

LEGISLATIVE BILL 90

Approved by the Governor June 11, 1997

Introduced by Robak, 22; Schimek, 27; Brown, 6; Crosby, 29; Hartnett, 45;
 Jensen, 20; Kiel, 9; Lynch, 13; Preister, 5

AN ACT relating to crimes and offenses; to amend section 28-101, Revised Statutes Supplement, 1996; to enhance penalties for certain offenses; to create a civil action; to provide a penalty; to provide duties for the Nebraska Commission on Law Enforcement and Criminal Justice; to eliminate penalty provisions relating to emergency medical services; to repeal the original section; and to outright repeal section 30, Legislative Bill 138, Ninety-fifth Legislature, First Session, 1997.

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

Section 1. Section 28-101, Revised Statutes Supplement, 1996, is amended to read:

28-101. Sections 28-101 to 28-1348 and sections 2 to 6 of this act shall be known and may be cited as the Nebraska Criminal Code.

Sec. 2. A person in the State of Nebraska has the right to live free from violence, or intimidation by threat of violence, committed against his or her person or the destruction or vandalism of, or intimidation by threat of destruction or vandalism of, his or her property regardless of his or her race, color, religion, ancestry, national origin, gender, sexual orientation, age, or disability.

Sec. 3. Any person who commits one or more of the following criminal offenses against a person or a person's property because of the person's race, color, religion, ancestry, national origin, gender, sexual orientation, age, or disability or because of the person's association with a person of a certain race, color, religion, ancestry, national origin, gender, sexual orientation, age, or disability shall be punished by the imposition of the next higher penalty classification than the penalty classification prescribed for the criminal offense, unless such criminal offense is already punishable as a Class IB felony or higher classification: Manslaughter, section 28-305; assault in the first degree, section 28-308; assault in the second degree, section 28-309; assault in the third degree, section 28-310; terroristic threats, section 28-311.01; stalking, section 28-311.03; kidnapping, section 28-313; false imprisonment in the first degree, section 28-314; false imprisonment in the second degree, section 28-315; sexual assault in the first degree, section 28-319; sexual assault in the second or third degree, section 28-320; arson in the first degree, section 28-502; arson in the second degree, section 28-503; arson in the third degree, section 28-504; criminal mischief, section 28-519; criminal trespass in the first degree, section 28-520; or criminal trespass in the second degree, section 28-521.

Sec. 4. The allegations stating that the underlying offense was committed because of the person's race, color, religion, ancestry, national origin, gender, sexual orientation, age, or disability or because of the person's association with a person of a certain race, color, religion, ancestry, national origin, gender, sexual orientation, age, or disability shall be set forth in the indictment or information, but the allegations shall not be disclosed to the jury trying the case. It is the burden of the county attorney to prove such allegations beyond a reasonable doubt to the judge after a guilty verdict on the underlying offense and prior to sentencing. If the case is tried to the judge without a jury, all allegations may be proved in the state's case in chief.

Sec. 5. (1) A person against whom a violation of section 3 of this act has been committed may bring a civil action for equitable relief, general and special damages, reasonable attorney's fees, and costs.

(2) A civil action brought pursuant to this section must be brought within four years after the date of the violation of section 3 of this act.

(3) In a civil action brought pursuant to this section, the plaintiff shall establish by a preponderance of the evidence that the defendant committed the criminal offense against the plaintiff or the plaintiff's property because of the plaintiff's race, color, religion, ancestry, national origin, gender, sexual orientation, age, or disability or because of the plaintiff's association with a person of a certain race, color, religion, ancestry, national origin, gender, sexual orientation, age, or disability.

Sec. 6. The Nebraska Commission on Law Enforcement and Criminal Justice shall establish and maintain a central repository for the collection and analysis of information regarding criminal offenses committed against a person because of the person's race, color, religion, ancestry, national origin, gender, sexual orientation, age, or disability or because of the person's association with a person of a certain race, color, religion, ancestry, national origin, gender, sexual orientation, age, or disability. Upon establishing such a repository, the commission shall develop a procedure to monitor, record, classify, and analyze information relating to criminal offenses apparently directed against individuals or groups, or their property, because of their race, color, religion, ancestry, national origin, gender, sexual orientation, age, or disability or because of their association with a person of a certain race, color, religion, ancestry, national origin, gender, sexual orientation, age, or disability.

Sec. 7. Original section 28-101, Revised Statutes Supplement, 1996, is repealed.

Sec. 8. The following section is outright repealed: Section 30, Legislative Bill 138, Ninety-fifth Legislature, First Session, 1997.