

LEGISLATURE OF NEBRASKA
ONE HUNDRED SEVENTH LEGISLATURE
FIRST SESSION

LEGISLATIVE BILL 110

Introduced by Pansing Brooks, 28; Hunt, 8; Vargas, 7; Wayne, 13.

Read first time January 07, 2021

Committee:

- 1 A BILL FOR AN ACT relating to the use of force; to amend sections
- 2 28-1406, 28-1409, 28-1412, and 28-1414, Reissue Revised Statutes of
- 3 Nebraska; to require a peace officer to intervene in cases of
- 4 excessive force; to require reports; to prohibit retaliation; to
- 5 define and redefine terms; to change provisions relating to
- 6 affirmative defenses for the use of force in law enforcement; to
- 7 harmonize provisions; and to repeal the original sections.
- 8 Be it enacted by the people of the State of Nebraska,

1 Section 1. (1) A peace officer shall intervene to prevent or stop
2 another peace officer from using excessive force, without regard for the
3 chain of command.

4 (2) A peace officer who intervenes or attempts to intervene as
5 required by this section shall report the incident to the peace officer's
6 immediate supervisor or to the Nebraska Commission on Law Enforcement and
7 Criminal Justice within ten days after the incident.

8 (3) At a minimum, the report required by this section must include
9 the date, time, and place of the incident; the identities, if known, and
10 description of the people involved; and a description of the excessive
11 force and intervention actions taken.

12 (4) A law enforcement agency or any of its employees, officers, or
13 agents shall not discipline or retaliate in any way against a peace
14 officer for: (a) Intervening or reporting as required by this section;
15 (b) reporting unconstitutional conduct; or (c) failing to follow what the
16 peace officer reasonably believes is an unconstitutional directive.

17 (5) For purposes of this section:

18 (a) Excessive force means force that would not be justifiable under
19 section 28-1412; and

20 (b) Peace officer means any law enforcement officer as defined in
21 section 81-1401.

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

24 28-1406 As used in sections 28-1406 to 28-1416, unless the context
25 otherwise requires:

26 (1) Actor means any person who uses force in such a manner as to
27 attempt to invoke the privileges and immunities afforded such actor by
28 sections 28-1406 to 28-1416. Actor does not include a peace officer,
29 except as otherwise provided in section 28-1414;

30 (2) Assent means consent, whether or not it otherwise is legally
31 effective, except assent to the infliction of death or serious bodily

1 harm;

2 (3) Bodily harm has the same meaning as bodily injury as defined in
3 section 28-109;

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

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

13 (4) (3) Deadly force means shall mean force which the actor or peace
14 officer uses with the purpose of causing or which the actor or peace
15 officer he knows to create a substantial risk of causing death or serious
16 bodily harm. Purposely firing a firearm in the direction of another
17 person or at a vehicle in which another person is believed to be
18 constitutes deadly force. A threat to cause death or serious bodily harm,
19 by the production of a weapon or otherwise, so long as the actor's or
20 peace officer's purpose is limited to creating an apprehension that the
21 actor or peace officer he will use deadly force if necessary, shall not
22 constitute deadly force;

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

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

30 (6) Peace officer means any law enforcement officer as defined in
31 section 81-1401;

1 (7) ~~(6)~~ Public officer means ~~shall mean~~ any elected or appointed
2 officer or employee of the State of Nebraska or its political
3 subdivisions, except any peace officer; ~~duly authorized law enforcement~~
4 ~~officer of the State of Nebraska or its political subdivisions.~~

5 (8) Reckless means acting with respect to a material element of an
6 affirmative defense when the actor or peace officer disregards a
7 substantial and unjustifiable risk that the material element exists or
8 will result from the actor's or peace officer's conduct. The risk must be
9 of such a nature and degree that, considering the nature and purpose of
10 the actor's or peace officer's conduct and the circumstances known to the
11 actor or peace officer, its disregard involves a gross deviation from the
12 standard of conduct that a reasonable person would observe in the actor's
13 or peace officer's situation;

14 (9) Serious bodily harm has the same meaning as serious bodily
15 injury as defined in section 28-109; and

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

22 Sec. 3. Section 28-1409, Reissue Revised Statutes of Nebraska, is
23 amended to read:

24 28-1409 (1) ~~Subject to the provisions of this section and of section~~
25 28-1414, the use of force upon or toward another person is justifiable
26 when the actor believes that such force is immediately necessary for the
27 purpose of protecting the actor himself ~~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 public officer's ~~his~~ duties or a person lawfully assisting the public
8 officer ~~him~~ 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 believes that such force is necessary to protect the
12 actor ~~himself~~ against death or serious bodily harm.

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

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

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

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

30 (ii) A public officer justified in using force in the performance of
31 the officer's ~~his~~ duties, or a person justified in using force in the

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

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

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

17 Sec. 4. Section 28-1412, Reissue Revised Statutes of Nebraska, is
18 amended to read:

19 28-1412 (1) Subject to ~~the provisions of~~ this section and of section
20 28-1414, the use of force by a peace officer upon or toward the person of
21 another is justifiable, if other means would be ineffective, in order to:

22 (a) Effect an arrest;

23 (b) Prevent an escape; or

24 (c) Prevent an imminent threat of bodily harm or death to the peace
25 officer or another person when the actor is making or assisting in making
26 an arrest and the actor believes that such force is immediately necessary
27 to effect a lawful arrest.

