

LEGISLATURE OF NEBRASKA  
ONE HUNDRED SEVENTH LEGISLATURE  
FIRST SESSION

**LEGISLATIVE BILL 300**

Introduced by Slama, 1; Albrecht, 17; Bostelman, 23; Brewer, 43; Briese, 41; Clements, 2; Dorn, 30; Erdman, 47; Friesen, 34; Gragert, 40; Hansen, B., 16; Hughes, 44; Linehan, 39; Lowe, 37; Murman, 38; Sanders, 45.

Read first time January 12, 2021

Committee:

- 1 A BILL FOR AN ACT relating to crimes and offenses; to amend sections
- 2 28-1406, 28-1407, 28-1408, 28-1409, 28-1410, 28-1411, 28-1412,
- 3 28-1413, 28-1414, 28-1415, 28-1416, and 29-439, Reissue Revised
- 4 Statutes of Nebraska; to define terms; to change provisions relating
- 5 to justifications for the use of force; to provide for presumptions;
- 6 to harmonize provisions; and to repeal the original sections.
- 7 Be it enacted by the people of the State of Nebraska,

1 Section 1. Section 28-1406, Reissue Revised Statutes of Nebraska, is  
2 amended to read:

3 28-1406 As used in sections 28-1406 to 28-1416 and section 5 of this  
4 act, unless the context otherwise requires:

5 (1) Actor means any person who uses force in such a manner as to  
6 attempt to invoke the privileges and immunities afforded such actor by  
7 sections 28-1406 to 28-1416 and section 5 of this act, except any duly  
8 authorized law enforcement officer of the State of Nebraska or its  
9 political subdivisions;

10 (2) Assent means consent, whether or not it otherwise is legally  
11 effective, except assent to the infliction of death or serious bodily  
12 injury;

13 (3) Bodily injury has the same meaning as in section 28-109;

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

20 ~~(2) Assent shall mean consent, whether or not it otherwise is~~  
21 ~~legally effective, except assent to the infliction of death or serious~~  
22 ~~bodily harm;~~

23 (4) ~~(3)~~ Deadly force means shall mean force which the actor uses  
24 with the purpose of causing or which the actor he knows to create a  
25 substantial risk of causing death or serious bodily injury harm.  
26 Purposely firing a firearm in the direction of another person or at a  
27 vehicle in which another person is believed to be constitutes deadly  
28 force. A threat to cause death or serious bodily injury harm, by the  
29 production of a weapon or otherwise, so long as the actor's purpose is  
30 limited to creating an apprehension that the actor he will use deadly  
31 force if necessary, shall not constitute deadly force;

1       ~~(4) Actor shall mean any person who uses force in such a manner as~~  
2 ~~to attempt to invoke the privileges and immunities afforded him by~~  
3 ~~sections 28-1406 to 28-1416, except any duly authorized law enforcement~~  
4 ~~officer of the State of Nebraska or its political subdivisions;~~

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

8       (6) Motor vehicle means every self-propelled land vehicle, not  
9 operated upon rails, except self-propelled chairs used by persons who are  
10 disabled, electric personal assistive mobility devices as defined in  
11 section 60-618.02, and bicycles as defined in section 60-611. A motor  
12 vehicle shall be considered to be the actor's motor vehicle if the actor  
13 is lawfully present in or on the motor vehicle, whether as an operator or  
14 passenger;

15       (7) (6) Public officer means ~~shall mean~~ any elected or appointed  
16 officer or employee of the State of Nebraska or its political  
17 subdivisions, except any duly authorized law enforcement officer of the  
18 State of Nebraska or its political subdivisions; ~~-~~

19       (8) Reckless means acting with respect to a material element of an  
20 affirmative defense when the actor disregards a substantial and  
21 unjustifiable risk that the material element exists or will result from  
22 the actor's conduct. The risk must be of such a nature and degree that,  
23 considering the nature and purpose of the actor's conduct and the  
24 circumstances known to the actor, its disregard involves a gross  
25 deviation from the standard of conduct that a reasonable person would  
26 observe in the actor's situation;

27       (9) Serious bodily injury has the same meaning as in section 28-109;  
28 and

29       (10) Unlawful force means force, including confinement, which is  
30 employed without the consent of the person against whom it is directed  
31 and the employment of which constitutes an offense or actionable tort or

1 would constitute such offense or tort except for a defense such as the  
2 absence of intent, negligence, or mental capacity; duress; youth; or  
3 diplomatic status; not amounting to a privilege to use the force.

