or death* of the animal;
- The animal shall be subject to seizure by law enforcement.
- The court shall order a felony offender not to own, possess, or reside with any animal for five to fifteen years.
- The court may order a misdemeanor offender not to own, possess, or reside with any animal for up to five years.

CRUEL MISTREATMENT:

1. Elements: [28-1009]

It is unlawful for any person to:

- a. Knowingly and intentionally,
- b. Kill, maim, disfigure, torture, beat, mutilate, burn, scald, or otherwise set upon any animal.

2. Classification:

- Class I Misdemeanor for a first offense;
- Class IIIA Felony for a second or subsequent offense;
- Class IIIA Felony if cruel mistreatment involved the knowing and intentional torture, repeated beating, or mutilation of the animal;
- The animal shall be subject to seizure by law enforcement,.
- The court shall order a felony offender not to own, possess, or reside with any animal for five to fifteen years.
- The court may order a misdemeanor offender not to own, possess, or reside with any animal for up to five years.

INDECENCY WITH AN ANIMAL:

1. Elements: [28-1010]

It is unlawful for any person:

- a. To subject an animal,
- b. To sexual penetration.

2. Definition:

Sexual penetration means:

- Sexual intercourse in its ordinary meaning, Cunnilingus, fellatio, anal intercourse, OR
- Any intrusion, however slight, of any part of the actor's

or animal's body or any object manipulated by the actor into the genital or anal openings of the animal's body which can be reasonably construed as being for nonmedical or non-health purposes.

- Sexual penetration does not require emission of semen.

3. Classification:

Class III Misdemeanor

- The offender may be ordered not to own, possess, or reside with any animal for five to fifteen years.

SALE OF A PUPPY/KITTEN UNDER EIGHT WEEKS OLD:

1. Elements: [28-1018]

It is unlawful for any person to:

- a. Sell a puppy or kitten under eight weeks of age,
- b. Without its mother,
- c. Other than an animal control facility, animal rescue, or animal shelter.

2. Classification:

Class V Misdemeanor

DOGS COLLAR REQUIRED: [54-605]

The owner of any dog shall securely place upon the neck of such dog a good and sufficient collar with a metallic plate inscribed with the name of such owner.

DOGS AT LARGE WITHOUT A COLLAR: [54-607]

The owner of any dog:

- a. Running at large for ten days without a collar,
- b. Shall be fined up to twenty-five dollars.

DOGS RUNNING AT LARGE: [54-608]

1. Elements:

In counties having a population of eighty thousand or more inhabitants and cities of the first class contained in such counties it is unlawful for any person or entity to:

- a. To have any dog that is owned, kept, harbored or habitually allowed on that person or entity's property,
- b. To be at large.

2. Classification

Class 4 Misdemeanor.

*NOTE: A city of the first class has at least 100,000 people. Also note that counties and local jurisdictions are empowered and likely to have local restrictions on dogs running at large.

VIOLATION OF A COURT ORDER NOT TO OWN, POSSESS, OR RESIDE WITH ANY ANIMAL

1. Elements: [28-1019]

- a. It is unlawful for any person subject to a court order not to own, possess, or reside with an animal,

- b. To violate such court order.

2. Classification:

- Class I Misdemeanor if defendant was convicted for felony animal fighting, abandonment, or cruel neglect and ordered not to own, possess, or reside with any animal for between five and fifteen years.
 - Class IV Misdemeanor if conviction was for misdemeanor animal fighting paraphernalia, cruel mistreatment, or indecency with an animal and defendant was ordered not to own, possess, or reside with any animal for up to five years.
3. Any animal involved in a violation of a court order is subject to seizure by law enforcement.
4. This section doesn't apply to a person with written confirmation from a licensed physician that owning, possessing, or residing with an animal is essential to the health of such person.

THE LIVESTOCK ANIMAL WELFARE ACT

[54-901] to [54-912]

The Livestock Animal Welfare Act creates rules, definitions, exceptions, and violations for livestock animals. Many of the definitions for general animal offenses apply, but differences are noted throughout this section, where applicable.

- ***Livestock Animal*** means any bovine, equine, swine, sheep, goats, domesticated cervine animals, ratite birds, or poultry.

APPLICABILITY: [54-907]

The Livestock Animal Welfare Act shall not apply to:

- a. Care or treatment of a livestock animal or other conduct by a veterinarian or veterinary technician that conforms to commonly accepted veterinary practices;
- b. Euthanasia of a livestock animal conducted by the owner or his/her agent or veterinarian at the owner's request;
- c. Research activity carried on by any research facility currently meeting the standards of the federal Animal Welfare Act, 7 U.S.C. 2131 et seq., as such act existed on January 1, 2010;
- d. Commonly accepted animal welfare practices with respect to livestock animals and commercial livestock operations, including their transport from one location to another and non-negligent actions taken by personnel or agents of the Department of Agriculture or the United States Department of Agriculture in the performance of duties prescribed by law;
- e. Commonly followed practices occurring in conjunction with the slaughter of animals for food or byproducts;
- f. Commonly accepted animal training practices; and
- g. Commonly accepted practices occurring in conjunction with sanctioned rodeos, animal racing, and pulling contests.

DUTY TO REPORT LIVESTOCK ABUSE: [54-908, 54-910]

Any employee of a governmental agency dealing with livestock animal control or and any licensed veterinarian or veterinary technician whose practice involves care of livestock animals:

- a. Shall make a report to the appropriate agency,
- b. When such person reasonably suspects a livestock animal has been abandoned, cruelly neglected, or cruelly mistreated.
- c. Reporting party has liability immunity, except false statements,
- d. Failure to report may be an infraction [54-908].

ENFORCEMENT AND SEIZURE: [54-906]

An officer who has reason to believe that a livestock animal has been abandoned, cruelly neglected or cruelly mistreated may:

- a. Seek a warrant authorizing entry upon private property to inspect, care for, or impound the livestock animal, and
- b. Issue a citation to the owner.
- c. Any equipment, device, or other property or things involved in a violation of section [54-903] or [54-904] shall be subject to seizure, and distribution or disposition may be made in such manner as the court may direct,
- d. An officer acting under this section shall not be liable for damage to property not the result of the officer's negligence.
- e. Any livestock animal involved in a violation of a court order not to own or possess livestock shall be subject to seizure by law enforcement [54-909].
- f. Any livestock animal involved in a violation of section [54-903] or [54-904] shall be subject to seizure. Distribution or disposition shall be made under section [54-913] as the court may direct. Any livestock animal seized under this subsection may be kept by the law enforcement officer on the property of the owner or custodian of such livestock animal.
- g. In lieu of seizure, an officer may specify a signed custody agreement by which the owner or custodian may maintain custody of the livestock animal to provide care at their expense. A violation of the agreement may result in seizure of the animal.

*NOTE: Metropolitan and Primary Class cities may pass different seizure rules by local ordinance.

EUTHANIZING A LIVESTOCK ANIMAL [54-906(5)]:

An officer may euthanize or cause the euthanasia of a livestock animal seized or kept under [54-906] if it is severely emaciated, injured, disabled, or diseased past recovery for any useful purpose:

- a. Euthanasia means the destruction of a livestock animal by commonly accepted veterinary practices.
- b. The officer shall notify the owner or custodian prior to the euthanasia if practicable under the circumstances.

- c. An owner or custodian may request that a veterinarian of their choosing view the livestock animal and be present upon examination of the animal.
- d. No livestock animal shall be euthanized without reasonable accommodation to provide for the presence of the owner's or custodian's veterinarian when requested.
- e. However, attempted notifications shall not unduly delay euthanasia when necessary.
- f. The law enforcement officer may forgo euthanasia if the care of the livestock animal is placed with the owner's or custodian's veterinarian.

ABANDONMENT OF LIVESTOCK:

1. Elements: [54-903]

It is unlawful for any person:

- a. To leave any livestock animal that is in one's care, whether as owner *or custodian*,
- b. For any length of time,
- c. Without making effective provision for feed, water, or other care reasonably necessary for the animal's health.

2. Definition:

Owner or custodian means any person owning, keeping, possessing, harboring, or knowingly permitting an animal to remain on or about premises owned or occupied by such person..

3. Classification:

- Class I misdemeanor
- A misdemeanor offender may be ordered by the court such not to own or possess any livestock animal for up to five years after the date of conviction. Violation of that order is a Class IV Misdemeanor.
- Class IV Felony if the abandonment or cruel neglect results in serious injury or illness or death of the livestock animal.
- A felony offender shall be ordered by the court not to own or possess any livestock animal for five to fifteen years. Violation of that order is a Class I Misdemeanor [54-909].
- Violator is liable for expenses for care, impoundment, or disposal of the animal, and the court may order violator to reimburse such expenses [54-904].

CRUEL MISTREATMENT OF LIVESTOCK:

1. Elements: [54-902], [54-903]

It is unlawful for any person to:

- a. Knowingly and intentionally,
- b. Kill or cause physical harm,
- c. To a livestock animal,
- d. In a manner not consistent with animal welfare practices.

2. Classification:

Class I misdemeanor for the first offense

- A misdemeanor offender may be ordered by the court such not to own or possess any livestock animal for up to five years after the date of conviction. Violation of that order is a Class IV Misdemeanor.

Class IV Felony for any subsequent offense

- Felony offender shall be ordered by the court not to own or possess any livestock animal for five to fifteen years.
- Violator is liable for expenses for care, impoundment, or disposal of the animal, and the court may order violator to reimburse such expenses [54-904)].

CRUEL NEGLECT OF A LIVESTOCK ANIMAL:

1. Elements: [54-902], [54-903]

It is unlawful for any person to:

- a. Knowingly and intentionally,
- b. Kill or cause physical harm,
- c. To a livestock animal,
- d. In a manner not consistent with animal welfare practices.

2. Classification:

- a. Class I Misdemeanor
 - The court may order the defendant not to own or possess any livestock animal for up to five years.
- b. Class IV Felony
 - If the cruel neglect results in serious injury or illness or death of the livestock animal.
 - A felony offender shall be ordered by the court not to own/possess any livestock animal for 5 -15 years.
- c. Defendant is liable for expenses for care, impoundment, or disposal of the animal, and the court may order reimbursement of such expenses [54-904].

VIOLATION OF A COURT ORDER NOT TO POSSESS A LIVESTOCK ANIMAL:

1. Elements: [54-909]

- a. It is unlawful to own or possess any livestock animal,
- b. While subject to a court order not to do so.

2. Classification:

- Class IV Misdemeanor if the original offense was a misdemeanor.
- Class I Misdemeanor if the original offense was a felony.
- Any livestock animal involved in a violation of a court order shall be subject to seizure by law enforcement.

INDECENCY WITH A LIVESTOCK ANIMAL:

1. Elements: [54-904]

It is unlawful for any person:

- a. To subject, a livestock animal,
- b. To sexual penetration.

2. Definition:

Sexual penetration has the same definition as that for indecency with other non-livestock animals.

3. Classification:

Class III Misdemeanor

- Violator is liable for expenses for care, impoundment, or disposal of a livestock animal, and the court may order violator to reimburse such expenses [54-904]

PROHIBITED ACTS RELATING TO EQUINE:

1. Elements: [54-911]

It is unlawful for any person to:

- a. Intentionally, by any means,
- b. Trip, cause to fall, lasso, or rope the legs of any equine,
- c. For the purpose of entertainment, sport, practice, or contest.

2. Classification:

Class I Misdemeanor

*NOTE: The acts prohibited by this section shall not be considered a commonly accepted practice for sanctioned rodeos, animal racing, or pulling contests.

PROHIBITED ACTS RELATING TO BOVINE:

1. Elements: [54-912]

It is unlawful to:

- a. Intentionally, by any means,
- b. Trip, cause to fall, or drag by its tail,
- c. Any bovine (cow, ox, or bison),
- d. For the purpose of entertainment, sport, practice, or contest.

2. Classification:

Class I misdemeanor.

*NOTE: The acts prohibited by this section shall not be considered a commonly accepted practice occurring in conjunction with sanctioned rodeos, animal racing, or pulling contests.

DANGEROUS DOGS:

[54-617 to 54-624]

DEFINITIONS:

- ***Animal control authority*** shall mean an entity (including a local law enforcement or other agency) authorized to enforce the animal control laws of a county, city, or village or this state;
- ***Animal control officer*** shall mean any individual authorized by an animal control authority for the purpose of enforcement of a law or ordinance relating to animals, and shall include

any state or local law enforcement officer or other employee whose duties in whole or in part include assignments that involve the seizure and impoundment of any animal;

- ***Dangerous dog*** means a dog that, according to the records of an animal control authority:
 - a. Has killed a human being;
 - b. Has inflicted injury on a person requiring medical treatment, But not if the injured person was tormenting, abusing, or assaulting the dog at the time of the injury or has previously been observed or reported to have done so.
 - c. Has killed a domestic animal without provocation; or
 - d. Has been previously been determined to be a potentially dangerous dog by an animal control authority, the owner has received notice of such determination, and the dog inflicts an injury (not necessarily requiring medical treatment) or threatens the safety of a human being or domestic animal. But not if the injury, damage, or threat was sustained by someone who was tormenting, abusing, or assaulting the dog or has been observed or reported to have done so in the past, or was committing a willful trespass, other crime, or tort upon the property of the owner of the dog.
 - e. A police animal cannot be found to be a dangerous dog under this section.
- ***Domestic animal*** shall mean a cat, a dog, or livestock;
- ***Livestock*** includes buffalo, deer, antelope, fowl, and any other animal in any zoo, wildlife park, refuge, wildlife area, or nature center intended to be on exhibit;
- ***Medical treatment*** means treatment administered by a physician or other licensed health care professional that results in sutress, surgery, or treatment for a broken bone;
- ***Owner*** shall mean any person, firm, corporation, organization, political subdivision, or department possessing, harboring, keeping, or having control or custody of a dog;
- ***Potentially dangerous dog*** shall mean
 - a. Any dog that when unprovoked:
 - (1) Inflicts injury on a person that does not require medical treatment or injures a domestic animal or
 - (2) Chases or approaches a person upon streets, sidewalks, or any public grounds in a menacing fashion or apparent attitude of attack or
 - b. Any specific dog with a known propensity, tendency, or disposition to attack when unprovoked, to cause injury, or to threaten the safety of humans or domestic animals;

DANGEROUS DOG VIOLATIONS: [54-617 et seq.]

A dangerous dog that has been declared as such shall:

- Be securely confined when unattended on the owner's

- property;
- Not be kept or harbored by any person on property under that person's charge or control without such dog being confined so as to protect the public;
- Not be permitted by the owner to go beyond the property of the owner unless the dog is restrained securely by a chain or leash,
- Be spayed or neutered and implanted with a microchip identification number;
- Not be permitted by the owner to be transported to another county, city, or village in Nebraska, unless being permanently relocated and only then with written permission from the animal control authority in both locations;
- Classification is a Class IV misdemeanor for most violations.

DANGEROUS DOG ATTACKS ON HUMANS:

1. Elements: [54-622.01]

The owner of a dangerous dog violates the law when:

- a. The dangerous dog inflicts a *serious bodily injury*,
- b. On a human being.

2. Classification:

- Class I Misdemeanor for the first offense;
- Class IV Felony for a second or subsequent offense, whether or not the same dangerous dog is involved.

*NOTE: It is a defense to this section that the dangerous dog was, at the time of the infliction of the serious bodily injury, in the custody of or under the direct control of a person other than the owner or the owner's immediate family.

CONFISCATION OF A DANGEROUS DOG:

- a. If a dangerous dog owned by a person with a prior dangerous dog violaiton attacks or bites a human being or another domestic animal, the dog shall be immediately confiscated by an animal control authority, placed in quarantine for the proper length. Upon conviction, the dog shall thereafter be destroyed in an expeditious and humane manner [54-623].
- b. Any dangerous dog may be immediately confiscated by an animal control officer if the owner is in violation of sections [54-617] to [54-624] (no attack or bite) [54-620].
- c. The owner shall be responsible for the reasonable costs incurred by the animal control authority for the care of a dangerous dog or for the lawful destruction of the dog.

SECTION III
VEHICLES AND TRAFFIC

OPERATORS LICENSE VIOLATIONS:

OPERATOR'S LICENSE DEFINED: [60-474]

An operator's or driver's license means any license or permit to operate a motor vehicle issued under the laws of NE, including:

- a. Any replacement or duplicate license or instruction permit;
- b. The privilege of any person to drive a motor vehicle whether such person holds a valid license;
- c. The privilege of person who is not a resident of Nebraska to operate or use a motor vehicle in this state;
- d. An employment driving permit issued as provided by sections [60-4,129] and [60-4,130]; and
- e. A hardship driving permit issued as provided by sections [60-4,130.01] and [60-4,130.02].

OPERATOR'S LICENSE REQUIRED: [60-484]

Unless otherwise provided, the operator of a motor vehicle upon alleys or highways in Nebraska must have an operator's license.

- A resident of Nebraska may not operate a motor vehicle until the person has obtained an operator's license for that purpose.
- A nonresident that moves to Nebraska is required to obtain a NE operator's license after thirty days of continuous residence in this state, unless granted further immunity noted below.
- A nonresident must be duly licensed in the state of his or her residence, and any motor vehicle must be properly registered in such state to lawfully operate a motor vehicle in NE.

NONRESIDENT LICENSE IMMUNITY: [60-488]

All nonresident members of the military, their spouses and dependants, and full time college students don't need a NE driver's license, so long as they are licensed in their state of residence. Exemption is also granted to temporary agriculture workers who are certified by the Dept. of Labor to work in Nebraska for no more than 60 days.

