

## 28-311.01.

### Terroristic threats; penalty.

(1) A person commits terroristic threats if he or she threatens to commit any crime of violence:

(a) With the intent to terrorize another;

(b) With the intent of causing the evacuation of a building, place of assembly, or facility of public transportation; or

(c) In reckless disregard of the risk of causing such terror or evacuation.

(2) Terroristic threats is a Class IIIA felony.

### Source

- Laws 1986, LB 956, § 11;
- [Laws 2015, LB605, § 15.](#)

### Annotations

- **1. Terroristic threats**
- **2. Double jeopardy**
- **3. Unconstitutionally vague**
- **4. Miscellaneous**
- **1. Terroristic threats**
- A terroristic threat made under subsection (1)(a) of this section requires an intent to terrorize another and is not concerned with the result produced by an individual's threat. *State v. Smith*, 267 Neb. 917, 678 N.W.2d 733 (2004).
- Third degree assault under subsection (1)(b) of section 28-310 is not a lesser-included offense of terroristic threats under subsection (1)(a) of this section. *State v. Smith*, 267 Neb. 917, 678 N.W.2d 733 (2004).
- To violate the statute prohibiting the commission of terroristic threats does not require an intent to execute the threats made or that the recipient of the threat be terrorized. *State v. Saltzman*, 235 Neb. 964, 458 N.W.2d 239 (1990).
- A defendant does not have to actually commit a crime of violence, because it is the threat of violence which is at the heart of the crime of terroristic threats. *State v. Tucker*, 17 Neb. App. 487, 764 N.W.2d 137 (2009).
- For purposes of the offense of terroristic threats, a threat may be written, oral, physical, or any combination thereof. *State v. Tucker*, 17 Neb. App. 487, 764 N.W.2d 137 (2009).
- A threat may be written, oral, physical, or any combination thereof, and whether a particular conduct constitutes a threat depends on the context of the interaction between the involved people. *State v. Curlile*, 11 Neb. App. 52, 642 N.W.2d 517 (2002).
- **2. Double jeopardy**

- In applying *Blockburger v. United States*, 284 U.S. 299, 52 S. Ct. 180, 76 L. Ed. 2d 306 (1932), to separately codified criminal statutes which may be violated in alternative ways, only the elements charged in the case at hand should be compared in determining whether the offenses under consideration are separate or the same for purposes of double jeopardy. *State v. Winkler*, 266 Neb. 155, 663 N.W.2d 102 (2003).
- Third degree assault and the making of terroristic threats are separate offenses for the purpose of double jeopardy. *State v. Winkler*, 266 Neb. 155, 663 N.W.2d 102 (2003).
- **3. Unconstitutionally vague**
- The words "terror" and "terrorize," as used in this section, are not unconstitutionally vague. *State v. Nelson*, 274 Neb. 304, 739 N.W.2d 199 (2007).
- Subsection (1) of this section is not unconstitutionally vague. *State v. Schmailzl*, 243 Neb. 734, 502 N.W.2d 463 (1993).
- As used in subsection (1)(c) of this section, the phrase "reckless disregard of the risk of causing such terror or evacuation" is not unconstitutionally vague. *State v. Mayo*, 237 Neb. 128, 464 N.W.2d 798 (1991).
- Subsection (1)(c) of this section defines the crime with sufficient definiteness and ascertainable standards of guilt to inform those subject to it as to what conduct will result in punishment, and it is constitutional. *State v. Bourke*, 237 Neb. 121, 464 N.W.2d 805 (1991).
- **4. Miscellaneous**
- The pointing of a gun can be a "threat to commit a crime of violence" pursuant to this section; however, the pointing of a gun in self-defense is necessarily less serious than when no issue of self-defense is involved. *State v. Oldenburg*, 10 Neb. App. 104, 628 N.W.2d 278 (2001).