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

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

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

11 (b) Neither sections 28-1406 to 28-1416 and section 5 of this act  
12 nor other law defining the offense provides exceptions or defenses  
13 dealing with the specific situation involved; and

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

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

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

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

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

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

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

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

1 war; or

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

3 (2) Sections 28-1409 to 28-1416 and section 5 of this act shall  
4 apply to:

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

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

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

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

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

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

23 28-1409 (1) Subject to the provisions of this section, ~~and of~~  
24 section 28-1414, and section 5 of this act, the use of force upon or  
25 toward another person is justifiable when the actor reasonably and in  
26 good faith believes that such force is immediately necessary for the  
27 purpose of protecting the actor ~~himself~~ against the use of unlawful force  
28 by such other person on the present occasion.

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

1           (3) The use of such force is not justifiable under this section to  
2 resist force used by the occupier or possessor of property or by another  
3 person on the occupier's or possessor's ~~his~~ behalf, ~~when~~ ~~where~~ the actor  
4 knows that the person using the force is doing so under a claim of right  
5 to protect the property, except that this limitation shall not apply if:

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

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

11           (c) The actor reasonably and in good faith believes that such force  
12 is necessary to protect the actor ~~himself~~ against death or serious bodily  
13 injury ~~harm~~.

14           (4) The use of deadly force shall not be justifiable under this  
15 section unless the actor reasonably and in good faith believes that such  
16 force is necessary to protect the actor ~~himself~~ against death, serious  
17 bodily injury ~~harm~~, kidnapping, or sexual intercourse compelled by force  
18 or threat, nor is it justifiable if:

19           (a) The actor, with the purpose of causing death or serious bodily  
20 injury ~~harm~~, provoked the use of force against the actor ~~himself~~ in the  
21 same encounter; or

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

27           (i) The actor shall not be obliged to retreat from the actor's ~~his~~  
28 dwelling, ~~or~~ place of work, or motor vehicle, unless the actor ~~he~~ was the  
29 initial aggressor or is assailed in the actor's ~~his~~ place of work by  
30 another person whose place of work the actor knows it to be; and

31           (ii) A public officer justified in using force in the performance of

1 the officer's ~~his~~ duties, ~~or~~ a person justified in using force in the  
2 officer's ~~his~~ assistance, ~~or~~ a person justified in using force in making  
3 an arrest or preventing an escape shall not be obliged to desist from  
4 efforts to perform such duty, effect such arrest, ~~or~~ prevent such escape  
5 because of resistance or threatened resistance by or on behalf of the  
6 person against whom such action is directed.

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

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

18 Sec. 5. (1) Subject to section 28-1414 and except as provided in  
19 subsection (2) of this section, when the actor is lawfully present in the  
20 actor's dwelling, place of work, or motor vehicle there shall be a  
21 rebuttable presumption that the actor held a reasonable and good faith  
22 belief that the use of force, including deadly force, is immediately  
23 necessary for the protection of the actor or a third person from death or  
24 serious bodily injury when:

25 (a) The person against whom such force is used:

26 (i) Is in the process of unlawfully and forcibly entering, or had  
27 unlawfully and forcibly entered, such dwelling, place of work, or motor  
28 vehicle; or

29 (ii) Had unlawfully and forcibly removed or is attempting to  
30 unlawfully and forcibly remove the actor or a third person, without the  
31 consent of the person being removed, from such dwelling, place of work,

1 or motor vehicle; and

2 (b) The actor knows or reasonably and in good faith believes that  
3 such unlawful and forcible entry or removal is occurring or had occurred.