DUTY TO CARRY AND PRESENT LICENSE:

1. Elements: [60-489]

The operator of a motor vehicle shall:

- a. Carry an operator's license at all times when operating on a highway, and
- b. Present such license or proof of ownership of the same,
- c. Upon lawful demand by any officer of the law.

2. Classification: [60-4111]

Class III Misdemeanor

CLASSIFICATION OF OPERATORS LICENSES: [60-480]

1. Motor Vehicles (Class O):

Authorizes the holder to operate on highways any motor vehicle except a commercial motor vehicle or motorcycle.

a. **Age Limit:**

- The driver must be at least 17 years of age.
- Anyone under 18 must have first held a provisional operator's license for at least 12 months and not have accumulated three or more points during that time.

b. **Expiration:**

An operator's expires on the licensee's birthday in the fifth year after issuance (or on his/her 21st birthday).

2. Motorcycles (Class M): [60-4127]

Required for anyone operating a motorcycle in Nebraska.

3. Commercial (CDL)

Authorizes the operation of commercial motor vehicles or any motor vehicle (except a motorcycle) on highways;

- A *Commercial Vehicle* is a motor vehicle used or designed to transport-passengers or property (a) With a gross vehicle weight rating of more than 26,000 lbs., OR (b) that is designed to transport 16 or more passengers including the driver, or (c) that is carrying hazardous materials and required to be placarded pursuant to Section [75-364].
- Driver's of commercial vehicles are prohibited from texting under [60-6,179.01].

4. School Permit (SCP): [60-4,124]

- a. Age limit: At least 14 years, two months of age, younger than 16 years and three months of age,
- b. Must either:
 - (1) Reside outside a metropolitan, primary or first class city or
 - (2) Attend school located outside the same.
- c. Must first have an LPD learner's permit for two months,
- d. May only be used to driving themselves and any family member who resides with such person to attend school or school related activities (direct route only),
- e. May also drive under personal supervision of a licensed operator who is at least 21 years old,
- f. The use of any interactive wireless communication device (voice or data) while driving is prohibited.

5. Farm Permit (FMP): [60-4126]

- a. Must be at least 13 years of age if living on the farm, age 14 for anyone not living on a farm but working on a farm,
- b. Authorizes the operation of motorized farm implements or minitrucks upon public highways and state roads.
- c. A farm permit need not be carried by the operator, but must be produced within 24 hours upon demand of an officer (60-489).

6. Commercial Learner's Permit (CLP): [60-4141]

A permit issued in conjunction with a Class O or CDL that authorizes the operation of a commercial vehicle for learning purposes when accompanied by a person at least twenty-one years of age who is a licensed commercial driver.

7. LPD Learner's Permit: [60-4123]

A permit to operate a motor vehicle (but not a commercial vehicle) for learning purposes:

- a. Must be at least 15 years of age,
- b. Valid twelve months from issue,
- c. Must be accompanied at all times by licensed operator who is at least twenty-one years old and actually occupying seat next to driver
- d. Use of any *Interactive Wireless Communication Device* (voice or data) is prohibited while driving.

8. School Learner's Permit: [60-4124]

A permit to operate a motor vehicle (but not a commercial vehicle) while learning to drive in preparation to apply for a school permit:

- a. Must be between 14 years two months and 16 years old,
- b. Valid for three months,
- c. Must be accompanied at all times by a licensed operator over 21 years of age.
- d. The use of any *interactive wireless communication device* (voice or data) is prohibited while driving.

9. Provisional Operator's Permits (POP): [60-4120.01]:

A driver who holds a provisional operators permit is subject to several driving restrictions.

- a. The holder of a POP shall operate a motor vehicle only between the hours of 6AM. and 12AM midnight, unless:
 - (1) The driver is en route to/from his/her residence, place of employment, or a school activity, OR
 - (2) Is accompanied by a parent, guardian, or adult at least 21 years old with a current operator's license.
- b. For the first six months a POP holder shall not have more than one passenger who is under nineteen years of age and is not an immediate family member.
- c. POP driver shall not use any type of *interactive wireless communication device* (voice or data) while driving.
- d. Enforcement is a secondary action only and the driver must also be cited or charged with a violation of some other law.
- e. Violation of this section is an infraction.

EVALUATION OF AN INCOMPETENT DRIVER'S OPERATING PRIVILEGE: [60-4,118]

A law enforcement officer may request the Director of DMV to evaluate the driving privilege of any person that is believed to be physically or mentally incompetent to operate a motor vehicle

safely.

- Any such request by an officer shall include a written justification for such request and shall be approved by a supervisory law enforcement officer, police chief, or county sheriff.

USE OF ANOTHER PERSON'S OPERATOR'S LICENSE OR IDENTIFICATION:

1. Elements: [60-491]

It is unlawful for any person to:

- a. Lend his or her operator's license or state identification card to any person or knowingly permit the use thereof by another;
- b. OR to display or represent as one's own any operator's license or state identification card not issued to him or her by the State of Nebraska or any other state;
- c. OR permit any unlawful use of an operator's license or state identification card issued to him or her by the State of Nebraska or any other state;

2. Classification:

Class III Misdemeanor

FAKE LICENSE OR IDENTIFICATION, POSSESSION:

1. Elements: [60-491]

It is unlawful for any person to:

- a. Display or cause or permit to be displayed, or have in his or her possession,
- b. Any fictitious or fraudulently altered operator's license or state identification card issued by Nebraska or any other state.

2. Classification:

Class III Misdemeanor

MAKING FAKE LICENSES OR IDENTIFICATION:

1. Elements: [60-491]

It is unlawful for any person to:

- a. Manufacture any fraudulent state identification card,
- b. Whether of the State of Nebraska or any other state.

2. Classification:

Class III Misdemeanor

ALLOWING AN UNAUTHORIZED PERSON TO DRIVE:

1. Elements: [60-491]

It is unlawful for any person to:

- a. Cause or knowingly permit his or her child or ward under the age of sixteen years to drive a motor vehicle upon any highway when such minor is not authorized by or is in violation of the Motor Vehicle Operator's License Act;
- b. To authorize or knowingly permit a motor vehicle owned

by him or her or under his or her control to be driven upon any highway by any person who is not authorized under or is in violation of the Motor Vehicle Operator's License Act.

2. Classification:

Class III Misdemeanor

OTHER DRIVER'S LICENSE VIOLATIONS:

1. Elements: [60-491]

It shall be unlawful for any person:

- To fail or refuse to surrender a suspended, revoked, or canceled license or state id upon demand of the DMV;
- To use a false or fictitious name in applying for an operator's license or state identification card or knowingly to make a false statement or knowingly to conceal a material fact or otherwise commit a fraud in applying for an operator's license or state identification card;
- To do any act forbidden or fail to perform any act required by the Motor Vehicle Operator's License Act.

2. Classification: [60-4111]

Class III Misdemeanor

**DRIVING WHILE SUSPENDED, REVOKED,
OR IMPOUNDED:**

GENERALLY:

The privilege to operate a motor vehicle in this state is subject to being suspended, revoked, or impounded by the DMV or a court. Each of those three conditions has different meanings, penalties for violation, and different possibilities to obtain a permit to continue driving for certain purposes.

- There is a tendency to mix up the terminology among suspended, revoked, and impounded; but each term has its own legal significance and associated offense and penalty.
- The term "license" is used synonymously with the general privilege to drive, and it does not matter whether a person ever had a valid operator's license as to whether that person may become suspended, revoked, or impounded.
- A particular driver may actually be suspended, revoked, and impounded at the same time.

DEFINITIONS:

- ***Suspension*** of operator's license means the *temporary* withdrawal of a person's operator's license by formal action of DMV. A suspended driver is eligible and can reinstate upon compliance with all conditions for reinstatement. [60-476.02].
- ***Revocation*** of operator's license means the termination of a person's operator's license by a court or by formal action of the DMV. A revoked driver is not eligible for reinstatement until

the revocation period is expired. [60-476.01]

- **Impoundment** of operator's license means the seizure and holding of a person's operator's license by the court pursuant to a court order requiring such person not to operate a motor vehicle for a specified period of time when the court has not ordered a revocation of the operator's license. [60-470.01].

*NOTE: A revoked driver may be eligible for a work, medical, or ignition interlock permit, depending on the reason for the revocation.

DRIVING WHILE SUSPENDED:

1. Elements: [60-4108(2)]

It is unlawful for any person to operate a motor vehicle:

- a. During any period that his/her operator's license has been suspended; OR
- b. After a period of revocation or impoundment but before issuance of a new license.

2. Classification:

- a. Class III Misdemeanor and the court may revoke such person's operator's license for one year from the date ordered by the court,
- b. But, if the person at the time of sentencing shows proof of reinstatement, issuance of a new license, or proof of return of the impounded license, the person shall only be fined to a maximum of one hundred dollars.

MISDEMEANOR DRIVING WHILE REVOKED OR IMPOUNDED:

1. Elements: [60-4108(1)]

It is unlawful for any person to:

- a. Operate a motor vehicle,
- b. During any period that he or she is:
 - (1) Subject to a court order not to operate any motor vehicle for any purpose, OR
 - (2) Subject to an order of revocation or impoundment pursuant to conviction of any law in Nebraska (other than those offenses listed in [60-6197.06]), OR
 - (3) Subject to by an order of revocation or impoundment of any court, OR
 - (4) Subject to an order of revocation or impoundment by an administrative order of the DMV (other than a point revocation, which is a separate offense).

2. Classification: [60-4108(1)]

- a. Class II Misdemeanor for a first offense and the court shall order such person's operator's license revoked for one year (unless probation is imposed in which case the revocation is not discretionary for the judge).
- b. Class II Misdemeanor for a second or third offense and

the court shall order such person's operator's license revoked for two years,

- c. Class I Misdemeanor for a fourth or subsequent offense and the court shall order such person's operator's license revoked for two years,

DRIVING WHILE REVOKED – POINT REVOCATION:

1. Elements: [60-4186]

It is unlawful for any person to:

- a. Operate a motor vehicle on the public highways
- b. During a period of revocation for points [4182] to [60-4186];

2. Classification:

Class III Misdemeanor

*NOTE: A point revoked driver may operate a non-commercial motor vehicle with an employment driving permit or a medical hardship driving permit.

FELONY DRIVING WHILE REVOKED OR IMPOUNDED:

1. Elements: [60-6197.06].

Unless authorized by an Interlock Permit, it is unlawful to:

- a. Operate a motor vehicle,
- b. On the highways or streets,
- c. While his or operator's license has been revoked for any of the following violations:
 - Motor Vehicle Homicide,
 - Leaving the Scene of an Injury/Death Accident,
 - DUI 2nd Aggravated,
 - DUI 3rd, 4th, 5th, or Subsequent Offense (whether aggravated or not),
 - Refusal of a Chemical Test by a person with one or more prior convictions for DUI or Refusal, or
 - DUI with a serious bodily injury.

2. Classification: [60-6197.06].

- a. Class IV Felony and the court will also order a fifteen year revocation.
- b. Class IIA Felony for a second or subsequent offense and the court will order an *additional* fifteen year license revocation.

*NOTE: This offense does not apply to the holder of a valid interlock permit, even if the driver does not have an interlock device installed. But, driving without an interlock device may still an interlock violation under [60-6211.11].

POSSESSION OF A REVOKED, SUSPENDED, OR IMPOUNDED LICENSE OR ID CARD:

1. Elements: [60-491]

It is unlawful for any person to:

- a. Possess, display, or cause or permit to be displayed,
- b. Any canceled, revoked, suspended, impounded operator's license or state identification card issued by any state.

2. Classification:

Class III Misdemeanor

SEIZURE OF A VEHICLE OPERATED BY A SUSPENDED, REVOKED, OR IMPOUNDED DRIVER:

Seizure and Impound Authorized: [60-4110(1)]

The motor vehicle may be seized by police and impounded at the expense of the owner upon the arrest of a driver who is currently suspended, revoked, or impounded for any of the following reasons:

- (1) A conviction for DUI [60-6196],
- (2) A conviction for Refusal of a Chemical Test [60-6197] or [60-211.02],
- (3) A conviction of an .02 Violation for Minors [60-211.01], or
- (4) By an order of any court or the DMV.

Seizure and Impound Required: [60-4110(1)]

The motor vehicle shall be impounded for not less than ten days or more than thirty days if the operator is currently suspended, revoked, or impounded for any of the following reasons:

- (1) An Administrative License Revocation (ALR) under [60-498.01], [60-498.02],
- (2) A DUI conviction [60-6,196],
- (3) A conviction for refusal to submit to a chemical test [60-6,197] or [60-6,211.02],
- (4) A conviction for an .02 violation for minors [60-6,211.01], or
- (5) A conviction for driving while revoked or impounded 4th or subsequent offense under [60-4108(1)(c)].

Impounding Restrictions:

- A motor vehicle impounded under this section may not be impounded for longer than thirty days.
- Any person who, at the direction of an officer, tows and stores a motor vehicle pursuant to this section shall have a lien upon the vehicle for reasonable towing and storage charges and has the right to retain the vehicle until such charges are paid.

Releasing an Impounded Vehicle: [60-4110(2)]

- a. A court may order the release of a vehicle seized under this section upon a showing by the owner that the vehicle is essential to the owner's livelihood.
- b. A seized vehicle must be released to a lienholder who is lawfully foreclosing on the vehicle to satisfy the lien.
- c. A vehicle must be released if it is owned by a leasing or rental company and the impounding law enforcement agency shall

immediately contact the company and inform it that the motor vehicle is available for the company to take possession.

INTERLOCK AND OTHER DRIVING PERMITS:

INTERLOCK DRIVERS PERMITS: [60-498.02]

A person with an interlock permit is allowed to operate a motor vehicle that is equipped with an interlock device.

- An interlock permit is never valid for commercial vehicles.
- Persons under 18 years of age are not eligible for an interlock permit for a DUI related revocation – [60-498.01(11)].
- Only the holder of a Class O or Class M operator's license is eligible for an ignition interlock permit – [60-4118.06(3)(b)]..

VIOLATION OF AN INTERLOCK PERMIT:

1. Elements: [60-6211.11(2)]

It is unlawful for any person to:

- a. Operate a motor vehicle,
- b. That is equipped with an ignition interlock device,
- c. In violation of the requirements of the order of the court or the DMV under which the device was installed.

2. Classification:

Class III Misdemeanor

DRIVING WITHOUT AN INTERLOCK DEVICE:

1. Elements: [60-6211.11(1)]

It is unlawful for any person to:

- a. Operate a motor vehicle,
- b. That is not equipped with an ignition interlock device,
- c. In violation of an order of a court or the DMV.

2. Classification:

- Class I Misdemeanor;
- Class IV Felony if driving with BAC of .02 or more (breath or blood).

TAMPERING WITH AN INTERLOCK DEVICE:

2. Elements: [60-6211.11(1)]

It is unlawful for any person to:

- a. Tamper with or circumvent an ignition interlock device,
- b. Installed under an order of a court or the DMV,
- c. While the order is in effect.

3. Classification:

- Class I Misdemeanor;
- Class IV Felony if driving with BAC of .02 or more (breath or blood).

BOARD OF PARDONS INTERLOCK ORDER VIOLATIONS:

1. Elements: [83-1127.02]

It is unlawful for any person restricted to driving only with an ignition interlock device by the Board of Pardons to operate a motor vehicle upon the highways of this state; or

- a. Without an ignition interlock device approved by DMV;
- b. With an ignition interlock device that has been disabled, bypassed, or altered in any way; or
- c. With an ignition interlock device but without an ignition interlock permit;

2. Classification:

- Class I Misdemeanor;
- Class IV Felony if driving with BAC of .02 or more (breath or blood) plus an additional fifteen year revocation.

EMPLOYMENT DRIVING PERMITS: [60-4,129]

Any person whose operator's license is revoked under section [60-4,183] or [60-4,186] (points) or suspended under section [43-3318] (child support) may be eligible for an employment driving permit to operate a motor vehicle.

- If granted, an employment allows a person to operate any motor vehicle, except a commercial motor vehicle only under the following circumstances, and the permit shall indicate for which purposes the permit was issued:
 - (1) From his or her residence to his or her place of employment and return; and
 - (2) During the normal course of employment if necessary in the course of such employment.
- It is unlawful to operate any motor vehicle for a purpose other than an employment-driving permit allows, and violation of such permit terms is a Class IV Misdemeanor.
- Upon conviction, the permit will be revoked.

MEDICAL HARDSHIP DRIVERS PERMITS: [60-4,130.01]

Any person whose license or privilege to operate a motor vehicle is *revoked for points* may be eligible for a medical hardship driving permit, valid for a period of ninety days.

- If granted, the person may legally operate a motor vehicle from his or her residence or place of employment to a hospital, clinic, doctor's office, or similar location and return.
- The permit will indicate the legal purposes it may be used for.
- The operation of a motor vehicle by the holder of a medical hardship driving permit, except as provided in this section, is a Class IV Misdemeanor.
- The permit will be revoked by DMV for any moving traffic offense.
- A medical hardship permit may not be used to operate a commercial motor vehicle.

SPEEDING VIOLATIONS:

ISSUING A SPEEDING CITATION:

The driver of any motor vehicle that is exceeding the maximum speed limit may be apprehended only if:

- a. The vehicle's speed has been measured by use of a speed measurement device, according the foundation protocol set out in section [60-6192],
- b. The apprehending officer is in uniform and displays his or her badge of authority,
- c. The apprehending officer has observed the recording of the speed of the motor vehicle by the radio microwave, mechanical, or electronic speed measurement device or has received a radio message from another officer who has observed the speed recorded,
- d. Such a radio message must be dispatched immediately after the speed of the motor vehicle was recorded and include a description of the vehicle and its recorded speed,

SPEED MEASUREMENT DEVICES: [60-6192]

A driver may not be cited for speeding unless the officer's visual observation of the vehicle's speed is corroborated by a radio microwave, mechanical, or electronic speed measurement device.