28 (2) The use of force by a peace officer is not justifiable under
29 this section unless:

30 (a) The peace officer actor makes known that such person is a peace
31 officer, the purpose of the arrest, and that force will be used if the

1 person does not comply, unless the peace officer reasonably and in good
2 faith or believes that:

3 (i) Such matters are it is otherwise known by or cannot reasonably
4 be made known to the person to be arrested; or and

5 (ii) To do so would unduly place a peace officer or other person at
6 risk of bodily harm or death;

7 (b) The peace officer has exhausted reasonable alternatives to the
8 use of force or the peace officer reasonably believes that such
9 alternatives would unduly place a peace officer or other person at risk
10 of bodily harm or death. For purposes of this section, reasonable
11 alternatives include, but are not limited to, verbal communication,
12 distancing, warning, de-escalation tactics and techniques intended to
13 stabilize a situation and reduce the immediacy of risk and need for the
14 use of force; and

15 (c) (b) When the arrest is made under a warrant, the warrant is
16 valid or reasonably and in good faith believed by the peace officer actor
17 to be valid.

18 (3) Except as provided in subsection (4) of this section, the The
19 use of deadly force by a peace officer is not justifiable under this
20 section unless, in addition to the requirements of subsection (3) of this
21 section:

22 (a) The arrest is for a felony that has caused or threatens serious
23 bodily harm or death;

24 (b) Such person effecting the arrest is authorized to act as a peace
25 officer or is assisting a person whom he believes to be authorized to act
26 as a peace officer;

27 (b) (c) The peace officer reasonably and in good faith actor
28 believes that the force employed creates no substantial risk of bodily
29 harm injury to innocent persons; and

30 (c) (d) The peace officer reasonably and in good faith actor
31 believes that either:

1 (i) The person to be arrested poses an immediate threat of death or
2 serious bodily harm to the peace officer or another person ~~crime for~~
3 ~~which the arrest is made involved conduct including the use or threatened~~
4 ~~use of deadly force; or~~

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

8 (4) Notwithstanding subsections (1) through (3) of this section, a
9 peace officer is justified in using deadly force if the peace officer
10 reasonably and in good faith believes that:

11 (a) The peace officer or any other person is in imminent danger of
12 being killed or suffering serious bodily harm; and

13 (b) A lesser degree of force would be inadequate to prevent the
14 imminent threat of death or serious bodily harm.

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

24 (6) ~~(5) A private person is justified in using force to assist a~~
25 peace officer in conduct described in subsection (1) of this section, to
26 the same extent as the peace officer and subject to the same requirements
27 as the peace officer in subsections (1) through (5) of this section,
28 except that:

29 (a) The person the private person is assisting must actually be a
30 peace officer or the private person must reasonably believe that the
31 person is a peace officer;

1 (b) If the private person who is summoned by a peace officer to
2 assist in effecting an unlawful arrest, the private person is nonetheless
3 justified in using any force which the private person he would be
4 justified in using if the arrest were lawful, except that such use of
5 force is not justified if such person believes ; Provided, that he does
6 not believe the arrest is unlawful; and -

7 (c) If the private person is not summoned by a peace officer or
8 person who the private person reasonably believes to be a peace officer,
9 and assists such person (6) A private person who assists another private
10 person in effecting an unlawful arrest, the private person is
11 nonetheless , or who, not being summoned, assists a peace officer in
12 effecting an unlawful arrest, is justified in using any force which the
13 private person he would be justified in using if the arrest were lawful,
14 if:

15 (i) The private person reasonably and in good faith (a) He believes
16 the arrest is lawful; and

17 (ii) (b) The arrest would be lawful if the facts were as the private
18 person he believes them to be.

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

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

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

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

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

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

19 Sec. 5. Section 28-1414, Reissue Revised Statutes of Nebraska, is
20 amended to read:

21 28-1414 (1) For purposes of this section, actor includes a peace
22 officer.

23 (2) ~~(1)~~ The justification afforded by sections 28-1409 to 28-1412 is
24 unavailable when:

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

29 (b) The actor's ~~His~~ error is the result of ignorance or mistake as
30 to the provisions of sections 28-1406 to 28-1416, any other provision of
31 the criminal law, or the law governing the legality of an arrest or

1 search.

2 ~~(3)~~ (2) When the actor believes that the use of force upon or toward
3 the person of another is necessary for any of the purposes for which such
4 belief would establish a justification under sections 28-1408 to 28-1413
5 but the actor is reckless or negligent in having such belief or in
6 acquiring or failing to acquire any knowledge or belief which is material
7 to the justifiability of the actor's ~~his~~ use of force, the justification
8 afforded by those sections is unavailable in a prosecution for an offense
9 for which recklessness or negligence, as the case may be, suffices to
10 establish culpability.

11 ~~(4)~~ (3) When the actor is justified under sections 28-1408 to
12 28-1413 in using force upon or toward the person of another but the actor
13 ~~he~~ recklessly or negligently injures or creates a risk of bodily harm
14 ~~injury~~ to innocent persons, the justification afforded by those sections
15 is unavailable in a prosecution for such recklessness or negligence
16 towards innocent persons.

17 Sec. 6. Original sections 28-1406, 28-1409, 28-1412, and 28-1414,
18 Reissue Revised Statutes of Nebraska, are repealed.