4 (2) The presumption provided for in this subsection shall not apply  
5 if:

6 (a) The person against whom force is used had the right to be  
7 present in the dwelling, place of work, or motor vehicle. A person does  
8 not have the right to be present in such place if it would be a violation  
9 of (i) a domestic violence protection order, harassment protection order,  
10 or sexual assault protection order or (ii) another written court order of  
11 which the person had actual knowledge;

12 (b) The person being removed without consent referred to in  
13 subdivision (1)(a)(ii) is a child or grandchild, or otherwise in the  
14 lawful custody or under the lawful guardianship of the person against  
15 whom the force is used;

16 (c) The actor is engaged in any other criminal offense that involves  
17 the use or threat of physical force or violence against any individual  
18 other than the use of force as justifiable under sections 28-1406 to  
19 28-1416 and this section.

20 (d) The actor is attempting to avoid arrest for any criminal offense  
21 that involves the use or threat of physical force or violence against any  
22 individual;

23 (e) The actor is using the dwelling, place of work, or motor vehicle  
24 to further any criminal offense that involves the use or threat of  
25 physical force or violence against any individual other than the use of  
26 force as justifiable under sections 28-1406 to 28-1416 and this section;

27 (f)(i) The person against whom the force is used is a peace officer  
28 who enters or attempts to enter a dwelling, place of work, or motor  
29 vehicle in the lawful performance of the officer's official duties and  
30 (ii) the officer identified himself or herself as otherwise required by  
31 law or the actor knew or reasonably should have known that the person was



1 a peace officer engaged in the lawful performance of his or her official  
2 duties; or

3 (g) The person against whom the force is used (i) has discontinued  
4 all efforts to unlawfully and forcibly enter the dwelling, place of work,  
5 or motor vehicle or to unlawfully and forcibly remove a person without  
6 such person's consent and (ii) has exited the dwelling, place of work, or  
7 motor vehicle.

8 (3) For purposes of determining whether a justification for the use  
9 of force is present, there shall be a rebuttable presumption that a  
10 person who unlawfully and forcibly enters a dwelling, place of work, or  
11 motor vehicle is doing so with the intent to commit an unlawful act  
12 involving force or violence.

13 (4) The presumptions provided for in this section apply to sections  
14 28-1409, 28-1410, and 28-1411.

15 Sec. 6. Section 28-1410, Reissue Revised Statutes of Nebraska, is  
16 amended to read:

17 28-1410 (1) Subject to the provisions of this section, ~~and of~~  
18 section 28-1414, and section 5 of this act, the use of force upon or  
19 toward the person of another is justifiable to protect a third person  
20 when:

21 (a) The actor would be justified under section 28-1409 in using such  
22 force to protect the actor himself against the injury the actor  
23 reasonably and in good faith he believes to be threatened to the person  
24 whom the actor he seeks to protect;

25 (b) Under the circumstances as the actor reasonably and in good  
26 faith believes them to be, the person whom the actor he seeks to protect  
27 would be justified in using such protective force; and

28 (c) The actor reasonably and in good faith believes that the actor's  
29 his intervention is necessary for the protection of such other person.

30 (2) Notwithstanding subsection (1) of this section:

31 (a) When the actor would be obliged under section 28-1409 to

1 retreat, to surrender the possession of a thing, or to comply with a  
2 demand before using force in self-protection, the actor he shall not be  
3 obliged to do so before using force for the protection of another person,  
4 unless the actor he knows that the actor he can thereby secure the  
5 complete safety of such other person;

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

13 (c) Neither the actor nor the person whom the actor he seeks to  
14 protect is obliged to retreat when in the other's dwelling, or place of  
15 work, or motor vehicle to any greater extent than in the actor's or such  
16 person's his own.