- Before the prosecutor may offer in evidence the results of a speed measurement device for the purpose of establishing the speed of any motor vehicle, the state shall prove the following:
 - a. The device was in proper working order at the time of conducting the measurement;
 - b. The device was being operated in such a manner and under such conditions so as to allow a minimum possibility of distortion or outside interference;
 - c. The person operating the device and interpreting such measurement was qualified by training and experience to properly test and operate it; and
 - d. The operator conducted external tests of accuracy upon the device, within a reasonable time both prior to and subsequent to the citation being issued and the device was found to be in proper working order.

*NOTE: The summons or notice to appear must specify the speed the person cited is alleged to have been driving.

MAXIMUM SPEED LIMITS: [60-6,186]

2018 Update

Except when a special hazard exists that requires lower speed for compliance with section 60-6,185, no person shall drive a vehicle on a highway at a speed in excess of such maximum limits:

- The maximum speed limits may be reduced by the Department of Transportation or by local authorities under sections [60-6188] or [60-6190].

- State and local authorities may place suitable signs along highways in such number and at such locations as they deem necessary to give adequate notice of the speed limits.
- The default maximum speed limits are as follows:

| Speed Limit | Type of Roadway |
|-----------------------------------|--|
| 20 mph | A business district |
| 25 mph | A residential district |
| 50 mph | A gravel or not dustless surfaced highway; |
| 55 mph | A dustless-surfaced highway not a part of the state highway system; |
| 65 mph | Any four-lane divided highway not a part of the state highway system; |
| 65 mph | Any part of the state highway system other than an expressway, a super-two highway, or a freeway; |
| 70 mph | an expressway or super-two highway that is part of the state highway system; |
| 70 mph | A freeway that is part of the state highway system but not part of the National System of Interstate and Defense Highways; |
| 75 mph | On (most of) the National System of Interstate and Defense Highways |
| 65 mph | Any portion of the Interstate in Douglas County, 180 in Lancaster County, 129 in Dakota County. |
| Super-Two Highway Defined: | A two-lane highway designed primarily for through traffic with passing lanes spaced intermittently and on alternating sides to provide predictable opportunities to pass slower moving vehicles. |

MINIMUM SPEED LIMITS: [60-6,193]

No person shall drive a motor vehicle at such a slow speed to impede the normal and reasonable movement of traffic except when reduced speed is necessary for safe operation or in compliance with law.

- On a freeway no motor vehicle, except emergency vehicles, shall be operated at a speed of less than forty miles per hour or at such a slow speed as to impede or block the normal and reasonable movement of traffic except when reduced speed is necessary for the safe operation of the motor vehicle because of weather, visibility, roadway, or traffic conditions.
- The minimum speed of forty miles per hour may be altered by the Department of Transportation or local authorities on freeways under their respective jurisdictions.
- Vehicular, animal, and pedestrian traffic prohibited on freeways by the Nebraska Rules of the Road shall not travel

on any other roadway where minimum speed limits of twenty miles per hour or more are posted.

- Any minimum speed limit that is imposed under subsection shall not be effective until appropriate and adequate signs are erected along the roadway.
- On any freeway, or other highway with two or more lanes of travel in one direction, vehicles shall not intentionally impede the normal flow of traffic by traveling side by side and at the same speed while in adjacent lanes. (vehicles may travel side by side in adjacent lanes because of congested traffic conditions).

SPEEDING PENALTIES: [60-682.01]

Any person who operates a vehicle in violation of any authorized maximum speed limit is guilty of a traffic infraction and upon conviction shall be fined as follows:

| MPH OVER SPEED LIMIT: | FINE: |
|---|--------------|
| 1 to 5 MPH | \$10 |
| 6 to 10 MPH | \$25 |
| 11 to 15 MPH | \$75 |
| 16 to 20 MPH | \$125 |
| 21 to 35 MPH | \$200 |
| Over 35 MPH | \$300 |
| Note: There are special rules for construction and school zone speed limits and penalties as noted below. | |

CONSTRUCTION SPEED ZONES: [60-6,188]

The authorized engineer for a state, county, municipal, or local jurisdiction may establish maximum speed limit through any maintenance, repair, or construction zone.

- Such speed limits take effect only after appropriate signs giving notice of the speed limit are erected or displayed in a conspicuous place in advance of the zone.
- The Speed limit through any highway maintenance, repair, or construction zone may be increased in increments of five miles per hour if the speed set does not exceed the maximum speed limits.
- The Department of Roads shall post signs in maintenance, repair, or construction zones stating that the fine for exceeding the posted speed limit in such zones is doubled.
- The maintenance, repair, or construction zone starts at the location of the first sign identifying the zone and continues until a posted or moving sign indicates that the maintenance, repair, or construction zone has ended.
- Construction zone speeding fines are only doubled within such portion of a highway where road construction workers are present.

SPEED LIMIT FOR TOWED MOTOR HOMES: [60-6187]

No person shall operate any motor vehicle when towing mobile home at a rate of speed in excess of fifty miles per hour.

SPEED LIMIT FOR MOTOR-DRIVEN CYCLES: [60-6187]

Thirty-five mph upon a roadway at nighttime unless equipped with:

- a. A headlight or headlights capable of revealing a person or vehicle in such roadway at least three hundred feet ahead;
- b. And with a taillight on the rear exhibiting a red light visible, under normal atmospheric conditions, from a distance of at least five hundred feet to the rear.
- c. A *Motor-driven cycle* means every motorcycle including every motor scooter, with a motor that produces up to five brake horsepower, mopeds..
 - A bicycle with motor attached is a motor-driven cycle, *unless* the motor is electric and not exceeding 750watts producing more than one brake horsepower, capable of propelling the bicycle at a maximum design speed of no more than twenty miles per hour on level ground.
 - An electric personal assistive mobility device is not a motor-driven cycle..

TOO FAST FOR CONDITIONS: [60-6,185]

Regardless of the posted speed limit, do person shall drive a vehicle at a speed greater than is reasonable and prudent under the conditions and having regard to the actual and potential hazards then existing.

- A person shall drive at a safe and appropriate speed at or near an intersection, railroad grade crossing, a curve, upon any narrow or winding roadway, and when special hazards exist with respect to pedestrians or other traffic or by reason of weather or highway conditions.

SCHOOL CROSSING ZONES:

1. Elements:

It is unlawful for any person operating a motor vehicle:

- a. To overtake and pass another vehicle in a school crossing zone,
- b. On a roadway with only one traffic lane in each direction.

2. Definitions:

- ***School crossing zone*** means the area or a roadway designated as such to the public by the Department of Roads or any county, city, or village by a sign or traffic control device.
- A school crossing zone starts at the location of the first sign or traffic sign or traffic control device identifying the zone and continues until a sign or traffic control device indicates that the school crossing zone has ended.

3. Classification:

- a. The fines for speeding are doubled if the violation occurs within a school crossing zone.
- b. Other violation of this section is a traffic infraction with fines of up to \$200 for a first offense, and between \$200 and \$400 for a second or subsequent offense.

RACING ON HIGHWAYS:

1. Elements: [60-6,195]

No person shall drive any vehicle on any highway:

- a. In any race, speed competition or contest, drag race or acceleration contest, test of physical endurance, or exhibition of speed or acceleration, or for the purpose of making a speed record,
- b. And no person shall in any manner participate in any such race, competition, contest, test, or exhibition.

2. Definitions:

- ***Drag Race*** means the operation of two or more vehicles side by side at accelerating speeds in a competitive attempt to outdistance each other, or over a common selected course, each starting at the same point and proceeding to the same point, for the purpose of comparing the relative speeds or power of acceleration of such vehicle(s) within a certain distance or time limit;
- ***Racing*** means one or more vehicles attempting to outgain or outdistance another vehicle, to prevent another vehicle from passing, to arrive at a given destination ahead of another vehicle or vehicles, or to test the physical stamina or endurance of drivers over long-distance driving routes.

3. Classification:

Class II Misdemeanor

RADAR TRANSMISSION DEVICE PROHIBITED:

1. Elements: [60-6274] to [60-6277]

It is unlawful for any person to:

- a. Operate or possess any radar transmission device,
- b. While operating a motor vehicle on any road, street, highway, or interstate highway in Nebraska.

2. Exceptions:

This act does not apply to a device used by law enforcement officials for official duties or devices licensed by the FCC

3. Definitions:

- ***Radar Transmission Device*** means any mechanism designed to interfere with radio microwaves (radar) used by law enforcement to measure speed.
- ***Possession*** means in a vehicle, connected to power, and accessible to any person in the vehicle while moving. It is legal if kept in a trunk, compartment, or other place.

4. Classification:

Class IIIA Misdemeanor

- The device shall be seized and disposed of as contraband pursuant to [29-820].

BICYLCES & ELECTRIC BICYCLES:

1. Defined: [60-611]

Bicycle means either:

- (1) A device propelled solely by human power, with two tandem wheels either of which is more than fourteen inches in diameter, OR
- (2) A device with two or three wheels, fully operative pedals for propulsion by human power, and an electric motor with a capacity not exceeding 750 watts producing no more than one brake horsepower and is capable of propelling the bicycle at a maximum design speed of no more than 20 mph on level ground.

2. Bicycles on Streets:

Any person who operates a bicycle upon a highway shall have all of the rights and shall be subject to all of the duties applicable to the driver of a vehicle. [60-6314].

- The point system does not apply to traffic violations on a bicycle – [60-6142].
- The driver of a vehicle overtaking a bicycle in the same direction shall exercise due care, including leaving a safe distance of no less than three feet clearance while passing [60-6133].

3. Bicycles on Sidewalks:

A bicyclist riding on a sidewalk has all the rights and duties applicable to a pedestrian under the same circumstances but shall yield the right-of-way to pedestrians.

- The bicyclist has a duty to exercise care. [60-6,317].

4. Bicycles in Crosswalks:

A bicyclist riding across a roadway or shoulder in a crosswalk shall have all the rights and duties applicable to a pedestrian but shall yield the right-of-way to pedestrians.

- Both the bicyclist and the driver of a vehicle have a duty to exercise care. [60-6,317].

5. Right of Way to Vehicles:

A bicyclist shall not suddenly leave a curb or other place of safety and ride into the path of a vehicle which is so close that it is impossible for the driver to stop. [60-6317].

6. Operating Rules: [60-6,317]

- a. Generally, a bicycle moving slower than the normal speed of traffic must be ridden on the right side of a road, unless:
 - Overtaking and passing another bicycle or vehicle going the same direction;
 - Preparing for a left turn onto a private road or driveway or at an intersection;

- Reasonably necessary to avoid conditions that make it unsafe to continue, such as objects, vehicles, bicycles, pedestrians, animals, or surface hazards;
 - Riding upon a lane of substandard width that is too narrow for a bicycle and a vehicle to travel safely side by side within the lane; or
 - Lawfully operating a bicycle on the paved shoulders of a highway included in the state highway system as provided in section [60-6,142].
- b. A bicycle on a one-way street with a speed limit of 35mph or less and with at least two lanes may ride along *either* the left or right edge of the roadway.
 - c. A bicycle rider who leaves the roadway to ride on the paved shoulder or leaves the paved shoulder to enter the roadway must clearly signal such intention and yield the right-of-way to all other vehicles.
 - d. A bicycle rider must use the hand signals approved for vehicles, but may signal a right turn with a fully extended arm – [60-6163].
 - e. Any person who operates a bicycle upon a highway shall not ride more than single file except on paths or parts of highways set aside for the exclusive use of bicycles.
 - f. A bicycle may be ridden on a highway even if there is a bicycle path adjacent to the highway.
- 7. Prohibited Acts:** [60-6315]
- Any person who rides a bicycle shall not ride other than upon or astride a permanent and regular attached seat.
 - Any person who rides a bicycle shall not remove his or her feet from the pedals and shall have at least one hand on the handlebars at all times.
 - Any person who operates a bicycle shall not carry any package, bundle, or article which prevents such operator from keeping at least one hand upon the handlebars.
 - No bicycle shall be used to carry more persons at one time than the number for which it is designed and equipped.
 - A bicycle rider shall not attach himself, herself, or the bicycle to any vehicle upon a roadway – [60-6316].
- 8. Equipment Requirements:** [60-6318]
- A bicycle on a highway must have brakes capable stopping the bicycle within twenty-five feet of the point of braking when moving at a speed of ten miles per hour on dry, level, clean pavement.
 - At night, a bicycle must be equipped with:
 - a. A light visible from at least 500 feet to the front on a clear night, and
 - b. A red reflector on the rear approved by DMV or a local authority, visible on a clear night from 600 feet

to the rear when directly in front of low beam headlights on a motor vehicle.

- c. A red light visible from five hundred feet to the rear may be used in addition to such red reflector.

9. Pedestrian Right of Way:

Pedestrians lawfully crossing a roadway have the right of way where a bicycle/pedestrian path crosses such roadway. [60-6153], [60-6154].

10. Additional Local Rules May Apply: [60-6,317(5)]

A local authority may have ordinances to further regulate bicycle operation, registration and inspection.

AUTOCYCLES: [60-102]

2. Defined:

An Autocycle is a motor vehicle:

- (1) Having a seat that does not require the operator to straddle or sit astride it,
- (2) Designed to travel on three wheels,
- (3) The operator and passenger ride either side by side or in tandem in a seating area that is completely enclosed with a removable or fixed top,
- (4) Is equipped with manufacturer-installed air bags, a manufacturer-installed roll cage, and a manufacturer-installed three-point safety belt system for each occupant,
- (5) Having antilock brakes, and
- (6) Designed to be controlled with a steering wheel and pedals.

3. Driving Restrictions:

To be legally operated on a street or highway, the following restrictions apply:

- The driver must wear a three-point safety belt system that is properly adjusted and fastened,
- The autocycle must be equipped with either one or two headlights and with a taillight exhibiting a red light visible from at least five hundred feet to the rear,
- The driver must have an operator's license,
- A driver may hold an LPD-learner's permit if a licensed driver is actually occupying the seat beside or behind the driver. A school permit is also valid.

4. Registration and Insurance

Like any other motor vehicle, an autocycle must have a valid license plate or intransit, and must have insurance.

- Only one intransit or license plate is required.

**ALL-TERRAIN, UTILITY VEHICLES, MINITRUCKS,
LOW-SPEED VEHICLES, & GOLF CAR VEHICLES:**

DEFINITIONS: [60-6,355]

- **All-Terrain Vehicle (ATV)** shall mean any motorized off-highway vehicle that meets ALL of the following criteria:
 - (1) Is fifty inches or less in width,
 - (2) Has a dry weight of twelve hundred pounds or less,
 - (3) Travels on three or more nonhighway tires, and
 - (4) Is designed for operator use only with no passengers or is specifically designed by the original manufacturer for the operator and one passenger.
- **Controlled-Access Highway** [60-615] means a highway with no legal right of access or egress except as determined by the public authority with jurisdiction over it;
- **Golf Car Vehicle** means a vehicle designed and manufactured for sporting and recreation on a golf course, with the following:
 - (1) Has at least four wheels,
 - (2) Maximum ground speed of less than twenty miles per hour,
 - (3) Maximum payload capacity of 1,200 pounds,
 - (4) Maximum gross vehicle weight of 2,500 pounds,
 - (5) Maximum passenger capacity of four persons.
- **Highway** [60-624] shall mean the entire width between the boundary limits of any street, road, avenue, boulevard, or way which is publicly maintained when any part thereof is open to the use of the public for purposes of vehicular travel;
- **Low-speed vehicle** is defined at [60-628] to mean a four-wheeled motor vehicle (a) whose speed attainable in one mile is more than twenty miles per hour and not more than twenty-five miles per hour on a paved, level surface, (b) whose gross vehicle weight rating is less than 3000, and (c) that complies with 49 C.F.R. part 571, as such part existed on 1-1-2011;
- **Minitruck** means a vehicle that meets ALL of the following:
 - (1) Is powered by an internal combustion engine with a piston or rotor displacement of 1,500 cubic centimeters or less,
 - (2) Is 67 inches or less in width,
 - (3) Has a dry weight of 4,200 pounds or less,
 - (4) Travels on four or more tires,
 - (5) Has a top speed of approximately fifty-five miles per hour,
 - (6) Is equipped with a bed or compartment for hauling,
 - (7) Has an enclosed passenger cab,
 - (8) Has headlights, taillights, turn signals, windshield wipers, a rearview mirror, and an occupant protection system, and
 - (9) Has a four-speed, five-speed, or automatic transmission.
- **Utility-Type Vehicle (UTV)** means any motorized off-

highway vehicle that meets ALL of the following criteria:

- (1) Is seventy-four inches in width or less,
- (2) Is not more than 180 inches length, including the bumper,
- (3) Has a dry weight of two thousand pounds or less, and
- (4) Travels on four or more nonhighway tires.

*NOTE: The term *utility-type vehicle* does not include all-terrain vehicles, golf car vehicles, or low-speed vehicles.

*NOTE: An ATV or UTV that has been modified or retrofitted with after-market parts to include additional equipment not required by sections [60-6357] and [60-6358] shall not be registered as a motor vehicle or any other category of vehicle.

ATV AND UTV OPERATION PROHIBITED:

An all-terrain or utility-type vehicle shall not be operated on or cross any controlled-access highway with more than two marked traffic lanes.

