

The following is taken from the Police Officers' Association of Nebraska Handbook, published in 1990 by the association.

I have selected several excerpts that deal with or relate to GUNS and the carry or use there of. This is not intended to be a restatement of law or to include all laws. It is however a useful hip pocket reference.

-Patrick Smith

DEFINITIONS

Some words appear frequently throughout the text of the handbook, a brief definition of each is as follows:

ARREST: An arrest may be defined as the taking of a person into formal custody and order that he answer for a criminal charge. Words alone do not constitute an arrest unless the person being arrested freely submits to the officer's authority. Otherwise, a restraint of the person's freedom to go as he may desire is required.

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.

BAILMENT: A bailment in the transfer of the possession of property without transferring ownership, for an accomplishment of a certain purpose.

CAPITAL CRIME: A capital crime in any crime for which the death penalty may be inflicted.

CRIME: A crime is a wrong which 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.

FELONY: A felony is any crime which may be punished by death or imprisonment in the Nebraska Penal and Correctional Complex.

INTENT: Intent is purely a mental process and may be 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 must be distinguished from motive. Motive is the reason which leads the mind to desire a certain result and is not an element of any crime.

MAGISTRATE: The term magistrate shall mean a County Judge or a Clerk Magistrate.

MALICE: Malice defines the condition of the mind which is manifested by intentionally doing a wrong act without cause or excuse. A person acts maliciously when he acts heartlessly, or in total disregard of any social duty.

MISDEMEANOR: A misdemeanor is a crime not considered as severe as a felony and is punishable only by a fine or imprisonment other than in the Nebraska Penal and Correctional Complex.

PREMEDITATION: Premeditation is made an element of several crimes and may be defined as a prior determination to do the act.

PROBABLE CAUSE: Probable cause may be defined as reasonable grounds for action, or the existence of facts and circumstances which would induce a reasonable person to believe that a crime has been committed or that the accused has committed it.

A mere suspicion or belief is never sufficient.

The phrase “probably cause” will appear in subsequent sections dealing with criminal procedure and it will be applied to certain situations, such as probable cause for arrest without a warrant.

STEALING: Stealing is the taking of the property of another, without his consent, with the intent to convert it to wrong doer’s own use.

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

It is issued upon showing probable cause, by 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 and bring before a Magistrate a named individual. The warrant must state the offense for which the person is arrested.

CLASSIFICATIONS OF CRIMES

CLASSIFICATION –PENALTY

Class I Felony

Death

Class Ia Felony

Life Imprisonment

Class Ib Felony

Maximum – Life imprisonment

Minimum – 10 years imprisonment

Class Ic Felony

Maximum – 50 years imprisonment

Minimum – 5 years imprisonment

Class Id Felony

Maximum – 50 years imprisonment

Minimum – 3 years imprisonment

Class II Felony

Maximum - 50 years imprisonment

Minimum – 1 year imprisonment

Class III Felony

Maximum - 20 years imprisonment

Minimum – 1 year imprisonment

Class IV Felony

Maximum - 5 years imprisonment

Minimum – none

Class I Misdemeanor

*Maximum – not more than 1 year imprisonment, or \$1,000.00 fine or both
Minimum - none*

Class II Misdemeanor

*Maximum – 6 months imprisonment, or \$1,000.00 fine or both
Minimum – none*

Class III Misdemeanor

*Maximum – 3 months imprisonment, or \$500.00 fine or both
Minimum – none*

Class IIIa Misdemeanor

*Maximum – 7 days imprisonment, or \$500.00 fine
Minimum – none*

Class IV Misdemeanor

*Maximum – no imprisonment, \$500.00
Minimum – \$100.00 fine*

Class V Misdemeanor

*Maximum – no imprisonment, \$100.00 fine
Minimum – none*

Class W Misdemeanor

Driving While Intoxicated/Implied Consent Refusal

First Conviction –

Maximum – 30 days imprisonment and \$500.00 fine

Mandatory Minimum – Seven days imprisonment and \$200.00 fine

Second Conviction –

Mandatory 30 days imprisonment and \$500.00 fine

Third and Subsequent Convictions -

Maximum – Six months imprisonment and \$500.00 fine

Minimum – Three months imprisonment and \$500.00 fine

First Degree Murder:[28-303]

1. Elements

- a) Whoever shall deliberately and purposely kill another b) with premeditated malice or c) in the commission or attempted commission of sexual assault in the first degree, arson, hijacking a public transportation, or burglary; or d) by administering poison or e) whoever shall buy willful and corrupt perjury or buy subordination or perjury purposely procure the conviction and execution of an innocent man f) shall be guilty of first degree murder.