17 Sec. 7. Section 28-1411, Reissue Revised Statutes of Nebraska, is  
18 amended to read:

19 28-1411 (1) Subject to the provisions of this section, ~~and of~~  
20 section 28-1414, and section 5 of this act, the use of force upon or  
21 toward the person of another is justifiable when the actor reasonably and  
22 in good faith believes that such force is immediately necessary:

23 (a) To prevent or terminate an unlawful entry or other trespass upon  
24 land or a trespass against or the unlawful carrying away of tangible,  
25 movable property if ; ~~Provided, that~~ such land or movable property is, or  
26 is reasonably and in good faith believed by the actor to be, in the  
27 actor's his possession or in the possession of another person for whose  
28 protection the actor he acts; or

29 (b) To effect an entry or reentry upon land or to retake tangible  
30 movable property if ; ~~Provided, that the~~

31 (i) The actor reasonably and in good faith believes that the actor

1 he or the person by whose authority the actor he acts or a person from  
2 whom the actor he or such other person derives title was unlawfully  
3 dispossessed of such land or movable property and is entitled to  
4 possession; ~~and and provided further, that:~~

5 (ii) ~~Either: (i)~~

6 (A) The force is used immediately or on fresh pursuit after such  
7 dispossession; or

8 (B) ~~(ii)~~ The actor reasonably and in good faith believes that the  
9 person against whom the actor he uses force has no claim of right to the  
10 possession of the property and, in the case of land, the circumstances,  
11 as the actor reasonably and in good faith believes them to be, are of  
12 such urgency that it would be an exceptional hardship to postpone the  
13 entry or reentry until a court order is obtained.

14 (2) For the purposes of subsection (1) of this section:

15 (a) A person who has parted with the custody of property to another  
16 who refuses to restore it to such person ~~him~~ is no longer in possession,  
17 unless such property is movable and was and still is located on land in  
18 such person's ~~his~~ possession;

19 (b) A person who has been dispossessed of land does not regain  
20 possession thereof merely by setting foot thereon; and

21 (c) A person who has a license to use or occupy real property is  
22 deemed to be in possession thereof except against the licensor acting  
23 under claim of right.

24 (3) The use of force is justifiable under this section only if the  
25 actor first requests the person against whom such force is used to desist  
26 from such person's ~~his~~ interference with the property, unless the actor  
27 reasonably and in good faith believes that:

28 (a) Such request would be useless;

29 (b) It would be dangerous to the actor ~~himself~~ or another person to  
30 make the request; or

31 (c) Substantial harm will be done to the physical condition of the

1 property which is sought to be protected before the request can  
2 effectively be made.

3 (4) The use of force to prevent or terminate a trespass is not  
4 justifiable under this section if the actor knows that the exclusion of  
5 the trespasser will expose the trespasser ~~him~~ to substantial danger of  
6 serious bodily injury ~~harm~~.

7 (5) The use of force to prevent an entry or reentry upon land or the  
8 recapture of movable property is not justifiable under this section,  
9 although the actor reasonably and in good faith believes that such  
10 reentry or recapture is unlawful, if:

11 (a) The reentry or recapture is made by or on behalf of a person who  
12 was actually dispossessed of the property; and

13 (b) It is otherwise justifiable under subdivision (1)(b) of this  
14 section.

15 (6) The use of deadly force is not justifiable under this section  
16 unless the actor reasonably and in good faith believes that:

17 (a) The person against whom the force is used is attempting to  
18 dispossess the actor ~~him~~ of the actor's ~~his~~ dwelling otherwise than under  
19 a claim of right to its possession; or

20 (b) The person against whom the force is used is attempting to  
21 commit or consummate arson, burglary, robbery, or other felonious theft  
22 or property destruction and either:

23 (i) Has employed or threatened deadly force against or in the  
24 presence of the actor; or

25 (ii) The use of force other than deadly force to prevent the  
26 commission or the consummation of the crime would expose the actor or  
27 another in the actor's ~~his~~ presence to substantial danger of serious  
28 bodily injury ~~harm~~.

29 (7) The justification afforded by this section extends to the use of  
30 confinement as protective force only if the actor takes all reasonable  
31 measures to terminate the confinement as soon as the actor ~~he~~ knows that

1 the actor ~~he~~ can do so with safety to the property, unless the person  
2 confined has been arrested on a charge of crime.