- Limited crossing by a UTV is allowed at an intersection.

UTV CROSSING CONTROLLED ACCESS HIGHWAY

A utility-type vehicle may cross a controlled-access highway with more than two marked traffic lanes if in compliance with the operation requirements for highways, and if the following requirements are met:

- a. The crossing is made at an intersection,
- b. The operator complies with the traffic control signal (in a city or village) or the stop sign (outside the limits of a city or village),
- c. Such crossing is specifically authorized by the appropriate governing body (county, city, or village).

ATV OR UTV OPERATION ALLOWED:

An all-terrain vehicle may be operated in accordance with the operating requirements if:

- a. Outside *a city or village* for agricultural purposes,
- b. Within a city or village if authorized by local authority

ATV OR UTV OPERATION ON A HIGHWAY: [60-6356(3)]

Authorized use of an ATV or UTV is subject to several restrictions:

- Operation only between the hours of sunrise and sunset;
- The operator must have a valid Class O license or farm permit as provided in section [60-4,126];
- The operator shall have liability insurance coverage for the ATV or UTV and shall provide proof of the same to any peace officer requesting such proof within five days of such a request;

- An ATV or UTV shall not exceed thirty miles per hour;
- The headlight and taillight of the vehicle shall be on;
- The vehicle must be equipped with a bicycle safety flag attached to the rear, extending at least five feet above ground;
- The bicycle safety flag shall be triangular shape, at least thirty square inches area, and shall be day-glow in color.

*NOTE: Cities and Villages may place additional restrictions for ATV or UTV use.

EXCEPTIONS TO ATV AND UTV USE RESTRICTIONS:

The above-noted restrictions do not apply to ATV or UTV operation under the following circumstances:

- a. An ATV or UTV in an authorized parade;
- b. An ATV or UTV crossing a highway (other than a controlled access highway) if the following are true:
 - The crossing is made at an angle of approx. 90 degrees to the direction of the highway and where no obstruction prevents a quick and safe crossing;
 - The vehicle is brought to a complete stop before crossing the shoulder or roadway of the highway;
 - The operator yields the right-of-way to all oncoming traffic that constitutes an immediate potential hazard;
 - In crossing a divided highway, the crossing is made only at an intersection of such highway with another highway;
 - Both the headlight and taillight of the vehicle are on.
- c. Electric Utility Personnel that are operating outside of the corporate limits of a municipality may operate an ATV or UTV after sunset within the course of employment, but are subject to the other requirements.

EQUIPMENT REQUIRED FOR ATV OR UTV:

1. Required Equipment: [60-6,358]

Every all-terrain vehicle and utility-type vehicle shall be equipped with ALL of the following:

- a. A brake system maintained in good operating condition;
- b. An adequate muffler system in good working condition;
- &
- c. A United States Forest Service qualified spark arrester.

2. Prohibited Modifications: [60-6,359]

No person shall equip or operate an ATV or UTV with:

- a. An exhaust system cutout, bypass, or similar device;
- b. A spark arrester removed or modified except for use in closed-course competition events.

*NOTE: An ATV or UTV operated at night or when visibility is reduced due to insufficient light or unfavorable atmospheric conditions shall display a lighted headlight and taillight – see [60-6357]

ATV OR UTV INJURY ACCIDENT REPORTS: [60-6,361]

The operator of an ATV or UTV involved in an accident:

- a. Shall report any accident involving death or an injury to any person that requires treatment by a physician.
- b. Reporting is done in the same manner as [60-699],
- c. Failure to report the accident is a Class IV Misdemeanor.

ABANDONED ATV, UTILITY VEHICLE, OR MINIBIKE:

1. Elements: [60-1907]

An all-terrain vehicle, a utility-type vehicle, or a minibike is an abandoned vehicle if:

- a. Left unattended for more than twenty-four hours on any public property, except where parking is legally permitted;
- b. Left unattended for more than forty-eight hours on public property where parking is legally permitted, but after the parking of such vehicle has become illegal;
- c. Left unattended for more than seven days on private property if left initially without permission of the owner, or after permission of the owner is terminated;
- d. Left for more than thirty days in the custody of a law enforcement agency after the agency has sent a letter to the last-registered owner under section [60-1903.01]; or
- e. Removed from private property by a municipality pursuant to a municipal ordinance.

MINITRUCK RESTRICTIONS: [60-6,379]

- A minitruck shall not be operated on the Interstate and Defense Highways, on expressways, or on freeways;
- A minitruck must always use headlights and taillights;
- Minitrucks require only one license plate, to be prominently displayed on the back – see [60-3,100]
- A minitruck is a “motor vehicle”.

LOW SPEED VEHICLE RESTRICTIONS: [60-6380]

The following rules apply for any low speed vehicle:

- It may be operated on any highway with a speed limit of not more than thirty-five miles per hour.
- It may cross a highway on which the speed limit is more than thirty-five miles per hour.
- The operator of a low-speed vehicle as authorized under this section must have a valid Class O operator's license.
- It must have liability insurance coverage.
- It must be registered under [60-383.02] and the license plate will be half the size of a car or truck – see [60-3100].
- The Department of Transportation may prohibit the operation of low-speed vehicles for public safety concerns.
- A county, city, or village may enact more stringent ordinances governing low-speed vehicle operation.

GOLF CAR VEHICLES: [60-6381]

- Any person operating a Golf Car Vehicle must have a valid Class O operator's license,
- The owner of the Golf Car Vehicle must have liability insurance, and provide such proof within five days of request by a peace officer.
- Golf Car Vehicles do not need to be registered and are not within the definition of "motor vehicle".
- A city or village or county may authorize and regulate the operation of golf car vehicles with more stringent safety rules.
- A golf car vehicle may only cross a highway if:
 - a. The crossing is made at an angle of approximately ninety degrees to the direction of the highway and at a place where no obstruction prevents a quick and safe crossing;
 - b. The golf car vehicle is brought to a complete stop before crossing the shoulder or roadway of the highway;
 - c. The operator yields the right-of-way to all oncoming traffic that constitutes an immediate potential hazard; and
 - d. In crossing a divided highway, the crossing is made only at an intersection of such highway with a street or road, as applicable.

**TEXTING, CELLPHONES, AND INTERACTIVE
COMMUNICATION DEVICES:**

NON-COMMERCIAL VEHICLES:

1. Elements: [60-6,179.01]

It is unlawful for the operator of a vehicle that is motion to use a handheld wireless communication device to:

- a. Read a written communication,
- b. Manually type a written communication, or
- c. Send a written communication.

2. Exceptions:

This prohibition does not apply to:

- a. A law enforcement officer, firefighter, ambulance driver, or emergency medical technician performing official duties;
- b. Any motor vehicle operator in an emergency situation.

3. Definitions:

- ***Handheld wireless communication device*** means any device that provides for written communication between two or more parties and is capable of receiving, displaying, or transmitting written communication (such as a cellphone, text-messaging device, personal digital assistant, a pager, or a laptop computer).
- Handheld wireless communication device does not include an electronic device that is part of, or permanently attached to the motor vehicle or is a hands-free wireless device;

- **Written communication** includes, but is not limited to, a text message, an instant message, electronic mail, and Internet web sites.

4. Enforcement:

Enforcement is a secondary action only, when a driver of a motor vehicle has been cited or charged with another offense.

5. Classification:

Traffic Infraction

- Two hundred dollars for the first offense;
- Three hundred dollars for a second offense; and
- Five hundred dollars for a third and subsequent offense.

*NOTE the difference between the rules for *handheld communication devices* (written communications such as texting) that apply to all drivers versus the rules for *interactive communication devices* (voice and data) rules that apply only to some classification of licenses. Note also the specific rules for texting applicable only to commercial and bus drivers.

COMMERCIAL VEHICLES, SCHOOL BUSES, AND 9-15 PASSENGER VEHICLES:

1. Elements: [60-6197.02]

It is unlawful for the operator of a commercial vehicle or a nine to fifteen passenger vehicle to:

- Engage in texting or use a handheld mobile telephone while driving,
- Unless necessary to communicate with police or other emergency services.

2. Definitions:

- **Commercial Motor Vehicle** means any self-propelled or towed motor vehicle used on a highway in interstate commerce or intrastate commerce to transport passengers or property when the vehicle:
 - Has a weight of ten thousand one pounds or more;
 - Is designed or used to transport more than eight passengers, including the driver, for compensation;
 - designed or used to transport more than fifteen passengers, including the driver, not for compensation;
 - Is transporting hazardous material in a quantity requiring placarding pursuant to section [75-364].
- **Driving** means operating a commercial motor vehicle, with the motor running (including while temporarily stationary because of traffic, or a traffic control device, or other momentary delays). It is not driving if such vehicle is moved off or to the side of the roadway, halted in a location where the vehicle can safely remain stationary;

- **Electronic device** means any device used to input, write, send, receive, or read text, such as a cellphone; pda, pager, computer, etc.;
 - **Mobile Telephone** means a mobile communication device that falls under or uses any commercial mobile radio service as defined in regulations of the FCC, 47 C.F.R. 20.3. Mobile telephone does not include two-way or citizens band radio services;
 - **Nine to Fifteen Passenger Vehicle** means a motor vehicle designed or used to transport between nine and fifteen passers, including the driver, not for direct compensation, if the vehicle does not otherwise meet the definition of a commercial motor vehicle.
 - **Texting** means manually entering or reading text from an electronic device, including short message service, email, instant messaging, internet access commands, or any other form of text retrieval or entry for present or future communication. Texting does not include inputting, selecting, or reading information on a GPS or navigation system, pressing a single button of a mobile telephone; or using a multi-function device for a purpose other than texting (such as music players, dispatching, etc);
 - **Use a Handheld Mobile Telephone** means using at least one hand to hold a mobile phone to conduct a voice communication, dialing or answering a mobile phone by pressing more than a single button; or reaching for a mobile phone in a manner so that he or she is no longer in a seated driving position and restrained by a seat belt;
4. **Classification:**
Violation is a traffic infraction. The violator is subject to disqualification as provided in section [60-4,168], shall be assessed points on his or her motor vehicle operator's license pursuant to section [60-4,182], and shall be fined:
- Two hundred dollars for the first offense;
 - Three hundred dollars for a second offense; and
 - Five hundred dollars for a third or subsequent offense.

SCHOOL BUSES

1. **Elements:** [60-6197.02]

It is unlawful for the operator of a school bus to:

- a. Engage in texting or use of a handheld mobile telephone while driving,
- b. During **school bus operations** (the use of a school bus to transport school children or school personnel),
- c. Unless necessary to communicate with police or other emergency services.

2. **Definitions:**

See definitions for commercial vehicles above.

3. **Classification:**

Violation is a traffic infraction. The violator is subject to disqualification as provided in section [60-4,168], shall be assessed points on his or her motor vehicle operator's license pursuant to section [60-4,182], and shall be fined:

- Two hundred dollars for the first offense;
- Three hundred dollars for a second offense; and
- Five hundred dollars for a third or subsequent offense.

INTERACTIVE WIRELESS COMMUNICATION DEVICES:

1. Elements: [60-4124]

The holder of a Provisional Operator's Permit, an LPD or LPE Learners Permit, or a School Permit, shall not:

- a. Use any interactive wireless communication device
- b. While operating a motor vehicle on the highways in NE.

2. Definition: [60-470.02]

An *Interactive Wireless Communication Device* is any wireless electronic communication device that provides for voice or data communication between two or more parties.

- Prohibited devices include, but are not limited to, mobile or cellphones, text messaging device, personal digital assistant that sends or receives messages, audio-video player that sends or receives messages, or laptop PC.

3. Enforcement

Enforcement is a secondary action only and the driver must also be cited or charged with a violation of some other law.

4. Classification

Infraction

GENERAL TRAFFIC RULES:

OBEDIENCE TO OFFICER: [60-6110]

1. Elements:

It is unlawful for any person to:

- a. Knowingly fail or refuse to obey any lawful order,
- b. Of a law enforcement officer controlling or directing traffic.

2. Classification:

- a. Traffic Infraction.
- b. Class III Misdemeanor if the officer was attempting to apprehend a traffic violator.

ABANDONED MOTOR VEHICLES

1. Elements: [60-1901], [60-1907]

No person shall cause any motor vehicle to be abandoned under any of the following circumstances:

- a. A vehicle left unattended without license plates or valid in transit stickers longer than six hours on public property;
- b. A vehicle left unattended longer than twenty-four hours on public property, unless legally parked;

- c. A vehicle left unattended longer than forty-eight hours, after the parking of such vehicle has become illegal, if left on public property where parking is legally permitted;
- d. A vehicle is left unattended longer than seven days on private property if left initially without permission of the owner, or after permission of the owner is terminated;
- e. A vehicle left longer than thirty days in the custody of a law enforcement agency after the agency has sent a letter to the last-registered owner;
- f. If removed from private property by a municipality pursuant to a municipal ordinance.

2. Other Types of Vehicles:

- An all-terrain vehicle, a utility-type vehicle, or a minibike is an abandoned vehicle if any of (b) - (f) above apply.
- A mobile home is abandoned if left on private property longer than 30 days after a local government sent a certified letter to the owner(s) and posted notice on it that it is subject to sale or auction or vesting of title under [60-1903].

4 Authority to Remove Abandoned or Trespassing Vehicle from Private Property: [60-1903.02] *2018 Update*

Law enforcement is authorized to remove an abandoned or trespassing vehicle from private property upon the request of the private property owner.

- After removal, the law enforcement agency with custody of the vehicle shall follow the procedures in sections 60-1902 and 60-1903.
- The property owner is also authorized to remove or cause the removal of such vehicle too, and may use a private towing service. If towed, the towing service must notify law enforcement within 24 hours of the towed vehicle and its location.
- Towed vehicles are subject to tow and storage liens and fees.
- A trespassing vehicle is one that is parked without permission on private property that is not typically made available for public parking.

5. Classification:

Abandoning a motor vehicle is a Class II Misdemeanor

*NOTE: A motor vehicle subject to forfeiture under section [28-431] is not an abandoned vehicle under this section

ANIMALS & FARM VEHICLES ON ROADWAY: [60-6111]

Persons riding animals or driving animal drawn vehicles or an implement of husbandry upon a roadway are subject to all the duties made applicable to a driver of a vehicle

- Slow moving animals or vehicles that obstruct traffic must drive to the nearest available shoulder to allow traffic to pass.

DRIVER MUST SECURE LOAD

1. Elements: [60-6304]

The driver of any vehicle must secure the cargo or contents carried by such vehicle:

- a. The vehicle must be constructed or loaded to prevent contents from dropping, sifting, leaking, or otherwise escaping from the vehicle;
- b. Sand, gravel, rock less than 2 inches in diameter, or refuse transported on any hard-surfaced state highway may not protrude above the sides of the vehicle unless enclosed or completely covered with canvas or similar covering;
- c. Cargo or contents must be distributed and secured adequately to prevent the falling from the vehicle.

2. Classification:

- Class IV Misdemeanor,
- \$250 minimum fine if livestock manure or urine is spilled from a vehicle in a city of the metropolitan class.

OVERTAKING BICYCLES, PEDESTRIANS, OR MOBILITY DEVICES: [60-6,133], [60-6109]

The driver of a vehicle must exercise due care, including:

- a. Leaving a safe distance of at least three feet when overtaking a bicycle, pedestrian or mobility device,
- b. And maintaining such clearance until safely past.

TRAFFIC CONTROL SIGNALS: [60-6123]

Traffic lights apply to drivers of vehicles and pedestrians as follows:

a. Green Light:

Vehicle traffic facing green may proceed straight through or turn right or left unless a sign at such place prohibits either such turn.

- Vehicle traffic, including vehicles turning right or left, shall yield the right-of-way to vehicles and pedestrians lawfully within the intersection or adjacent crosswalk;

b. Green Arrow:

Vehicle traffic facing a green arrow may cautiously enter the intersection only to make the movement indicated by such arrow or other indications shown at the same time.

- Traffic shall yield the right-of-way to other vehicles and pedestrians lawfully within the intersection or adjacent crosswalk;

c. Yellow:

Vehicle traffic facing a steady yellow shall stop before entering the nearest crosswalk at the intersection.

- But if a stop cannot be made in safety, a vehicle may be driven cautiously through the intersection
- A yellow light is a warning that green is going to end and the light will turn red.

- d. **Red:**
Vehicles facing a steady red shall stop at a clearly marked stop line, or if there is no such line vehicles must stop before entering the crosswalk on the near side of the intersection or, if there is no crosswalk, before entering the intersection. Traffic will remain stopped until an indication to proceed is shown.
- e. **Vehicles Turning Right on Red:**
- Unless prohibited by a traffic control device, vehicles facing a steady red light may cautiously enter an intersection to make a right turn after stopping.
 - The turning vehicle must yield the right-of-way to pedestrians lawfully within an adjacent crosswalk and to other traffic lawfully using the intersection.
- f. **Vehicles Turning Left on Red:**
Unless prohibited by a traffic control device, vehicles facing a steady red light at the intersection of two one-way streets may cautiously enter the intersection to make a left turn after stopping as required.
- The turning vehicle must yield the right-of-way to pedestrians lawfully within an adjacent crosswalk and to other traffic lawfully using the intersection.
- g. **Flashing Red:**
Vehicles shall stop at a clearly marked stop line or if there is no such line, then before entering the crosswalk on the near side of the intersection. If there is no crosswalk, the stop is to be made at the point nearest the intersecting roadway where the driver has a view of approaching traffic on the intersecting roadway before entering the intersection. The right to proceed shall be subject to the rules applicable after making a stop at a stop sign.
- h. **Flashing Yellow:**
Vehicles may proceed through the intersection or past such light only with caution.

