

ONE HUNDRED FIRST LEGISLATURE - FIRST SESSION - 2009
COMMITTEE STATEMENT
LB97

Hearing Date: Wednesday March 11, 2009
Committee On: Judiciary
Introducer: Lautenbaugh
One Liner: Change provisions relating to foreign corporations and provisions and penalties relating to certain sex offenders

Roll Call Vote - Final Committee Action:
Advanced to General File with amendment(s)

Vote Results:

Aye: 8 Senators Ashford, Christensen, Coash, Council, Lathrop, Lautenbaugh, McGill, Rogert
Nay:
Absent:
Present Not Voting:

Proponents:

Sen. Scott Lautenbaugh
Corey O'Brien
Mark Young
Ed Sexton
Craig Wiech

Representing:

Introducer
NE Attorney General's Office
County Attorneys
Attorney General's Office
Bellevue Police Department

Opponents:

Coleen Nielsen
Amy Miller

Representing:

Criminal Defense
ACLU Nebraska

Neutral:

Korby Gilbertson

Representing:

MPAA (Motion Picture Assoc. of America)

Summary of purpose and/or changes:

Legislative Bill 97 would amend statues related to sex offenses and sex offenders to enhance penalties and increase regulation of those required to register.

LB 97 would make the following changes:

- Creates the offense of unlawful use of the Internet by a Registered Sex Offender (one who is classified as a level II or III sex offender or has been convicted of a sex offense involving a child) and makes it a Class I misdemeanor for the first offense and a Class IIIA felony for any subsequent offenses;
 - Increases the penalty for On-Line Enticement of a Child from a Class IIIA felony for first offense to a Class ID felony and from a Class II felony for subsequent offenses to a Class IC felony;
 - Increases the penalty for Criminal Child Enticement from a Class I misdemeanor to a Class IIIA felony;
 - Changes On-Line Enticement Using a Computer to On-Line Enticement Using an Electronic Communication Device so as to include those offenders who use personal digital assistants (PDAs) or cell phones to commit their crimes;
 - Increases the penalty for Manufacture of Child Pornography a Class III felony for a first offense to a Class ID felony
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and from a Class II felony for subsequent offenses to a Class IC felony;

- Increases the penalty for trafficking in Child Pornography from a Class IIIA felony for subsequent offenses to a Class IC felony for subsequent offenses;
- Increases the penalty for Possession of Child Pornography from a Class IV felony to a Class III felony and a Class IC felony for subsequent offenses;
- Expands the definition of visual depiction of sexually explicit conduct to include undeveloped films and videotapes and to include images merely depicted on a computer screen;
- Describes rules and procedures for introducing child pornography in court and for sharing child pornography evidence with the defense through the discovery process;
- Eliminates the applicability of the statute of limitations for the crime of Incest.
- Requires judges to tell applicable sex offenders at sentencing that they will have to disclose pertinent computer and Internet information to law enforcement and inform them that they are prohibited from accessing and using social networking sites;
- Adds the crime of Enticement by Electronic Communication Device to the list of offenses that are subject to the Sex Offender Registration Act;
- Allows for service of search warrants and subpoenas on Internet Service Providers headquartered in other jurisdictions but doing business on-line in Nebraska; and
- Includes an emergency clause.

Explanation of amendments:

Committee Amendment AM 893 is a white copy amendment which would include the provisions of LB 97 and the changes proposed by the Committee. The proposed changes would incorporate the provisions of LB 15, introduced by Senator White; would amend provisions related to the handling of evidence; would add provisions related to juveniles and would strike provisions related to the visual depiction of sexually explicit conduct.

Legislative Bill 15, as amended into LB 97 by AM 893, would amend Sec. 29-4006 to require additional information to be included in the database of registered sex offenders. The new information required under the bill would include driver's license numbers, email addresses, instant messaging screen names, and other internet communication identifiers. In addition, the bill would require any person required to register under the Sex Offender Registration Act to inform the sheriff, in writing, by the next working day, if he or she establishes or changes an email addresses, instant messaging address, or other internet communication identifier. The sheriff would then be required to send the information to the sex offender registration and community notification division of the Nebraska State Patrol, in writing, by the next working day after the receipt of the information.

The amendment would add language to the section of the bill describing rules and procedures for handling child pornography evidence. The new language would allow the court to order that a copy of the evidence be delivered to an expert witness for the defense to prepare testimony. The defense expert would be subject to the same restrictions as law enforcement and would have to return all copies after their evaluation.

The amendment would amend Sec. 28-319.01 to expand the crime of sexual assault of a child in the first degree to include instances when a person who is at least twenty-five years old subjects a person who is less than sixteen but at least twelve years old to sexual penetration. The crime would be a Class IB felony with a mandatory minimum sentence of fifteen years in prison for the first offense.

The amendment would address the issue of juveniles sending sexually explicit pictures of themselves to one another. Section 28-813.01, which prohibits the possession of child pornography, would be amended to differentiate between persons who are under nineteen years of age and those nineteen and older with regard to the penalty provisions. A person under nineteen at the time of the criminal conduct would be guilty of a Class IV felony for each offense and a Class IC felony for subsequent offenses. Those who are nineteen and older at the time of the criminal conduct would be guilty of a Class III felony for each offense and a Class IC felony for subsequent offenses in accordance with the provisions of the original LB 97. The amendment would also establish an affirmative defense to the charge of possession of child pornography if: 1) the image is of the defendant alone, or 2) the defendant was under 19; the image

portrays a child at of least 15 years of age; the child depicted generated the image knowingly and voluntarily; the image was knowingly and voluntarily provided by the child depicted; the image contains only one child; the defendant has not provided or made available the image to anyone except the child who originally generated and provided it to the defendant; and the defendant did not coerce the depicted child to generate or provide the image.

Section 28-1463.03, which prohibits the manufacture of child pornography in (1), would be amended to establish an affirmative defense to the charge if the defendant was under 18 at the time the image was generated and the image is of the defendant alone. An affirmative defense would also be established to the charge of buying, selling or distributing child pornography in (2) if: a) the defendant was under 18 at the time the image was generated, b) image is of the defendant alone, c) the defendant reasonably believed he or she was sending the image to a willing recipient, and d) the recipient was at least 15 at the time the image was sent.

Section 28-1463.04 would be amended to differentiate between persons who are under nineteen years of age and those nineteen and older with regard to the penalty provisions for the crimes listed under Sec. 28-1463.03. A person under nineteen at the time of the criminal conduct would be guilty of a Class III felony for each offense and a Class IC felony for subsequent offenses. Those who are nineteen and older at the time of the criminal conduct would be guilty of a Class ID felony for each offense and a Class IC felony for subsequent offenses in accordance with the provisions of the original LB 97.

Section 28-1463.05 would be amended to differentiate between persons who are under nineteen years of age and those nineteen and older with regard to the penalty provisions for possession with intent to deliver child pornography. A person under nineteen at the time of the criminal conduct would be guilty of a Class IIIA felony for each offense and a Class IC felony for subsequent offenses. Those who are nineteen and older at the time of the criminal conduct would be guilty of a Class III felony (this is an increase from a Class IIIA felony) for each offense and a Class IC felony for subsequent offenses in accordance with the provisions of the original LB 97.

The amendment would strike all instances of new language in the bill that prohibit certain types of involvement with sexually explicit images that appear to, but do not actually, include a minor as a participant or portrayed observer.

The amendment would also add a severability clause to the bill.

(Testimony for LB15 and LB97 was heard together at the public hearing.)

Brad Ashford, Chairperson