3 (8) The justification afforded by this section extends to the use of  
4 a device for the purpose of protecting property only if:

5 (a) Such device is not designed to cause or known to create a  
6 substantial risk of causing death or serious bodily injury ~~harm~~;

7 (b) Such use of the particular device to protect such property from  
8 entry or trespass is reasonable under the circumstances, as the actor  
9 reasonably and in good faith believes them to be; and

10 (c) Such device is one customarily used for such a purpose or  
11 reasonable care is taken to make known to probable intruders the fact  
12 that it is used.

13 (9) The use of force to pass a person whom the actor reasonably and  
14 in good faith believes to be purposely or knowingly and unjustifiably  
15 obstructing the actor from going to a place to which the actor ~~he~~ may  
16 lawfully go is justifiable if:

17 (a) The actor reasonably and in good faith believes that the person  
18 against whom the actor ~~he~~ uses force has no claim of right to obstruct  
19 the actor;

20 (b) The actor is not being obstructed from entry or movement on land  
21 which the actor ~~he~~ knows to be in the possession or custody of the person  
22 obstructing the actor ~~him~~, or in the possession or custody of another  
23 person by whose authority the obstructor acts, unless the circumstances,  
24 as the actor reasonably and in good faith believes them to be, are of  
25 such urgency that it would not be reasonable to postpone the entry or  
26 movement on such land until a court order is obtained; and

27 (c) The force used is not greater than would be justifiable if the  
28 person obstructing the actor were using force against the actor ~~him~~ to  
29 prevent the actor's ~~his~~ passage.

30 Sec. 8. Section 28-1412, Reissue Revised Statutes of Nebraska, is  
31 amended to read:

1           28-1412 (1) Subject to ~~the provisions of~~ this section and of section  
2 28-1414, the use of force upon or toward the person of another is  
3 justifiable when the actor is making or assisting in making an arrest and  
4 the actor reasonably and in good faith believes that such force is  
5 immediately necessary to effect a lawful arrest.

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

7           (a) The actor makes known the purpose of the arrest or reasonably  
8 and in good faith believes that it is otherwise known by or cannot  
9 reasonably be made known to the person to be arrested; and

10          (b) When the arrest is made under a warrant, the warrant is valid or  
11 reasonably and in good faith believed by the actor to be valid.

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

14          (a) The arrest is for a felony;

15          (b) Such person effecting the arrest is authorized to act as a peace  
16 officer or is assisting a person whom such person reasonably and in good  
17 faith he believes to be authorized to act as a peace officer;

18          (c) The actor reasonably and in good faith believes that the force  
19 employed creates no substantial risk of injury to innocent persons; and

20          (d) The actor reasonably and in good faith believes that:

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

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

26          (4) The use of force to prevent the escape of an arrested person  
27 from custody is justifiable when the force could justifiably have been  
28 employed to effect the arrest under which the person is in custody,  
29 except that a guard or other person authorized to act as a peace officer  
30 is justified in using any force, including deadly force, which such  
31 person reasonably and in good faith he believes to be immediately

1 necessary to prevent the escape of a person from a jail, prison, or other  
2 institution for the detention of persons charged with or convicted of a  
3 crime.

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

9 (6) A private person who assists another private person in effecting  
10 an unlawful arrest, or who, not being summoned, assists a peace officer  
11 in effecting an unlawful arrest, is justified in using any force which  
12 such person he would be justified in using if the arrest were lawful, if:

13 (a) Such person reasonably and in good faith He believes the arrest  
14 is lawful; and

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

17 (7) The use of force upon or toward the person of another is  
18 justifiable when the actor reasonably and in good faith believes that  
19 such force is immediately necessary to prevent such other person from  
20 committing suicide, inflicting serious bodily injury ~~harm~~ upon himself or  
21 herself, committing or consummating the commission of a crime involving  
22 or threatening bodily injury ~~harm~~, damage to or loss of property, or a  
23 breach of the peace, except that:

24 (a) Any limitations imposed by the other provisions of sections  
25 28-1406 to 28-1416 and section 5 of this act on the justifiable use of  
26 force in self-protection, for the protection of others, the protection of  
27 property, the effectuation of an arrest, or the prevention of an escape  
28 from custody shall apply notwithstanding the criminality of the conduct  
29 against which such force is used; and