PEDESTRIANS:

Unless otherwise directed by a pedestrian-control signal, the following rules apply for pedestrians facing a traffic signal:

- a. Pedestrians facing any green indication, except when the sole green indication is a turn arrow, may proceed across the roadway within any marked or unmarked crosswalk.
- b. Pedestrians facing a steady yellow indication, unless otherwise directed by a pedestrian-control signal, are not to start to cross the roadway.
- c. Pedestrians facing a steady red indication alone shall not enter the roadway.
- d. Pedestrians facing a steady WALK indication or a symbol of a walking person may proceed across the roadway in the direction of such signal and shall be given the right-of-way by

- the drivers of all vehicles.
- e. Pedestrians may not cross in the direction of a DONT WALK indication or a symbol of an upraised hand.
- But a pedestrian who has partially completed his or her crossing on the WALK or walking person indication shall immediately proceed to a sidewalk or safety island while the flashing DONT WALK or flashing upraised hand indication is showing.

DAMAGING A TRAFFIC SIGN OR DEVICE:

1. Elements: [60-6,129]

No person shall, without lawful authority:

- a. Willfully or maliciously,
- b. Injure, deface, alter, or knock down any sign, traffic control device, or traffic surveillance device.

2. Classification:

Class II misdemeanor

REMOVING A TRAFFIC SIGN OR DEVICE:

1. Elements: [60-6,129]

No person shall, without lawful authority:

- a. Remove any official sign, traffic control device, or traffic surveillance device placed along a highway for traffic control, warning, or informational purposes,
- b. It shall be unlawful for any person to possess a sign or device that has been unlawfully removed.

2. Classification:

Class II misdemeanor

SHOOTING A TRAFFIC SIGN OR DEVICE:

1. Elements: [60-6,130]

It is unlawful for any person to willfully or maliciously shoot upon the public highway and injure, deface, damage or destroy any sign, monument, road marker, traffic control device, traffic surveillance device, or other public notice lawfully placed upon such highways.

2. Classification:

Class III misdemeanor

DRIVING ON RIGHT OF ROAD REQUIRED: [60-6,131]

Upon all roadways of sufficient width, a vehicle shall be drive upon the right half of the roadway except as follows:

- a. When overtaking and passing another vehicle proceeding in the same direction;
- b. When an obstruction exists making it necessary;
- c. Upon a roadway divided into three marked lanes for traffic under the rules applicable thereon;
- d. Upon a roadway restricted to one-way traffic.

OVERTAKING AND PASSING ON THE LEFT: [60-6,133]

Except when overtaking and passing on the right is permitted, the following rules shall govern the overtaking and passing of vehicles proceeding in the same direction:

- a. The driver of a vehicle overtaking another vehicle proceeding in the same direction shall first give a visible signal of his or her intention and shall pass to the left of the other vehicle at a safe distance and shall not again drive to the right side of the roadway until safely clear of the overtaken vehicle; and
- b. The driver of an overtaken vehicle shall give way to the right in favor of the overtaking vehicle and shall not increase the speed of his or her vehicle until completely passed by the overtaking vehicle.

OVERTAKING AND PASSING ON THE RIGHT: [60-6,134]

In no event shall the driver of a vehicle overtake and pass another vehicle upon the right unless such movement may be made safely upon the roadway. The driver of a vehicle may overtake and pass on the right of another vehicle only under the following conditions:

- When the vehicle to be overtaken is making or about to make a left turn upon a two-way street or highway with an unobstructed roadway, not occupied by parked vehicles, of sufficient width for two or more lanes of moving vehicles going in the same direction when the passing vehicle is traveling in one of such lanes; or
- Upon a one-way street, or upon any roadway on which traffic is restricted to one direction of movement, when the roadway is free from obstructions and of sufficient width for two or more lanes of moving vehicles.

PASSING IN A SCHOOL CROSSING ZONE: [60-6,134.01]

It is unlawful to overtake and pass another vehicle in a school-crossing zone on a roadway with only one lane of traffic in each direction.

- The fine is up to \$200 for the first offense and \$200 to \$400 for a second or subsequent offense.

FOLLOWING TOO CLOSELY: [60-6,140]

- a. The driver of a motor vehicle shall not follow another vehicle more closely than is reasonable and prudent, and such driver shall have due regard for the speed of such vehicles and the traffic upon and the condition of the roadway.
- b. The driver of any motor vehicle drawing a trailer, semi-trailer, or another vehicle, when traveling outside of a business or residential district, shall leave sufficient space for an overtaking vehicle to enter and occupy such space without danger and shall not follow another motor vehicle drawing a trailer, semi-trailer, or another vehicle more closely than one hundred feet.
- c. The driver of any motor vehicle, when traveling upon a

roadway outside of a business or residential district, who is following another vehicle displaying flashing amber or white lights shall not follow such vehicle more closely than one hundred feet. This subsection shall not prevent a vehicle from overtaking and passing any other vehicle.

TRAFFIC LANE RULES: [60-6,139]

Whenever any roadway has been divided into two or more clearly marked lanes for traffic, the following rules, in addition to all others consistent with this section, shall apply:

- a. A vehicle shall be driven as nearly as practicable within a single lane and shall not be moved from such lane until the driver has first ascertained that such movement can be made with safety;
- b. Upon a roadway that is divided into three lanes and provides for two-way movement of traffic, a vehicle shall not be driven in the center lane except:
 - (1) When overtaking and passing another vehicle traveling in the same direction when such center lane is clear of traffic within a safe distance,
 - (2) In preparation for making a left turn, or
 - (3) When such center lane is allocated exclusively (by a traffic control device) to traffic moving in the same direction that the vehicle is proceeding.

VEHICLE RIGHT OF WAY RULES:

- a. **Entering Intersection At Same Time:**

When two vehicles approach or enter an intersection from different roadways at approximately the same time, the driver of the vehicle on the left shall yield the right-of-way to the vehicle on the right.
- b. **Entering From an Entrance Ramp:**

A vehicle entering a highway from an acceleration lane, a ramp, or any other approach road shall yield to a vehicle on the main road entering such merging area at the same time, regardless of whether the approach road is to the left or the right of the main road, unless posted signs indicate otherwise.
- c. **From an Unpaved Road:**

The driver of a vehicle about to enter or cross a paved roadway from an unpaved roadway and who is not subject to control by a traffic control device shall yield the right-of-way to all vehicles approaching on such paved roadway.
- d. **Turning Left:**

The driver of a vehicle who intends to turn to the left within an intersection or into an alley, private road, or driveway shall yield the right-of-way to any vehicle approaching from the opposite direction which is within the intersection or approaching so close as to constitute an immediate hazard.
- e. **From a Stop Sign:**

After having stopped as required at a stop sign, such driver shall yield the right-of-way to any vehicle which has entered the intersection from another highway or which is approaching so closely on such highway as to constitute an immediate hazard if such driver moved across or into such intersection.

f. **From a Yield Sign:**

After slowing or stopping as required at a yield sign, a vehicle shall yield the right-of-way to any other vehicle in the intersection or approaching on another highway so closely as to constitute an immediate hazard if such driver moved across or into such intersection.

g. **From an Alley, Driveway, Private Road, or Building:**

The driver of a vehicle emerging from an alley, driveway, private road, or building shall stop such vehicle immediately before driving onto a sidewalk and shall yield the right-of-way to any pedestrian approaching on any sidewalk. Before entering the highway, the driver shall yield the right-of-way to all vehicles approaching on such highway.

h. **Entering an Alley, Building, Private Road, or Driveway:**

The driver of a vehicle entering an alley, building, private road, or driveway shall yield the right-of-way to any pedestrian approaching on any sidewalk

i. **From a Stopped or Parked Position:**

No person shall move a vehicle that is stopped, standing, or parked without yielding the right-of-way to all other vehicles and pedestrians affected by such movement and in no event until such movement can be made with reasonable safety.

j. **To an Emergency Vehicle:**

Upon the immediate approach of an authorized emergency vehicle which makes use of proper audible or visual signals, other drivers shall yield the right-of-way and immediately drive to a position parallel to and as close as possible to the right-hand edge or curb of the roadway or to either edge or curb of a one-way roadway, clear of any intersection, and shall stop and remain in such position until such emergency vehicle passes unless otherwise directed by any peace officer.

k. **To A Pedestrian:** [60-6153]

Except at a point where a pedestrian tunnel or overhead pedestrian crossing has been provided, when traffic control signals are not in place or not in operation, the driver of a vehicle shall yield the right-of-way and come to a complete stop for a pedestrian crossing the roadway within a crosswalk.

- Whenever a vehicle is stopped at a marked or unmarked crosswalk at an intersection to permit a pedestrian to cross the roadway, vehicles approaching from the rear shall not overtake and pass such stopped vehicle.
- No pedestrian shall suddenly leave a curb or other place of safety and walk or run into the path of a vehicle which is so close that it is impossible for the driver to stop.

YIELD SIGN VIOLATION: [60-6,148]

The driver of a vehicle approaching a yield sign shall slow to a speed reasonable under the existing conditions and, if required for safety, to stop.

STOP SIGN VIOLATION: [60-6,148]

A vehicle approaching an intersection where a stop is indicated by a stop sign shall stop:

- a. At a clearly marked stop line;
- b. If there is no such line the vehicle shall stop before entering the crosswalk on the near side of the intersection;
- c. If there is no such crosswalk, the vehicle shall stop at the point nearest the intersecting roadway where the driver has a view of approaching traffic on the intersecting roadway before entering the intersection.

POSITION AND METHOD OF TURNING: [60-6,159]

a. **Right Turns:**

Both the approach for a right turn and a right turn shall be made as close as practicable to the right-hand curb or edge of the roadway.

b. **Left Turns:**

The driver of a vehicle intending to turn left at any intersection shall approach the intersection in the extreme left-hand lane, and a left turn shall be made so as to leave the intersection, as nearly as practicable, in the extreme left-hand lane lawfully available to traffic moving in such direction upon the roadway being entered. Whenever practicable, the left turn shall be made in that portion of the intersection to the left of the center of the intersection.

U-TURNS: [60-6,160]

Vehicles shall not turn so as to proceed in the opposite direction:

- a. Upon any curve,
- b. Upon the approach to or near the crest of a grade where such vehicle cannot be seen by the driver of any other vehicle approaching from either direction within five hundred feet,
- c. Or at any place where prohibited by a sign,
- d. No vehicle, except authorized emergency vehicles, shall be turned on a freeway so as to proceed in the opposite direction.

CHANGING LANES WITHOUT SAFETY: [60-6,161]

No vehicle shall turn or move right or left upon a roadway unless and until such movement can be made with reasonable safety

TURN SIGNALS REQUIRED: [60-6,161]

No person shall turn a vehicle or move right or left upon a roadway without giving an appropriate signal.

- a. A turn signal shall be given either by signal lights or by hand and arm.. If a hand and arm signal would not be visible both

to the front and rear of the vehicle for one hundred feet, the required signals shall be given by such a light or device.

- b. A signal of intention to turn or move right or left when required shall be given continuously during not less than the last one hundred feet traveled by the vehicle before turning.

SUDDEN STOPPING WITHOUT SIGNAL: [60-6,161]

No person shall stop or suddenly decrease the speed of A vehicle without first giving an appropriate signal in the manner provided in such sections to the driver of any vehicle immediately to the rear when there is opportunity to give such signal.

- A stop or turn signal is required by either hand/arm or by signal lights. If a hand and arm signal would not be visible both to the front and rear of the vehicle for one hundred feet, the required signals shall be given by such a light or device.

OVERLOADING THE FRONT SEAT: [60-6,179]

- a. No person shall drive a motor vehicle when it is so loaded, or when there is in the front seat such a number of persons, exceeding three, as to obstruct the view of the driver to the front or sides of the vehicle or to interfere with the driver's control over the driving mechanism of such vehicle.
- b. No passenger shall ride in such a position as to interfere with the driver's view ahead or to the sides or to interfere with the driver's control over the driving mechanism of such vehicle.

RAILROAD CROSSINGS: [60-6,170]

- a. Upon approach of a railroad grade crossing a vehicle shall stop within fifty feet but not less than fifteen feet from the nearest rail of such railroad and shall not proceed until he or she can do so safely if:
 - (1) A clearly visible electric or mechanical signal device gives warning of the immediate approach of a train;
 - (2) A crossing gate is lowered or a flagperson gives a signal of the approach or passage of a train;
 - (3) A railroad train approaching within approximately one-quarter mile of the highway crossing emits an audible signal audible and is an immediate hazard; or
 - (4) An approaching railroad train is plainly visible and is in hazardous proximity to such crossing.
- b. No person shall drive any vehicle through, around, or under any crossing gate or barrier at a railroad crossing while such gate or barrier is closed or is being opened or closed.

SCHOOL BUS SIGNAL VIOLATION: [60-6,175]

1. Elements:

Upon meeting or overtaking any school bus from either the front or the rear, the driver of a motor vehicle shall:

- a. Reduce speed to not more than twenty-five miles per hour if the bus displays flashing yellow warning signal lights,
 - b. Bring such vehicle to a complete stop when the school bus is stopped, the stop signal arm is extended, and the flashing red signal lights are turned on, and
 - c. Remain stopped until the flashing lights are off, the stop signal arm is retracted, and the bus resumes motion.
2. **Exceptions:**
This section shall not apply to approaching traffic in the opposite direction on a divided highway or to approaching traffic when there is a sign directing traffic to proceed.
3. **Classification:**
 - Class IV Misdemeanor,
 - A five hundred dollar fine,
 - Three points assessed to the driver's record.

CARELESS DRIVING:

1. **Elements:** [60-6212]
It is unlawful for any person to:
 - a. Drive a motor vehicle carelessly or without due caution,
 - b. So as to endanger a person or property.
2. **Enforcement:** [60-6108]
Most traffic violations apply only to publicly maintained roads and highways, but careless driving may be enforced anywhere except private property which is not open to public access.
3. **Classification:** [60-682]
Careless driving is a Traffic Infraction:
 - Not more than one hundred dollars for the first offense;
 - Not more than two hundred dollars for a second offense within a one-year period; and
 - Not more than three hundred dollars for a third and subsequent offense within a one-year period

RECKLESS DRIVING:

1. **Elements:** [60-6,213]
Any person who drives any motor vehicle in such a manner as to indicate an indifferent or wanton disregard for the safety of persons or property shall be guilty of reckless driving.
2. **Enforcement:** [60-6108]
Most traffic violations apply only to publicly maintained roads and highways, but reckless driving may be enforced anywhere except private property which is not open to public access.
3. **Classification:**
 - Every person convicted of reckless driving shall, upon a first conviction, be guilty of a Class III Misdemeanor;
 - A second offense is a Class II Misdemeanor, and the court shall order the offender not to drive a motor vehicle for any purpose for a period of not less than sixty days nor more than two years. If the offender owned the vehicle, it

will be impounded for at least two months, up to one year.

- A third or subsequent conviction is a Class I Misdemeanor and the court shall order a one year license revocation.

WILLFUL RECKLESS DRIVING:

1. Elements: [60-6,214]

Any person who drives any motor vehicle in such a manner as to indicate a willful disregard for the safety of persons or property shall be guilty of willful reckless driving.

2. Enforcement: [60-6108]

Most traffic violations apply only to publicly maintained roads and highways, but willful reckless may be enforced anywhere except private property which is not open to public access.

3. Classification:

- a. Every person convicted of reckless driving shall, upon a first conviction, be guilty of a Class III Misdemeanor;
- b. A second offense is a Class II Misdemeanor, and the court shall order the offender not to drive a motor vehicle for any purpose for a period of not less than sixty days nor more than two years. If the offender owned the vehicle, it will be impounded for at least two months, up to one year.
- c. A third or subsequent conviction is a Class I Misdemeanor and the court shall order the offender's license to be revoked and not to drive any motor vehicle for any purpose for a period of one year.

PROOF OF FINANCIAL RESPONSIBILITY:

1. Elements: [60-3167]

The owner of a motor vehicle or trailer must have a current and effective automobile liability policy, evidence of insurance, or proof of financial responsibility if it is operated or towed on a public roads or highway.

2. Definitions

- ***Automobile liability policy*** [60-310] means liability insurance from an authorized insurance carrier protecting other persons from damages for liability on account of accidents occurring while the policy is effective;
- ***Evidence of Insurance*** [60-323] means proof of a current and effective automobile liability policy, either in paper or electronic format;
- ***Owner*** [60-342] means a person, firm, or corporation that either:
 - a. Holds *legal title* of a motor vehicle or trailer, OR
 - b. Has an *immediate right of possession* of it with a right of purchase agreement, a lease, or a mortgage on it.
- ***Proof of financial responsibility*** [60-346] means proof of ability to pay damages for liability for accidents arising

out of the ownership, maintenance, or use of a motor vehicle;

3. Electronic Evidence of Insurance

Most drivers will show evidence of insurance, rather than a liability policy or proof of financial responsibility, and such evidence may shown be by either paper or electronic format.

- Showing electronic evidence is not consent for law enforcement to access other contents of the device.
- The person presenting the device assumes liability for damage to it.

4. Minimum Amount of Liability:

A liability policy or proof of financial responsibility must cover the minimum liability amounts set out by law:

- Twenty-five thousand dollars for bodily injury to or death of one person in any one accident,
- Fifty thousand dollars for bodily injury to or death of two or more persons in any one accident, and
- Twenty-five thousand dollars for property damage of other persons in any one accident.