2. Classification Class I or Ia Felony

Second Degree Murder [28-304]

1. Elements

- a) Any person who shall purposely and maliciously b) but without deliberation and pre-meditation, kill another c) shall be guilty of second degree murder.

2. Classification Class Ib Felony

Manslaughter [28-305]

1. Elements
 - a) Any person who shall unlawfully kill another b) without malice, c) either upon a sudden quarrel d) or unintentionally while the slayer is in the commission of an unlawful act.
2. Class III Felony

Motor Vehicle Homicide [28-306]

1. Elements
 - a) Any person who shall cause the death of another b) unintentionally c) while engaged in the unlawful operation of a motor vehicle d) shall be guilty of this offense.
2. Class IV Felony / Class I Misdemeanor

First Degree Assault [28-208]

1. Elements
 - a) A person commits this offense in the first degree if he intentionally or knowingly causes serious bodily injury to another person.
2. Class III Felony

Kidnapping [28-313]

1. Definitions
 - a) **Restrain**: Shall mean to restrict a person's movement in such a manner as to interfere substantially with his liberty. 1) by means of force, threat, deception or 2) if the person is under the age of 18 or incompetent without the consent of the relative, person or institution having custody of him and
 - b) **Abduct**: Shall mean to restrain a person with intent to prevent his liberation by 1) secreting or holding him in a place where he is not likely to be found or 2) endangering or threatening to endanger the safety of any human being.
2. Elements
 - a) A person commits kidnapping if he abducts another or having abducted another continues to restrain him with intent to do the following b) hold him for ransom or reward or c) use him as a hostage or shield or d) terrorizes him or a third person or e) commit a felony or f) interfere with the performance of any government of political function.
3. Class Ia Felony / Class II Felony

First Degree False Imprisonment [28-314]

1. Elements
 - a) A person commits this offense if he knowingly restrains or abducts another person b) under terrorizing circumstances or under circumstances which expose the person to the risk of serious bodily injury or c) with intent to hold him in a condition of involuntary servitude.
2. Class IV Felony

Second Degree False Imprisonment [28-315]

1. Elements

A person commits false imprisonment in the second degree if he knowingly restrains another person without legal authority.

2. Class I Misdemeanor

IMPERSONATING A PEACE OFFICER [28-610]

1. Elements

- a) A person commits this offence if he falsely pretends to be a peace officer and performs
- b) Any act in that pretended capacity.

2. Classification

Class I Misdemeanor.

REFUSING TO AID A PEACE OFFICER [28-903]

1. Elements

- a) A person commits this offence if
- b) Upon request by a person known to him to be a peace officer
- c) He unreasonably refuses or fails to aid such peace officer in:
 - 1) Apprehending any person charged with or convicted of any offense against any law of this state; or
 - 2) Securing such offender when apprehended; or
 - 3) Conveying such offender to the jail of the county.

2. Classification

Class II Misdemeanor

CARRYING CONCEALED WEAPONS [28-1201]

1. Elements

- a) Any person who carries a weapon or weapons
- b) Concealed on or about his person
- c) Such as a revolver, pistol, bowie knife, dirk or knife with a dirk blade attachment, brass or iron knuckles, or any other dangerous weapon.
- d) Commits this offense
- e) **EXCEPTION:** If the defendant is engaged in any lawful business, calling or employment at the time he was carrying such weapon, and the circumstances in which such person was placed at the time were such as to justify a prudent person in carrying the weapon, for the defense of his person, property or family.
- f) This section does not apply to a person who is the holder of a valid permit issued under the concealed handgun permit act if the weapon is a handgun.

2. Classification

First offense: Class I misdemeanor

Second and subsequent offenses: Class IV Felony

Definitions relating to firearms offenses: [28-1201]

Knife shall mean any dagger, dirk knife, or stiletto with a blade over three and one half inches in length, or any other dangerous instrument capable of inflicting cutting, stabbing, or tearing wounds.

Brass or Iron Knuckles shall mean any instrument that consists of fingers rings or guards made of a hard substance and that is designed, made, or adapted for the purpose of inflicting serious injury or death by striking a person with a fist enclosed in the knuckles. **Short Rifles** shall mean a rifle having a barrel less than sixteen inches long or an overall length of less than twenty-six inches.

Short Shotgun shall mean a shotgun having a barrel or barrels of less than eighteen long or an overall length of less than twenty-six inches.

Machine Gun shall mean any firearm, whatever its size or designation, that shoots automatically more than one shot, by a single function of the trigger.

TRANSPORTING OR POSSESSING PROHIBITED WEAPONS [28-1203]

1. Elements
 - a) Any person who shall unlawfully transport or possess any machine gun, short rifle, or short shotgun commits a felony.
2. Classification
 - Class IV Felony