

# **One Hundred Fifth Legislature - First Session - 2017**

## **Introducer's Statement of Intent**

### **LB558**

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**Chairperson: Senator Laura Ebke**

**Committee: Judiciary**

**Date of Hearing: March 01, 2017**

The following constitutes the reasons for this bill and the purposes which are sought to be accomplished thereby:

On May 6, 2016, the Nebraska Supreme Court held that the definition of a deadly weapon per se in Neb.Rev.Stat. 28-1201 includes any knife with a blade over 3 ½ inches long and as such the manner or intended use of a knife is not an element of the crime charged. The case can be found at State v. Bao Minh Nguyen 293 Neb. 493 (2016). This decision supersedes previous Supreme Court decisions that held the State must present evidence that an accused intended to use a knife as a deadly weapon regardless of the length of a knife's blade.

The reason given by the court for the change in course was due to action taken by the Legislature in 2009 amending the general definition of "knife" in 28-1201 and amending the definition of a deadly weapon in 28-1202. Prior to 2009 "daggers, dirks, or knives with dirk blades" were considered to be deadly weapons per se and the manner or intended use of these weapons was immaterial. The general definition of "knife" was interpreted to mean knives that were not per se deadly weapons (such as typical household knives), and, as noted above, in order to convict, the state needed to prove that the manner in which the possessed knife was used or intended to be used was capable of producing death or bodily injury. Quoting from the 2016 Nguyen case about a 1984 decision involving the use of a steak knife in which the court held that the intended use of a knife is an element of the crime charged:

We reasoned that the context of chapter 28, article 12, of the Nebraska Revised Statutes required that the concept of per se deadly weapons be limited to the specific weapons enumerated in § 28-1202(1). We concluded that to hold otherwise would mean that every citizen carrying a kitchen paring knife with a 4-inch blade in a picnic basket with other appropriate picnic items would be concealing a per se deadly weapon and would be guilty of a Class IV felony, without being able to explain his or her innocent intent.

In 2009 the general definition of "knife" was amended to include any knife "or any other dangerous instrument capable of inflicting cutting, stabbing, or tearing wounds" with a blade in excess of 3½ inches long and the definition of a deadly weapon was amended to include the general definition of "knife". Together the changes eliminated any distinction between knives considered deadly weapons per se and any knife with a blade in excess of 3 ½ inches long and, according to the Court, also eliminated any need to take into consideration the intended use of a knife used in a crime.

The definition of "knife" is applicable to a number of offenses, including the crime of "Carrying a Concealed Weapon", which prohibits anyone from having a weapon concealed on or about his or her person. The Court's express concern in 1984 with criminalizing the action of any citizen carrying a kitchen paring knife in a picnic basket in has been realized. The law of the land in Nebraska is that the mere possession of a knife with a blade in excess of 3 ½ inches hidden from view, for instances in a shopping bag or a tackle box, is a crime.

For purposes of clarity LB588 breaks the definition of "knife" into two parts to distinguish knives with blades over 3 ½ inches from "any other dangerous instrument capable of inflicting cutting, stabbing, or tearing wounds". To

reinstate intended use be an element of the crime charged, the bill adds the phrase “and which, in the manner it is used or intended to be used, is capable of producing death or serious bodily injury”, which is a phrase lifted from Section 28-109(8), a separate section defining “deadly weapon” for purposes of other provisions of the criminal code.

**Principal Introducer:** \_\_\_\_\_

Senator Paul Schumacher