5. Presumption:

The owner is presumed to know of the operation or towing of his or her motor vehicle or trailer and can be prosecuted if someone else was operating or towing it while uninsured.

6. Forgiveness: [60-3167(2)]

An owner who brings such proof *to the prosecutor within 10 days* of the request by an officer will not be prosecuted.

7. Classification:

- a. Class II Misdemeanor
- b. If convicted, the person can avoid suspension and SR-22 by showing proof to the DMV afterwards.

DRIVER DUTY UPON APPROACH OF FIRE AND POLICE DEPARTMENT VEHICLES: [60-6154]

Upon approach of an authorized emergency vehicle, giving audible signal by bell, siren, or exhaust whistle:

- a. All other vehicles shall proceed to right-hand curb and stop until police vehicle has passed,
- b. It is unlawful to follow any fire apparatus closer than 500 feet (vehicles on official business excepted),
- c. It is unlawful to drive into or park within the block where fire apparatus has stopped to answer fire alarm.

“MOVE OVER” RULE FOR STOPPED EMERGENCY OR ROAD ASSISTANCE VEHICLES: [60-6,378]

1. Elements:

If an authorized emergency vehicle or road assistance vehicle is stopped on a *controlled-access highway* with at least two adjacent lanes of travel in the same direction on the same side of the highway, and such vehicle is using proper audible or

visual signals, the following rules apply:

- a. Drivers (using due regard, care, and caution for all persons) must yield the right of way and “move over” into a lane at least one moving lane apart from the stopped authorized emergency vehicle or road assistance vehicle,
- b. Unless directed otherwise by a peace officer or other authorized emergency personnel.

2. Exceptions:

- a. If moving into another lane is not possible because of:
 - (1) Weather or road conditions,
 - (2) The immediate presence of vehicular or pedestrian traffic,
 - (3) Or because the controlled-access highway does not have two available adjacent lanes of travel in the same direction on the same side of the highway,
- b. Then the driver approaching or passing shall:
 - (1) Reduce his or her speed,
 - (2) Maintain a safe speed with regard to the location of the stopped vehicles, the weather and road conditions, and vehicular or pedestrian traffic,
 - (3) And proceed with due care and caution or proceed as directed by a peace officer or other authorized emergency personnel or road assistance personnel.

2. Definitions:

- ***Controlled-Access Highway*** means every highway or roadway for which there is no legal right of access to or egress from except as determined by the public authority having jurisdiction over such highway;
- ***Authorized Emergency Vehicle*** means all publicly owned police, fire, or rescue vehicles, as well as ambulances and some privately owned vehicles designated by DMV, and military vehicles designated by the National Guard;
- ***Road Assistance Vehicle*** includes a vehicle operated by the Department of Roads, a Nebraska State Patrol motorist assistance vehicle, and a United States Department of Transportation registered towing or roadside assistance vehicle. Such vehicle shall emit a warning signal utilizing properly displayed emergency indicators such as strobe, rotating, or oscillating lights when stopped along a highway.

4. Classification:

- A Traffic Infraction for a first offense
- Class IIIA Misdemeanor for a 2nd or subsequent offense

*NOTE: Enforcement shall not be done by using *simulated situations* involving an authorized emergency vehicle or a road assistance vehicle.

COASTING: [60-6182]

It is unlawful to coast in neutral gear when traveling on a downgrade.

DISABLED VEHICLES: [60-6164]

When a vehicle is disabled or inoperable in a roadway for any reason *other than an accident* and is obstructing the regular flow of traffic, the following rules apply:

- a. The driver shall move or cause the vehicle to be moved as soon as practical
- b. A disabled vehicle may remain temporarily if impossible to be moved, but the driver must get it moved as soon as practical.
- c. An officer may remove or cause a disabled vehicle that was in an accident to be removed from a roadway without the consent of the driver or owner under the guidelines of [60-696(3)] (see accidents this handbook).

RULES FOR TOWING OTHER VEHICLES: [60-3221]

Particular types of vehicles may only be pulled by certain other types of vehicles, as listed in the statute:

1. A CABIN TRAILER may be towed by a properly registered passenger car, commercial motor vehicle or apportionable vehicle, farm truck, local truck, minitruck, recreational vehicle, or bus;
2. A UTILITY TRAILER may be towed by a properly registered passenger car, commercial motor vehicle or apportionable vehicle, farm truck, local truck, minitruck, recreational vehicle, motor vehicle which is engaged in soil and water conservation pursuant to section [60-3,149], well-boring apparatus, dealer-plated vehicle, or bus.
3. A FARM TRAILER may be towed by a properly registered passenger car, commercial motor vehicle, farm truck; or minitruck.
4. A COMMERCIAL TRAILER may be towed by a properly registered motor vehicle that is engaged in soil and water conservation, a Local truck, well-boring apparatus, commercial motor vehicle or apportionable vehicle, dealer-plated vehicle, bus, or farm truck.
5. A FERTILIZER TRAILER may be towed by a properly registered passenger car, commercial motor vehicle or apportionable vehicle, farm truck, or a local truck.
6. A POLE AND CABLE REEL TRAILER may be towed by a properly registered commercial motor vehicle or apportionable vehicle, or a local truck.
7. A DEALER-PLATED TRAILER may be towed by a dealer-plated vehicle, passenger car, commercial motor vehicle or apportionable vehicle, farm truck, or a minitruck;
8. Trailers registered pursuant to section [60-3,198] as part of an APPORTIONED FLEET may be towed by a properly

registered motor vehicle engaged in soil and water conservation under [60-3,149], a local truck, well-boring apparatus, commercial motor vehicle or apportionable vehicle, dealer-plated vehicle, bus, or farm truck.

HANDICAPPED PARKING VIOLATIONS:

1. Elements: [18-1741], [60-3113.06]

It is unlawful for any person to do any of the following:

- a. Park a vehicle in a designated space or access aisle without displaying a valid permit;
- b. Display a permit without authorization and park in a handicapped or disabled parking space or access aisle;
- c. Transport a handicapped person and park in a designated space or access aisle unless the permit holder is actually in the vehicle or unless such person has left the parked vehicle and will return before the vehicle leaves.

2. Other Violations:

- Permits are not transferable and shall be used only by the party to whom issued or for the motor vehicle for which issued and only for the purpose issued;
- No person shall alter or reproduce a permit in any manner;
- No person shall knowingly hold more than one permit;
- No person shall knowingly provide false information on an application for a permit.

3. Classification:

A violation is a Handicapped Parking Infraction, with a fine:

- Up to \$150 for the 1st offense,
- Up to \$300 for a 2nd offense within one year, and
- Up to \$500 for a 3rd/subsequent offense within one year.
- Violator may also have their permit revoked for six months and be subject to other punishment as may be provided by local ordinance.

4. Other Considerations:

- A cited person may have the complaint dismissed by filing an affidavit with the court within seven business days, signed by a peace officer certifying that the recipient is the lawful possessor of a handicapped parking permit issued under section [18-1738] or [18-1738.01] and that the peace officer has personally viewed the permit;
- If the identity of the person who parked the vehicle in violation cannot be readily determined, the owner or person in whose name the vehicle is registered is responsible;
- Designation of a handicapped space or access aisle shall be made by posting a sign aboveground and immediately adjacent to and visible from each stall or space, including access aisles. Such sign must comply with

federal law;

- Any person failing to appear or otherwise comply with the command of a handicapped parking citation shall be guilty of a Class III misdemeanor;
- **Access Aisle** means a space adjacent to a handicapped parking space or passenger loading zone which is constructed and designed in compliance with federal law.

WINDSHIELD OBSTRUCTIONS:

1. Elements: [60-6,256]

It is unlawful to operate a motor vehicle with any object placed or hung in or upon the motor vehicle in such a manner as to:

- a. Significantly and materially obstruct or interfere with the view of the operator through the windshield, OR
- b. To prevent the operator from having a clear and full view of the road and condition of traffic behind the vehicle,
- c. Except required or permitted equipment of the vehicle,

2. Exceptions:

A sticker or identification authorized or required by a government agency may be placed upon the windshield of a motor vehicle without violating this section.

3. Enforcement:

Enforcement of this section is a secondary action when a driver of a motor vehicle has been cited or charged with a traffic violation or some other offense.

4. Classification:

Traffic Infraction with a fine of \$50 (1st offense), \$100 (2nd offense), and \$150 (3rd or subsequent offense).

REGISTRATION AND LICENSE PLATES:

VEHICLE AND TRAILER REGISTRATION: [60-362]

Unless otherwise provided, motor vehicles or trailers that are operated or parked on the streets must be registered.

- Motor vehicles and trailers stored or kept on private property for more than 30 days are presumed to be used on the streets and therefore must be registered. This is a rebuttable presumption.

DUTY TO CARRY REGISTRATION CERTIFICATE: [60-363]

No person shall operate or park a motor vehicle or tow or park a trailer on the highways without the registration certificate carried in or upon it, subject to inspection by any peace officer.

- A motorcycle registration certificate shall be carried either in plain sight, affixed to the motorcycle, or in the tool bag or some convenient receptacle attached to the motorcycle.
- The registration certificate for a fertilizer trailer shall be kept at the principal place of business of the owner.

- A driver who tows or parks a trailer may carry a copy of the registration for it either upon the trailer or in or upon the vehicle that is used to tow or park it, subject to inspection by an officer.

INTRANSIT VEHICLES: [60-365]

An intransit sticker allows the operation or towing of a newly purchased motor vehicle trailer without a license plate for a period of thirty days from the date of purchase.

- A motor vehicle requires two intransit stickers, displayed on both the front and either the rear or rear side windows;
- A motorcycle is required to display only one intransit sticker, half the size required for a motor vehicle;
- A trailer intransit must be displayed on both the front and rear,
- All intransit stickers shall be plainly printed in black letters the words In Transit, and shall include a registration number for which a record is kept by the issuing dealer;
- A dealer-issued intransit sticker is presumptively valid, and the vehicle may not be stopped to check the validity of such sticker,
- A vehicle displaying an intransit that was not issued by a dealer is subject to being stopped, and an officer may require the person in charge of the motor vehicle or trailer to present a title, a bill of sale or other satisfactory evidence of ownership and the date of transfer [60-376].

OPEN TITLE VIOLATION:

1. Elements: [60-139]

It is unlawful to:

- a. Purchase a vehicle,
- b. And receive title that does not contain assignments on it to show title in the purchaser,
- c. Possession of a title that does not comply is prima facie evidence of a violation.

2. Classification:

Class III Misdemeanor.

VEHICLES FROM OTHER STATES: [60-366]

Vehicles from other states may be operated or towed in Nebraska if such vehicle is properly registered where the owner resides, if the license plate or plates are displayed.

- Vehicles from other states must be registered in Nebraska if the nonresident owner is gainfully employed or present in this state, after 30 days of continuous employment or presence unless the state of his or her legal residence grants immunity to residents of Nebraska who operate or tow a vehicle in that state.

- A nonresident owner may register in the county where the motor vehicle or trailer is domiciled or where the owner conducts a bona fide business.

REGISTRATION IN THE PROPER COUNTY: [60-385]

Vehicles must be registered in the county where the motor vehicle or trailer is stored and kept for the greater portion of the calendar year (where the vehicle has “situs”) under [60-349].

- A *Student* may register in the county of their residence if different from the place at which he or she is attending school.

FICTITIOUS, ALTERED, OR CANCELLED LICENSE PLATES: [60-399]

No person shall attach to or display on a motor vehicle or trailer:

- a. License plate or registration certificate other than as assigned to it for the current registration period,
- b. Fictitious or altered license plates or registration certificate,
- c. License plates or a registration certificate that has been canceled by DMV, or
- d. License plates lacking current validation decals.

PROPER DISPLAY OF PLATES: [60-399], [60-3100]

No person shall operate, park, tow, or cause to be operated, parked or towed, a motor vehicle or trailer unless:

- Such motor vehicle or trailer has displayed the proper number of plates as required by law;
- The license plates have current validation decals on them;
- The plates are securely fastened in an upright position to the vehicle or trailer so as to prevent such plates from swinging;
- The bottom of the license plate must be a minimum distance of twelve inches from the ground;
- All letters, numbers, printing, writing, and other identification marks upon such plates and certificate shall be kept clear and distinct and free from grease, dust, or other blurring matter, so that they shall be plainly visible at all times during daylight and under artificial light in the nighttime.
- When two license plates are issued, one shall be prominently displayed at all times on the front and one on the rear of the vehicle or trailer.
- When only one plate is issued, it shall be prominently displayed on the rear. When only one plate is issued for an apportionable vehicle registered pursuant to [60-3,198] or a truck-tractor, it shall be prominently displayed on the front.

ONE PLATE FOR SPECIALTY CARS: [60-3100(2)(c)]

- a. A car not manufactured with a bracket for a front license plate,
- b. May display only one license plate on the rear,
- c. Along with an authorized license decal on the front driver’s side of the windshield.

OTHER ONE PLATE VEHICLES:

Vehicles with only one license plate are (i) apportionable vehicles, (ii) buses, (iii) dealers, (iv) minitrucks, (v) motorcycles, (vi) special interest motor vehicles, (vii) trailers, and (viii) truck-tractors.

- Autocycles, motorcycles, minitrucks, low-speed vehicles, and trailer license plate letters and numerals are half size.

SPECIAL INTEREST LICENSE PLATES: [60-3531.01]

A special interest license plate is for any vehicle that is being collected, preserved, restored, or maintained as a leisure pursuit and not for general transportation of persons or cargo.

- The special interest motor vehicle license plate shall be affixed to the rear of the special interest motor vehicle.
- A special interest motor vehicle shall not be used for the same purposes and under the same conditions as other motor vehicles of the same type and shall not be used for business or occupation or regularly for transportation to and from work.
- A special interest motor vehicle may be driven on the public streets and roads only for occasional transportation, public displays, parades, and related pleasure or hobby activities.
- Violation of this section is a Class V misdemeanor.

UNDERCOVER LICENSE PLATES: [60-3,135]

Undercover license plates issued to law enforcement agencies and shall be used only for legitimate criminal investigatory purposes.

- Undercover plates shall not be used on personally owned vehicles or for personal use of government-owned vehicles;
- An agency contact person must keep records of the number of undercover plates possessed by the agency, the particular license plate numbers for each motor vehicle, and the person who is assigned to the motor vehicle. This record shall be confidential and not be subject to public disclosure;
- Any person who receives information pertaining to undercover license plates in the course of his or her employment and who discloses any such information to any unauthorized individual shall be guilty of a Class III misdemeanor.

SEATBELT AND CHILD RESTRAINT REQUIREMENTS:***SEATBELTS:***

Motor vehicles built since 1973 (except farm equipment, motorcycles, and buses) must be equipped with an occupant protection system (seatbelts) that meets federal regulations.

1. Elements: [60-6,270]

It is unlawful for any person to operate a motor vehicle upon a highway or street in this state unless:

- a. The driver and each front-seat occupant are wearing occupant protection system;

- b. And all occupant protection systems are properly adjusted and fastened.
- c. All persons being transported by a holder of a provisional operator's permit (POP) or a school permit must use an occupant protection system;
- d. All children between eight and eighteen years of age must use an occupant protection system.
- e. Children less than eight years old must use a *child restraint system*.

2. Exceptions:

The following persons shall not be required to wear an occupant protection system:

- (1) A person who possesses written verification from a physician that the person is unable to wear an occupant protection system for medical reasons;
- (2) A USPS rural letter carrier while performing duties between the first and last delivery points; and
- (3) A member of an emergency medical service while involved in patient care.

3. Classification:

Violation is a Traffic Infraction with a fine of \$25.

- No points or court costs are assessed;
- Only one violation per driver, regardless of how many people are not wearing a seat belt.

*NOTE: Enforcement of a seatbelt violation may only be done as a secondary action when a driver has been cited or charged with a violation of some other offense. Child restraint violations for children under eight are primary, however.

CHILD RESTRAINT REQUIREMENTS: 2018 Update

1. Elements: [60-6,267]

It is unlawful for the driver of any motor vehicle which has or is required to have an occupant protection system:

- a. To transport any child less than eight years of age,
- b. Without the use of a correctly installed child passenger restraint system,
- c. Of a type which meets the standards of the NHTSA.
- d. The child must be in a rear seat if available (not already occupied by a child less than eight years old).
- e. Children less than two years old must be in a rear-facing device until the child outgrows the height or weight requirements by the manufacturer.
- f. All children between eight and eighteen years of age must use an occupant protection system.

2. Exceptions:

Vehicles which do not need to use child restraint systems under this section are:

- Authorized emergency vehicles;

- Taxicabs, buses, mopeds, motorcycles;
- A motor vehicle operated in a parade or exhibition conducted in accordance with state and local laws;
- Any motor vehicle model year 1963 or earlier which is not equipped with an occupant protection system;
- A vehicle transporting a child unable to wear an occupant protection system for medical reasons if the driver has a signed written statement in the vehicle from a physician identifying the child and the grounds for such waiver.

3. Classification:

- Violation is an Infraction with a fine of twenty-five dollars for each violation.
- Failure to provide a child restraint system for more than one child in the same vehicle is not a separate offense.

*NOTE: A child safety seat violation involving a child up to age eight is enforced as a primary offense

ACCIDENTS AND ACCIDENT REPORTS:

LEAVING THE SCENE OF A PROPERTY DAMAGE ACCIDENT:

1. Elements: [60-696]

The driver of any vehicle involved in an accident/collision:

- Upon a public highway, private road, or private drive,
- Resulting in damage to property,
- Shall immediately stop the vehicle at the scene of the accident,
- And provide the following information to the driver or occupants of any other vehicle involved or the owner of the property struck:
 - His/her name, address, telephone number , And
 - His/her operator's license number

2. Classification:

- Class II Misdemeanor (if no convictions under [60-696] in twelve years prior)
- Class I Misdemeanor (if one or more convictions under 60-696 in the twelve years prior)
- The court may also revoke the defendant's driving privilege for one year.