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

1 (i) The actor reasonably and in good faith believes that there is a  
2 substantial risk that the person whom the actor ~~he~~ seeks to prevent from  
3 committing a crime will cause death or serious bodily injury ~~harm~~ to  
4 another unless the commission or the consummation of the crime is  
5 prevented and that the use of such force presents no substantial risk of  
6 injury to innocent persons; or

7 (ii) The actor reasonably and in good faith believes that the use of  
8 such force is necessary to suppress a riot or mutiny after the rioters or  
9 mutineers have been ordered to disperse and warned, in any particular  
10 manner that the law may require, that such force will be used if they do  
11 not obey.

12 (8) The justification afforded by subsection (7) of this section  
13 extends to the use of confinement as preventive force only if the actor  
14 takes all reasonable measures to terminate the confinement as soon as the  
15 actor ~~he~~ knows that the actor ~~he~~ safely can do so, unless the person  
16 confined has been arrested on a charge of crime.

17 Sec. 9. Section 28-1413, Reissue Revised Statutes of Nebraska, is  
18 amended to read:

19 28-1413 The use of force upon or toward the person of another is  
20 justifiable if:

21 (1) The actor is the parent or guardian or other person similarly  
22 responsible for the general care and supervision of a minor or a person  
23 acting at the request of such parent, guardian, or other responsible  
24 person and:

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

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

31 (2) The actor is the guardian or other person similarly responsible



1 for the general care and supervision of an incompetent person and:

2 (a) Such force is used for the purpose of safeguarding or promoting  
3 the welfare of the incompetent person, including the prevention of such  
4 person's ~~his or her~~ misconduct, or, when such incompetent person is in a  
5 hospital or other institution for such person's ~~his or her~~ care and  
6 custody, for the maintenance of reasonable discipline in such  
7 institution; and

8 (b) Such force used is not designed to cause or known to create a  
9 substantial risk of causing death, serious bodily injury ~~harm~~,  
10 disfigurement, extreme or unnecessary pain, mental distress, or  
11 humiliation;

12 (3) The actor is a doctor or other therapist or a person assisting a  
13 doctor or other therapist ~~him or her~~ at the doctor's or therapist's ~~his~~  
14 ~~or her~~ direction and:

15 (a) Such force is used for the purpose of administering a recognized  
16 form of treatment which the actor reasonably and in good faith believes  
17 to be adapted to promoting the physical or mental health of the patient;  
18 and

19 (b) Such treatment is administered with the consent of the patient  
20 or, if the patient is a minor or an incompetent person, with the consent  
21 of the patient's ~~his or her~~ parent or guardian or other person legally  
22 competent to consent in the patient's ~~his or her~~ behalf or the treatment  
23 is administered in an emergency when the actor reasonably and in good  
24 faith believes that no one competent to consent can be consulted and that  
25 a reasonable person, wishing to safeguard the welfare of the patient,  
26 would consent;

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

29 (a) The actor reasonably and in good faith ~~He or she~~ believes that  
30 the force used is necessary for the purpose of enforcing the lawful rules  
31 or procedures of the institution, unless the actor's ~~his or her~~ belief in

1 the lawfulness of the rule or procedure sought to be enforced is  
2 erroneous and the actor's ~~his or her~~ error is the result of ignorance or  
3 mistake as to the provisions of sections 28-1406 to 28-1416 and section 5  
4 of this act, any other provision of the criminal law, or the law  
5 governing the administration of the institution;

6 (b) The nature or degree of force used is not forbidden by section  
7 28-1408 or 28-1409; and

8 (c) If deadly force is used, its use is otherwise justifiable under  
9 sections 28-1406 to 28-1416 and section 5 of this act;

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

13 (a) The actor reasonably and in good faith ~~He or she~~ believes that  
14 the force used is necessary to prevent interference with the operation of  
15 the vessel or aircraft or obstruction of the execution of a lawful order  
16 unless such belief in the lawfulness of the order is erroneous and such  
17 error is the result of ignorance or mistake as to the law defining such  
18 authority; and

19 (b) If deadly force is used, its use is otherwise justifiable under  
20 sections 28-1406 to 28-1416 and section 5 of this act; and

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

24 (a) The actor reasonably and in good faith ~~He or she~~ believes that  
25 the force used is necessary for such purpose; and

26 (b) Such force used is not designed to cause or known to create a  
27 substantial risk of causing death, bodily injury ~~harm~~, or extreme mental  
28 distress.

