

LEGISLATURE OF NEBRASKA

ONE HUNDRED FIRST LEGISLATURE

SECOND SESSION

LEGISLATIVE BILL 507

FINAL READING

Introduced by Pirsch, 4; Howard, 9; McCoy, 39; Mello, 5; Carlson, 38; Christensen, 44; Hadley, 37; Krist, 10; Nelson, 6.

Read first time January 21, 2009

Committee: Judiciary

A BILL

1 FOR AN ACT relating to domestic violence; to amend sections 28-323
2 and 28-707, Reissue Revised Statutes of Nebraska; to
3 provide for payment for prenatal services in certain
4 situations; to provide a termination date; to change
5 provisions relating to the offense of domestic assault;
6 to change penalties for domestic assault and child abuse
7 as prescribed; to provide operative dates; to repeal the
8 original sections; and to declare an emergency.

9 Be it enacted by the people of the State of Nebraska,

1 Section 1. A pregnant United States citizen and Nebraska
2 resident with an income at or below one hundred eighty-five percent
3 of the federal poverty level who is subject to a child support
4 enforcement sanction may ask for her case to be reviewed by the
5 chief executive officer of the Department of Health and Human
6 Services to obtain prenatal services from state-only funds. If
7 the chief executive officer, upon review of the circumstances of
8 the case, determines, in his or her discretion, that circumstances
9 relating to domestic violence warrant an exception to the existing
10 rules and regulations governing medicaid coverage and sanctions,
11 he or she may authorize prenatal services to be paid from state
12 general funds. Prenatal services provided under this section shall
13 not include abortion counseling, referral for abortion, or funding
14 for abortion.

15 This section terminates on June 30, 2011.

16 Sec. 2. Section 28-323, Reissue Revised Statutes of
17 Nebraska, is amended to read:

18 28-323 (1) A person commits the offense of domestic
19 assault in the third degree if he or she:

20 (a) Intentionally and knowingly causes bodily injury to
21 his or her intimate partner; ~~or~~

22 (b) ~~Places, by physical menace, his or her~~ Threatens an
23 intimate partner in fear of with imminent bodily injury; or-

24 (c) Threatens an intimate partner in a menacing manner.

25 (2) A person commits the offense of domestic assault in

1 the second degree if he or she intentionally and knowingly causes
2 bodily injury to his or her intimate partner with a dangerous
3 instrument.

4 (3) A person commits the offense of domestic assault in
5 the first degree if he or she intentionally and knowingly causes
6 serious bodily injury to his or her intimate partner.

7 (4) Violation of ~~subsection (1)~~ subdivision (1)(a) or
8 (b) of this section is a Class I misdemeanor, except that for
9 any second or subsequent violation of such subsection within
10 twelve years after the date of the current conviction, subsequent
11 violation of subdivision (1)(a) or (b) of this section, any person
12 so offending against the same intimate partner is guilty of a Class
13 IV felony.

14 (5) Violation of subdivision (1)(c) of this section is a
15 Class I misdemeanor.

16 ~~(5)~~ (6) Violation of subsection (2) of this section is
17 a Class IIIA felony, except that for any second or subsequent
18 violation of such subsection, within twelve years after the date of
19 the current conviction, any person so offending against the same
20 intimate partner is guilty of a Class III felony.

21 ~~(6)~~ (7) Violation of subsection (3) of this section is
22 a Class III felony, except that for any second or subsequent
23 violation under such subsection, within twelve years after the date
24 of the current conviction, any person so offending against the same
25 intimate partner is guilty of a Class II felony.

1 ~~(7)~~ (8) For purposes of this section, intimate partner
2 means a spouse; a former spouse; persons who have a child in
3 common whether or not they have been married or lived together
4 at any time; and persons who are or were involved in a dating
5 relationship. For purposes of this subsection, dating relationship
6 means frequent, intimate associations primarily characterized by
7 the expectation of affectional or sexual involvement, but does not
8 include a casual relationship or an ordinary association between
9 persons in a business or social context.

10 Sec. 3. Section 28-707, Reissue Revised Statutes of
11 Nebraska, is amended to read:

12 28-707 (1) A person commits child abuse if he or she
13 knowingly, intentionally, or negligently causes or permits a minor
14 child to be:

15 (a) Placed in a situation that endangers his or her life
16 or physical or mental health;

17 (b) Cruelly confined or cruelly punished;

18 (c) Deprived of necessary food, clothing, shelter, or
19 care;

20 (d) Placed in a situation to be sexually exploited by
21 allowing, encouraging, or forcing such minor child to solicit for
22 or engage in prostitution, debauchery, public indecency, or obscene
23 or pornographic photography, films, or depictions; or

24 (e) Placed in a situation to be sexually abused as
25 defined in section 28-319, 28-319.01, or 28-320.01.

1 (2) The statutory privilege between patient and
2 physician, between client and professional counselor, and between
3 husband and wife shall not be available for excluding or refusing
4 testimony in any prosecution for a violation of this section.

5 (3) Child abuse is a Class I misdemeanor if the offense
6 is committed negligently.

7 (4) Child abuse is a Class IIIA felony if the offense
8 is committed knowingly and intentionally and does not result in
9 serious bodily injury as defined in section 28-109.

10 (5) Child abuse is a Class ~~III~~ II felony if the offense
11 is committed knowingly and intentionally and results in serious
12 bodily injury as defined in such section.

13 (6) Child abuse is a Class IB felony if the offense is
14 committed knowingly and intentionally and results in the death of
15 such child.

16 Sec. 4. Sections 2, 3, and 5 of this act become operative
17 three calendar months after the adjournment of this legislative
18 session. The other sections of this act become operative on their
19 effective date.

20 Sec. 5. Original sections 28-323 and 28-707, Reissue
21 Revised Statutes of Nebraska, are repealed.

22 Sec. 6. Since an emergency exists, this act takes effect
23 when passed and approved according to law.