LEAVING THE SCENE OF AN INJURY OR DEATH ACCIDENT:

1. Elements: [60-697]

- The driver of any vehicle involved in an accident
- Upon a public highway, private road, or private drive
- Resulting in injury or death to any person, shall:
 - Immediately stop such vehicle at the scene of such accident and ascertain the identity of all persons

involved, AND

- (2) Give his or her name and address and the license number of the vehicle and exhibit his or her operator's license to the person struck or the driver or occupants of any vehicle collided with, AND
- (3) Render to any person injured in such accident reasonable assistance, including the carrying of such person to a physician or surgeon for medical or surgical treatment if it is apparent that such treatment is necessary or is requested by the injured person.

2. Classification: [60-698]:

- Class IIIA Felony for an injury accident that did not involve a serious bodily injury or death;
- Class III Felony for an injury accident that resulted in a serious bodily injury or death;
- The court shall also order the offender's driving privilege revoked for a period of between one and fifteen years.

UNATTENDED VEHICLE OR PROPERTY: [60-696]

1. Elements:

The driver of any vehicle involved in an accident

- a. Upon a public highway, private road, or private drive,
- b. Resulting in damage to an unattended vehicle or property,
- c. Shall immediately stop such vehicle,
- d. And leave written notice in a conspicuous place in or on the unattended vehicle or property containing:
 - (1) His/her name, address, telephone number,
 - (2) And give his or her operator's license number

2. Classification:

- Class II Misdemeanor (if no convictions under 60-696 in twelve years prior)
- Class I Misdemeanor (if one or more convictions under 60-696 in the twelve years prior)
- The court may also revoke such persons drivers privilege for one year upon conviction for leaving the scene.

ADDITIONAL DUTY TO REPORT COLLISION:

1. Elements: [60-696]

- a. The driver of any vehicle involved in an accident,
- b. Upon a public highway, private road, or private drive,
- c. Resulting in damage to an unattended vehicle or property,
- d. Shall, without unnecessary delay, report the collision, by telephone or otherwise, to an appropriate peace officer.

2. Classification:

- Class II Misdemeanor (no convictions in 12 years prior)
- Class I Misdemeanor (2nd or subsequent offense within previous 12 years)
- The court may also revoke such person's driving privilege for one year upon conviction.

AUTHORITY OF PEACE OFFICER TO REMOVE ROAD OBSTRUCTIONS: [60-696(3)]

1. Generally:

A peace officer may remove or cause to be removed from a roadway, without the consent of the driver or owner:

- a. Any vehicle, cargo, or other property which is obstructing the roadway creating or aggravating an emergency situation or otherwise endangering the public safety.
- b. Any vehicle, cargo, or other property obstructing a roadway shall be removed by the most expeditious means available to clear the obstruction, giving due regard to the protection of the property removed.

2. Exception:

This subsection does not apply if an accident results in or is believed to involve the release of hazardous materials, hazardous substances, or hazardous wastes, as those terms are defined in section [75-362].

ACCIDENT REPORTS:

(1) Officers Duty: [60-695]

It is the duty of any peace officer to submit an original report of a traffic accident investigation to the Accident Records Bureau of the Department of Transportation:

- a. Within ten days after each such accident.
- b. When such accident resulted in either:
 - (2) Injury or death to any person, or
 - (3) Estimated damage exceeding one thousand dollars, to the property of any one person.

(2) Driver Duty: [60-6100]

The operator of any vehicle involved in an accident resulting in either injury or death to any person, or property damage to an apparent extent of more than one thousand dollars to the any one person, including such operator, shall:

- a. Forward a report within ten days (*with correct information*) of such accident to the Dept. of Transportation.
- b. If the operator is physically incapable of making the report, the owner of the motor vehicle shall report it in writing to the Dept. of Transportation within ten days from the time he/she learns of the accident,

(4) Classification:

Class V Misdemeanor for failure to report or for giving incorrect information

(5) Effect of Filed Accident Reports:

- Such reports are *not* admissible in evidence at trial and are not evidence of negligence.
- All reports made by peace officers are public records.
- Reports by the operator or owner are not public record.

DRIVING UNDER THE INFLUENCE OF ALCOHOL OR DRUGS

GENERALLY:

DUI (DWI) is a single offense that can be proven one of two ways:

- The first way is to show that the driver was impaired and was under the influence, regardless of what breath/blood alcohol concentration (BAC) that person had.
- The second way is to simply show the BAC at or above the legal limit, regardless of impairment. Failure of a chemical test is a “per se” evidence of violating this section.

VENUE: [60-6108]

DUI law applies anywhere throughout the state, except private property which is not open to public access.

- This is an exception to the general rule that traffic laws apply only to the public streets

DEFINITIONS:

Many definitions related to DUI are not statutory, but are defined by the courts, or by the Nebraska Administrative Code, Title 177.

- ***Actual Physical Control*** means dominion and physical possession of a motor vehicle.
- ***Motor vehicle*** [60-638] means every self-propelled land vehicle, not operated upon rails, except mopeds, self-propelled chairs for disabled persons, and electric personal assistive mobility devices.
- ***Open to Public Access*** means any place designed for motor vehicle traffic with unrestricted ingress/egress to/from the public streets.
- ***Operate*** means physically handle the controls of a motor vehicle
- ***Under the Influence*** means the ingestion of alcohol or drugs (or both) in an amount sufficient to impair to any appreciable degree the driver's ability to operate a motor vehicle in a prudent and cautious manner.
 - a. It must be shown that the use of alcohol or any drug caused the impairment,
 - b. It must be shown that the operator was under the influence *at the time* of driving,
 - c. Proof that a driver was *under the influence* does not depend on a pretest or chemical test (although such evidence may show the reason for observed impairment),
 - d. A driver who tests *under* the per se legal limit may still be under the influence of alcohol and/or drugs,
 - e. Sufficient evidence for a conviction may come from either a law enforcement officer's observations of a defendant's intoxicated behavior or the defendant's poor performance on field sobriety tests,

- f. If the impairment observed cannot be related to alcohol, officers should consider a second test for drugs.

DRIVING UNDER THE INFLUENCE (DUI):

1. Elements: [60-6196]

It shall be unlawful for any person to:

- a. Operate or be in actual physical control of a motor vehicle,
- b. While under the influence,
- c. Of alcoholic liquor or any drug,
- d. Or with a concentration of alcohol in his or her blood or breath at or above the legal limit (.08).

2. Classification: [60-6197.03], [28-106]

The penalty for DUI depends on whether the person convicted has a prior offense, whether there was a chemical test, and what the result (BAC) of the chemical test was.

- There are enhanced penalties for drivers who test .15 or greater (“Aggravated” DUI).

| Penalties for DUI Offenses: [28-106], [60-6197.03] | |
|---|---|
| <i>First Offense:</i> | <u>Class W Misdemeanor</u> <ul style="list-style-type: none"> • 7-60 days jail, \$500 fine, • 6 month operator license revocation, • 1 year revocation (BAC of .15 or more) |
| <i>Second Offense:</i> | <ol style="list-style-type: none"> a. <u>Class W Misdemeanor</u> (BAC .08 - .149): <ul style="list-style-type: none"> • 30 days to six months jail, \$500 fine • 18 month revocation b. <u>Class I Misdemeanor</u> (BAC of .15 or more) <ul style="list-style-type: none"> • 18 month to fifteen year revocation |
| <i>Third Offense:</i> | <ol style="list-style-type: none"> a. <u>Class W Misdemeanor</u> (BAC .08 - .149): <ul style="list-style-type: none"> • 90 days to one year jail, \$1000 fine • Fifteen year revocation b. <u>Class IIIA Felony</u> (BAC of .15 or more) <ul style="list-style-type: none"> • Minimum 180 days imprisonment • Fifteen year revocation |
| <i>Fourth Offense:</i> | <ol style="list-style-type: none"> e. <u>Class IIIA Felony</u> (BAC .08 to .149): <ul style="list-style-type: none"> • Minimum 180 days imprisonment • Fifteen year revocation b. <u>Class IIA Felony</u> (BAC of .15 or more) <ul style="list-style-type: none"> • Minimum one year imprisonment • Fifteen year revocation |
| <i>Fifth and Subsequent Offense:</i> | <ol style="list-style-type: none"> a. <u>Class IIA Felony</u> (BAC .08 to .149): <ul style="list-style-type: none"> • Minimum two years imprisonment • Fifteen year revocation b. <u>Class II Felony</u> (BAC of .15 or more) <ul style="list-style-type: none"> • Minimum two years imprisonment • Fifteen year revocation |

PRIOR CONVICTIONS: [60-6197.02]: To enhance a charge of DUI or Refusal beyond a first offense requires one or more valid prior convictions.

- A prior conviction must have occurred within the previous fifteen years, computed from the date of the prior offense.
- A prior conviction may be a state violation or a city or village ordinance enacted in conformance with the noted statute.
- Any of the following offenses qualify as a prior conviction:

| Convictions used to enhance a DUI or Refusal: | |
|---|----------------------------------|
| DUI | [60-6,196] |
| DUI Serious Bodily Injury | [60-6198], |
| Refusal of a Chemical Test | [60-6197] |
| Felony Motor Vehicle Homicide while DUI or Felony DUR related to a DUI | [28-306(3)(b)] [28-306(3)(c)] |
| Motor Vehicle Homicide of an Unborn Child while DUI or Felony DUR related to a DUI | [28-394(3)(b)] [28-394(3)(c)] |
| DUI or Refusal that was committed with child passenger under age 16 | [28-1254] |
| Out of State Convictions that may be used to enhance: Any conviction for any of the above under a law of another state if, at the time of the conviction under the law of such other state, the offense for which the person was convicted would have been a violation of Nebraska law. | |

ZERO-TOLERANCE (.02) VIOLATION FOR FELONY DUI OFFENDERS:

1. Elements: [60-6196.01]

It is unlawful for anyone who has a prior conviction for felony DUI within the previous fifteen years to:

- Operate have actual physical control of a motor vehicle,
- When such person has a blood or breath alcohol concentration of two-hundredths (.02) or more.

2. Classification:

Class IIIA Misdemeanor.

IMPLIED CONSENT: [60-6,197]

The implied consent provisions of Nebraska law allow an officer to demand a test for a suspected drunk driver. Any person who operates or has in his or her actual physical control a motor vehicle in this state shall be deemed to have given his or her consent to submit to a chemical test or tests of his or her blood, breath, or urine for the purpose of determining the concentration of alcohol or the presence of drugs.

- Any peace officer that is authorized to make arrests for traffic violations may demand a chemical test if the conditions of the implied consent law (listed below) are met.

- Any person who refuses a chemical test shall be guilty of a crime and upon conviction punished as provided in sections [60-6,197.02] to [60-6,197.08].
- Note that a repeat drunk driver who refuses the chemical test will be punished the same as an Aggravated DUI offender.

*NOTE: The U.S. Supreme Court has held that actual consent or a warrant is required for the collection of blood, and that implied consent is a violation of the subject's rights. (blood only).

1. ***Chemical Test Advisement Required***

Any person who is required to submit to a chemical test or tests pursuant to the implied consent law shall be advised that refusal to submit to such test or tests is a separate crime for which the person may be charged.

- Failure to provide the advisement will not affect the admissibility of the chemical test (in a prosecution for DUI), but will prevent the person from being charged with refusal of the test under [60-6197].
- Note that giving the implied consent advisement to obtain a blood sample may cause admissibility problems in court and officers should consult their legal advisor.

2. ***When a Chemical Test May Be Required:***

a. Arrest for DUI

A peace officer may require a chemical test from any person arrested for any offense arising out of acts alleged to have been committed while the person was driving or was in actual physical control of a motor vehicle while under the influence of alcoholic liquor or drugs. The arresting officer must have reasonable grounds to believe that such person was in violation of section [60-6,196].

b. Motor Vehicle Accident While DUI

Any person in a motor vehicle accident in this state may be required to submit to a chemical test if the officer has reasonable grounds to believe that such person was in violation of section [60-6,196] at the time of the accident.

c. Fail or Refuse PBT

Any person who refuses to submit to a preliminary breath test or whose preliminary breath test results indicate a BAC of .08 or above shall be placed under arrest.

3. ***Right to a Lawyer / Miranda Warnings:***

A driver is not entitled to consult a lawyer before taking a chemical test, nor shall the test be delayed by such a request.

- Miranda warnings do not need to be given prior to a driver being required to submit to a chemical test under the implied consent law.

4. Choice of Test

Any person subject to the implied consent provisions may be required to submit to a chemical test or tests of his or her blood, breath, or urine for a determination of the concentration of alcohol or the presence of drugs.

- The *officer* decides whether the test or tests are of blood, breath, or urine [60-6,199].

5. Unconscious Person May Be Tested [60-6200]

Any person who is unconscious or who is otherwise in a condition rendering him or her incapable of refusal shall be deemed not to have withdrawn the implied consent.

6. Leaving the State Does not Revoke Consent

A person involved in a motor vehicle accident remains subject to the implied consent law even if they leave the state.

- This is particularly helpful when a driver is transported to a hospital across state lines.

7. Right to Independent Test [60-6199]

The person tested shall be permitted to have a physician evaluate them and perform independent tests, in addition to and following the test or tests administered at the direction of the officer.

8. Recording Chemical Test Results:

- Breath Test Results shall be reported as hundredths or thousandths of a gram of alcohol per 210 liters of breath on the checklist from NAC Title 177 (Test results shall not be rounded upward). The completed checklist is the official record of breath test results (not the printout).
- Blood Test Results shall be reported in terms of hundredths or thousandths of a gram of alcohol per 100 milliliters of blood (test results shall not be rounded upward).

REFUSAL TO SUBMIT TO A CHEMICAL TEST:

This is a separate crime from DUI and may be charged in addition to DUI if sufficient facts are shown that the driver was under the influence.

1. Elements: [60-6197]

It is unlawful for any person:

- a. To refuse to submit to a chemical test or tests of blood, breath, or urine;
- b. When ordered to submit to such test or tests by a peace officer under the implied consent provisions.
 - A single request to submit to a test is sufficient.
 - There is no requirement that a second request be made if the person arrested refuses.

2. Definition:

Refusal of a chemical test means that a person understood what is being asked of them and then in some way manifested non-acceptance, non-consent, or unwillingness to do so.

- A driver whose conduct would justify a reasonable person in the requesting officer's position in believing that the driver understood but was unwilling to submit to a test, has refused under the implied consent law

2. Classification:

Refusal is subject to the same penalty as DUI.

- Refusal to submit to a chemical test is admissible evidence for prosecution for driving under the influence.

*NOTE: Any person who is required to submit to a chemical test shall be advised that refusal to submit to such test or tests is a separate crime for which the person may be charged. Failure to properly advise the suspect will negate the state's ability to bring a charge of refusal.

REFUSAL OF A PRELIMINARY BREATH TEST:

1. Elements: [60-6197.04]

Any peace officer authorized to make arrests for traffic laws may require a PBT from any person who operates or has in his/her actual physical control a motor vehicle in this state if the officer has reasonable grounds to believe that any of the following about the driver:

- (1) The driver has alcohol in his/her body, OR
- (2) Has committed a moving traffic violation, OR
- (3) Has been involved in a traffic accident.

2. Classification:

Refusal to submit to a PBT is a Class V Misdemeanor.

- Refusing the PBT means the suspect shall be arrested.

DUI OR REFUSAL; SERIOUS BODILY INJURY:

1. Elements: [60-6,198]

It is unlawful for any person to:

- a. Operate a motor vehicle,
- b. In violation of [60-6196] (DUI) or [60-6197] (Refusal),
- c. And proximately cause *serious bodily injury* to another person or to the unborn child of a pregnant woman.

2. Definition:

- ***Serious Bodily Injury*** means a substantial risk of death or serious permanent disfigurement, or a temporary or protracted loss or impairment of function of any body part or organ.

3. Classification:

Class IIIA Felony plus a revocation of 60 days to fifteen years.

ALR REVOCATIONS: [60-498.01], [60-498.02]

After a person is arrested under for failing a chemical test or for refusing to take a chemical test, the administrative license revocation procedures take effect.

- The process for ALR is that an arrested person has a fifteen-day temporary license, after which the person will be revoked for 180 days (if no history of DUI), or one year (if any prior DUI or ALR in the past fifteen years).
- An arrested person can contest the ALR by filing notice with the DMV within ten days. A hearing would be held within 20 days of the petition, and a hearing held as noted below.
- A driver that waives the ALR hearing can get an interlock permit after fifteen days if they have no prior history of DUI or ALR. A person with priors must wait an additional 45 days, and a person that refuses the chemical test must wait an additional 90 days.
- A driver that challenges the ALR is not eligible for an interlock permit unless ordered by a court at sentencing for the DUI or Refusal offense.

1. *Verbal Notice to Arrested Person:*

The arresting peace officer shall verbally serve notice to the arrested person:

1. Of the intention to immediately confiscate and revoke the operator's license of such person, AND
2. That the revocation will be automatic fifteen days after the date of arrest.

2. *Other Notice Requirements:*

The arresting peace officer submitting a sworn report shall serve notice of the revocation on the arrested person, and the revocation shall be effective fifteen days after the date of arrest.