29 Sec. 10. Section 28-1414, Reissue Revised Statutes of Nebraska, is  
30 amended to read:

31 28-1414 (1) The justification afforded by sections 28-1409 to

1 28-1412 and section 5 of this act is unavailable when:

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

6 (b) The actor's ~~His~~ error is the result of ignorance or mistake as  
7 to the provisions of sections 28-1406 to 28-1416 and section 5 of this  
8 act, any other provision of the criminal law, or the law governing the  
9 legality of an arrest or search.

10 (2) When the actor believes that the use of force upon or toward the  
11 person of another is necessary for any of the purposes for which such  
12 belief would establish a justification under sections 28-1408 to 28-1413  
13 and section 5 of this act but the actor is reckless or negligent in  
14 having such belief or in acquiring or failing to acquire any knowledge or  
15 belief which is material to the justifiability of the actor's ~~his~~ use of  
16 force, the justification afforded by those sections is unavailable in a  
17 prosecution for an offense for which recklessness or negligence, as the  
18 case may be, suffices to establish culpability.

19 (3) When the actor is justified under sections 28-1408 to 28-1413  
20 and section 5 of this act in using force upon or toward the person of  
21 another but the actor ~~he~~ recklessly or negligently injures or creates a  
22 risk of injury to innocent persons, the justification afforded by those  
23 sections is unavailable in a prosecution for such recklessness or  
24 negligence towards innocent persons.

25 Sec. 11. Section 28-1415, Reissue Revised Statutes of Nebraska, is  
26 amended to read:

27 28-1415 Conduct involving the appropriation, seizure or destruction  
28 of, damage to, intrusion on, or interference with property is justifiable  
29 under circumstances which would establish a defense of privilege in a  
30 civil action based thereon, unless:

31 (1) Sections 28-1406 to 28-1416 and section 5 of this act or the law

1 defining the offense deals with the specific situation involved; or

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

4 Sec. 12. Section 28-1416, Reissue Revised Statutes of Nebraska, is  
5 amended to read:

6 28-1416 (1) In any prosecution based on conduct which is justifiable  
7 under sections 28-1406 to 28-1416 and section 5 of this act,  
8 justification is an affirmative defense.

9 (2) The justification defenses provided for under sections 28-1406  
10 to 28-1416 and section 5 of this act shall be available in any civil  
11 action for assault and battery or intentional wrongful death and, where  
12 applicable, shall be a bar to recovery.

13 Sec. 13. Section 29-439, Reissue Revised Statutes of Nebraska, is  
14 amended to read:

15 29-439 (1) If a peace officer receives complaints under section  
16 28-323 from two or more opposing persons, the officer shall evaluate each  
17 complaint separately to determine who was the predominant aggressor. If  
18 the officer determines that one person was the predominant aggressor, the  
19 officer need not arrest the other person believed to have committed an  
20 offense. In determining whether a person is the predominant aggressor,  
21 the officer shall consider, among other things:

22 (a) Prior complaints under section 28-323;

23 (b) The relative severity of the injuries inflicted on each person;

24 (c) The likelihood of future injury to each person; and

25 (d) Whether one of the persons acted with a justified use of force  
26 under sections 28-1406 to 28-1416 and section 5 of this act.

27 (2) In addition to any other report required, a peace officer who  
28 arrests two or more persons with respect to such a complaint shall submit  
29 a detailed, written report setting forth the grounds for arresting  
30 multiple parties.

31 Sec. 14. Original sections 28-1406, 28-1407, 28-1408, 28-1409,

- 1 28-1410, 28-1411, 28-1412, 28-1413, 28-1414, 28-1415, 28-1416, and
- 2 29-439, Reissue Revised Statutes of Nebraska, are repealed.