- The notice of revocation shall contain a statement explaining the operation of the administrative license revocation procedure.
- The officer shall also provide to the arrested person information from DMV describing how to request an administrative license revocation hearing or apply for an ignition interlock permit from the department.
- If the person has an operator's license, the arresting officer shall take possession of the license and issue a temporary operator's license valid for fifteen days,
- The arresting peace officer shall forward the operator's license to DMV along with the sworn report.
- DMV may accept the sworn report electronically.

3. *Officer Must Submit Report:*

Within ten days, the arresting peace officer shall forward a sworn report. The report may be submitted electronically, and must contain the following information:

- a. That the person was arrested as described in subsection

- (2) of section [60-6,197] and the reasons for such arrest,
- b. That the person was requested to submit to the required test, and either:
 - (1) That the person submitted to a test, the type of test to which he or she submitted, and that such test revealed the presence of alcohol in a concentration specified in section [60-6,196], OR
 - (2) That the person refused to submit to the required test.
 - c. If the chemical test results are not available to the arresting peace officer while the arrested person is in custody, and the notice of revocation has not been served, the officer shall forward the sworn report to DMV within ten days after receipt of the results. If the sworn report is not received within ten days, the revocation shall not take effect.

4. *ALR Hearings:*

At hearing the issues under dispute shall be limited to:

- a. In the case of a refusal to submit to a chemical test of blood, breath, or urine:
 - (1) Whether the officer had probable cause to believe the person was operating or in actual physical control of a motor vehicle in violation of [60-6,196], and
 - (2) Whether the person refused or failed to complete a chemical test after the request by an officer.
- b. If the chemical test discloses the presence of alcohol in a concentration specified in section [60-6,196]:
 - 1. Whether the officer have probable cause to believe the person was operating or in the actual physical control of a motor vehicle in violation of [60-6,196].
 - 2. Whether the person was operating or in the actual physical control of a motor vehicle while having a BAC in violation of [60-6,196].

DUI WITH PASSENGER UNDER 16:

1. *Elements:* [28-1254]

It shall be unlawful for any person to operate or be in the actual physical control of a motor vehicle:

- a. With a person under the age of sixteen years as a passenger,
- b. While under the influence of alcoholic liquor or any drug,
- c. Or with a BAC at or above the legal limit,
- d. Or if the driver refuses to submit to a chemical test or tests when directed to do so by a peace officer.

2. *Classification:*

Class I misdemeanor.

*NOTE: This offense shall be treated as a separate and distinct offense from any other related offenses, such as DUI.

MINORS AND ZERO TOLERANCE (.02 VIOLATION)

1. Elements: [60-6211.01]

It is unlawful for any person under twenty-one years of age to:

- a. Operate or be in actual physical control of any motor vehicle,
- b. With a blood or breath alcohol concentration of .02 to .079.

1. Implied Consent:

- When the officer has probable cause to believe a person is in violation of this section, the officer may require:
 - a. A preliminary breath test, and/or
 - b. A chemical test or tests of his or her blood or breath,
 - c. For the purpose of determining the concentration of alcohol in such person's blood or breath.
- If such person refuses a PBT, that person shall be placed under arrest and be required to submit to a chemical test.

2. Classification:

- Failure of a chemical test (blood or breath) is a Traffic Infraction and the court will impound the person's operator's license for thirty days.
- Refusal of a chemical blood or breath test is a Traffic Infraction and the court will impound the offender's operator's license for ninety days.

*Note, like DUI, the implied consent provisions for blood are no longer enforceable and may cause the blood sample to be inadmissible. The U.S. Supreme court has dictated that blood samples must come from actual consent or a warrant.

DUI AND COMMERCIAL VEHICLES

The driver of a commercial vehicle is subject to the same basic rules and procedures for DUI and Refusal as the driver of a motor vehicle, with some additional requirements for officers:

- **Commercial motor vehicle** means any motor vehicle used or maintained for the transportation of persons or property for hire, compensation, or profit or designed, used, or maintained primarily for the transportation of property and does not include farm trucks.
- In addition to criminal prosecution for DUI the driver of a commercial vehicle is prohibited from operating the vehicle with any alcoholic liquor in his/her body.
- The driver of a commercial motor vehicle who has any alcoholic liquor in his/her body or who refuses to submit to a chemical test shall be placed out of service by the officer for twenty-four hours, and shall be subject to disqualification as provided in sections [60-4,167] and [60-4,168], and shall be subject to prosecution for any violation of sections [60-6,196]

and [60-6,197].

- An officer may require a PBT or a chemical test from a commercial vehicle driver with reasonable grounds to believe the driver has any alcoholic liquor in his or her body.
- An officer may require a PBT from a commercial vehicle driver with reasonable grounds to believe that (1) such person has any alcoholic liquor in his/her body, or (2) has committed a moving traffic violation, OR (3) has been involved in a traffic accident.
- Refusal of a PBT is a **Class V Misdemeanor**. The driver shall be arrested and be required to submit to a chemical test.
- If a commercial vehicle driver refuses a chemical test or has a BAC of .04 or above (blood or breath) the officer shall forward DMV a sworn report stating the same.
- If the person refuses a test and leaves the state for any reason following an accident, he or she shall remain subject to testing and prosecution upon return.

BOATS AND BOATING SAFETY

THE SAFE BOAT ACT:

Section [37-1201 to 37-12,110] is the *State Boat Act*. It is the policy of this state to promote safety for persons and property in and connected with the use, operation, and equipment of vessels and to promote uniformity of laws relating thereto.

*NOTE: The statutes listed are only a selected portion of the laws regarding boats and other watercraft most relevant to this handbook.

DEFINITIONS:

- ***Boat***, as the term is used in this handbook, refers to a motorboat, a personal watercraft, or other watercraft subject to the provisions in this section.
- ***Motorboat*** [37-1204] means any watercraft propelled in any respect by machinery, including watercraft temporarily equipped with detachable motors, but shall not include a vessel which has a valid marine document issued by the Bureau of Customs of the United States Government or any federal agency successor thereto.
- ***Personal watercraft*** [37-12.04.01] means a class of motorboat less than sixteen feet in length which uses an internal combustion engine powering a jet pump as its primary source of motive propulsion and is designed to be operated by a person sitting, standing, or kneeling on the watercraft rather than in the conventional manner of boat operation. Unless otherwise specified, a personal watercraft is subject to all applicable laws that govern *vessels*.
- ***Vessel*** [37-1203] means every description of watercraft, other

than a seaplane on the water, used or capable of being used as a means of transportation on water.

- ***Waters of This State*** [37-1206] means any waters within the territorial limits of Nebraska.

RECKLESS OR NEGLIGENT OPERATION PROHIBITED:

1. Elements: [37-1254]

It is unlawful for any person to:

- a. Operate any motorboat or vessel,
- b. Or manipulate any water skis, surfboard, or similar device,
- c. In a reckless or negligent manner so as to endanger the life, limb, or property of any person.

2. Classification: [37-1272]

Class II Misdemeanor

PERSONAL WATERCRAFT USE RESTRICTIONS:

1. Manner of Operation: [37-1241.04]

A person shall operate a personal watercraft on the waters of this state in a reasonable and prudent manner.

- A maneuver which unreasonably or unnecessarily endangers life, limb, or property is prohibited and includes weaving through congested vessel traffic, jumping the wake produced by another vessel at a distance of less than fifty yards, or jumping the wake produced by a motorboat or personal watercraft that is towing a person or persons.
- A person shall not operate a personal watercraft on the waters of this state unless he or she is facing forward on the watercraft.

2. Time Restrictions: [37-1241.03]

A person shall not operate a personal watercraft on the waters of this state during the period from sunset to sunrise.

3. Towing; When Permitted: [37-1241.05]

A person shall not operate a personal watercraft on the waters of this state to tow a person on water skis, kneeboards, inflatable crafts, or any other device unless the personal watercraft is designed to accommodate more than one person and the personal watercraft is recommended by the manufacturer to tow such devices.

4. Exceptions: [37-1241.08]

Personal watercraft restrictions do not apply to participation in an authorized regatta, race, marine parade, tournament, or exhibition or to a person who is otherwise exempt from the State Boat Act.

5. Classifications:

The violations listed above are Class IV Misdemeanors.

**AGE AND OTHER RESTRICTIONS FOR MOTORBOATS
AND PERSONAL WATERCRAFT:**

[37-1241.06] to [37-1241.08]

- a. A person must be at least fourteen years of age to operate a motorboat or personal watercraft on the waters of this state.
- b. No person under sixteen years of age shall operate a motorboat or personal watercraft on the waters of this state with an individual in tow behind the motorboat or personal watercraft.
- c. Effective January 1, 2012, no person born after December 31, 1985, shall operate a motorboat or personal watercraft unless he or she has successfully completed an approved boating safety course and been issued a valid boating safety certificate.
- d. A boat livery may not lease, hire, or rent a motorboat or personal watercraft to any person under eighteen years of age.
- e. These restrictions do not apply to participation in an authorized regatta, race, marine parade, tournament, or exhibition or to a person who is otherwise exempt from the State Boat Act.
- f. Violation of the restriction above is a Class V Misdemeanor, except a violation related to a boat livery rental is a Class IV.

MOTORBOATS TOWING A PERSON: [37-1260]

All motorboats having in tow or otherwise assisting a person on water skis, aquaplane, or similar contrivance, shall be operated in a careful and prudent manner and at a reasonable distance from persons and property so as not to endanger the life or property of any person.

MOTORBOAT NOISE RESTRICTIONS: [37-1253]

- No person shall operate or give permission for the operation of a motorboat on the waters of this state in such a manner as to exceed a noise level of ninety-six decibels when measured at one hundred feet or more on plane using the A-weighting network of a sound level meter complying with the standards set forth in S1.4-1983 (R 2001) of the American National Standards Institute
- The exhaust of every internal combustion engine used on any motorboat shall be effectively muffled by equipment so constructed and used as to muffle the noise of the exhaust in a reasonable manner.
- The use of cutouts is prohibited except for motorboats competing in an approved regatta or boat race (including trials 48 hours before and after).

BOATING UNDER INFLUENCE OF ALCOHOL OR DRUGS

1. Elements: [37-1254.01]

It is unlawful for any person to be in the actual physical control of any motorboat or personal watercraft under

propulsion upon the waters of this state:

- a. While under the influence of alcoholic liquor or of any drug,
- b. Or with a concentration of alcohol in his/her blood or breath at or above the legal limit (.08).

2. Classification: [37-1254.12]

- a. Class II Misdemeanor for a first offense.
 - The offender shall be ordered not to operate any motorboat or personal watercraft under propulsion for six months from the date of conviction (sixty days if offender is placed on probation)
- b. Class I Misdemeanor if the offender has had one or more prior convictions.
 - A person convicted of a second or subsequent offense shall be ordered not to be in the actual physical control of any motorboat or personal watercraft under propulsion for two years - even if probation is granted or the sentence suspended.

IMPLIED CONSENT FOR BOATS: [37-1254.02]

Any person who has in his or her actual physical control a motorboat or personal watercraft under propulsion upon the waters of this state shall be deemed to have given his or her consent to submit to a chemical test or tests of his or her blood, breath, or urine for the purpose of determining the concentration of alcohol or the presence of drugs in such blood, breath, or urine.

- An officer may require any person arrested for any offense arising out of acts committed while boating under the influence of alcohol or drugs to submit to a chemical test when the officer has reasonable grounds to believe that the person was in violation of [37-1254.01].
- Any person who is required to submit to a chemical test shall be advised that if he or she refuses to submit to such test or tests, he or she could be charged with a separate crime.
- Failure to provide such advisement shall not affect the admissibility of the chemical test result but shall negate the state's ability to bring any criminal charges against a refusing party pursuant to this section.
- The officer directs whether the test or tests shall be of blood, breath, or urine [37-1254.03].
- The person tested shall be permitted to have a physician of their choice evaluate his/her condition and perform or have whatever laboratory tests such person tested deems appropriate in addition to and following the test or tests directed by the peace officer.
- If the officer refuses to permit such additional tests to be taken, then the original tests shall not be competent as evidence.
- Upon request the results of the test or tests taken at the

direction of the peace officer shall be made available to the person being

*NOTE - like DUI for vehicles, the implied consent provisions for blood are no longer enforceable and may cause the blood sample to be inadmissible. The U.S. Supreme court has dictated that blood samples must come from actual consent or a warrant.

REFUSAL OF A CHEMICAL TEST:

1. Elements: [37-1254.02]

It is unlawful for any person who has in his or her actual physical control a motorboat or personal watercraft under propulsion upon the waters of this state to:

- a. Refuse to provide a sample of his/her blood, breath, or urine
- b. After being directed by a peace officer to submit to a chemical test or tests of his or her blood or breath pursuant to this section.

2. Classification: [37-1254.12]

- Refusal of the chemical test has the same penalty as boating under the influence, noted below.

*NOTE: A person arrested for refusal must be advised that refusal of the test means that he/she could be charged with a separate crime. Failure to give this advisement means that the person cannot be charged with refusal - see [37-1254.02].

*NOTE: An implied consent advisement to obtain blood may result in the sample being inadmissible in court based on recent U.S. Supreme Court decisions. Actual consent or a warrant for blood is required – officers should consult their legal advisor.

PBT TESTING AND BOATS: [37-1254.09]

Any officer authorized to make arrests for boating under the influence may require the operator of a boat to submit to a preliminary breath test with *reasonable grounds* to believe that such person is under the influence of alcohol or of any drug.

- a. Any person who refuses to submit to such PBT or whose test results is above the legal limit shall be placed under arrest.
- b. Any person who refuses to submit to such preliminary breath test shall be guilty of a Class III Misdemeanor.

BOATING DURING COURT-ORDERED

PROHIBITION: [37-1254.10]

It is a crime to operate a motorboat or personal watercraft during a period of court-ordered prohibition resulting from a conviction for

boating under the influence or refusal of a chemical test as outlined in [37-1254.01] or [37-1254.02] or a similar city or village ordinance.

- Violation of this section is a Class I Misdemeanor.

FLEEING IN A VESSEL TO AVOID ARREST:

1. Elements: [28-905]

Any person who:

- a. Operates any motor vehicle,
- b. To flee in such vehicle or vessel (watercraft),
- c. In an effort to avoid arrest or citation,
- d. For the violation of any law constituting a misdemeanor, felony, infraction, or traffic infraction in Nebraska.

2. Classification:

- a. Class I Misdemeanor
 - Up to one-year revocation of operator's privilege.
- b. Class IV Felony and a two-year revocation of the offender's operating privilege if any of the following factors are present:
 - (1) The person fled to avoid arrest for a felony offense;
 - (2) The flight results in the death or injury of any person;
 - (3) The flight includes the willful reckless operation; or
 - (4) It is the second or subsequent violation.

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| POAN 2018 UPDATE SUMMARY: | |
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| Mandatory Reporting of Sexual Assault Health care providers have always been required to report injuries believed to be caused by any criminal offense. The law now provides new rules for injuries related to sexual assault, and allows for anonymous reporting for an adult victim unless the victim gives written consent. <ul style="list-style-type: none"> Consent is not required in the case of a serious bodily injury or any injury where a deadly weapon was the cause. | P. 44 |
| Payment Scanners and Encoders A new statute makes it a crime to intentionally or knowingly use or possess a <i>scanning device</i> to retrieve information that is encoded on a payment card without permission. <ul style="list-style-type: none"> The law also makes it a crime to use or possess an <i>encoding machine</i> with the intent to move information encoded on a payment card onto a different card without permission. | P. 95-96 |
| Assault on a Health Care Provider: The definition of <i>Public Safety Officer</i> is expanded to include a health care professional for the crime of assault with a bodily fluid. | P. 135 |
| Firearms and Juvenile Offenders A new statute makes it illegal for anyone under age 25 who had a juvenile adjudication for any crime of domestic violence (felony or misdemeanor) to possess a firearm. <ul style="list-style-type: none"> Exceptions are made for military and law enforcement officers, and a process is created for such an offender to get a court-ordered exemption from the law. This is a felony offense. | P. 142 |
| Intimidation by Electronic Device The law of intimidation by telephone has been expanded to include electronic communications, including words, sounds, photos, or other data. <ul style="list-style-type: none"> The offense does not require that any conversation, response, or exchange take place. The crime is committed at either the place the communication was sent or where it was received. | P. 162-163 |

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| <p>MIP – Immunity for Overdose Reporters Several changes were made to the immunity provisions for the reporter of an overdose from alcohol.</p> <ul style="list-style-type: none"> • The law used to require that the reporter be the first one to request assistance, which has changed to only require that the reporter make a <i>good faith</i> request for assistance, regardless of whether it was the first such report. • The law makes clear that only the reporter(s) get immunity, not the person who is experience the overdose (unless they report it themselves in good faith). • Effective 7-19-2018 | P. 175 |
| <p>Speed Limits The default speed limits on state highways have increased by five mph, and a new definition for “super-two” highway was added. See the chart in the handbook.</p> | P. 206 |
| <p>Trespassing Vehicles, Authority to Remove A new law allows law enforcement to remove an abandoned or trespassing vehicle from private property upon request of the property owner.</p> | P. 222 |
| <p>Child Restraints New restrictions on child passengers require a child restraint system for any child up to age eight (changed from age six), and seatbelts for all children between eight and eighteen.</p> <ul style="list-style-type: none"> • Children must generally be in the backseat, and children less than two years old must be in a rear-facing car seat until unless the child meets the manufacturers height or weight requirements. | P. 241 |
| <p>Other As always, many things were cleaned up, reorganized, or clarified to hopefully improve the handbook and make it more useful. Suggestions, comments, and clarifications are welcome and encouraged.</p> | |