

LEGISLATURE OF NEBRASKA

ONE HUNDRED FIRST LEGISLATURE

FIRST SESSION

LEGISLATIVE BILL 97

FINAL READING

Introduced by Lautenbaugh, 18; Friend, 10; Howard, 9; Rogert, 16; Flood, 19.

Read first time January 09, 2009

Committee: Judiciary

A BILL

1 FOR AN ACT relating to law; to amend sections 21-20,177, 21-20,179,
2 27-404, 27-1103, 28-101, 28-311, 28-318, 28-319.01,
3 28-320.02, 28-813.01, 28-1010, 28-1463.02, 28-1463.03,
4 28-1463.04, 28-1463.05, 29-110, 29-4001, 29-4003,
5 29-4006, 29-4007, 29-4008, and 83-4,143, Reissue Revised
6 Statutes of Nebraska; to change provisions relating to
7 service on and revocation of certificates of authority
8 of foreign corporations; to adopt new rules of evidence
9 relating to sexual misconduct and sexual offenses; to
10 change and eliminate provisions relating to admissibility
11 of evidence; to change provisions and penalties regarding
12 criminal child enticement, use of a computer in sexual

1 assault, sexual assault of a child, visual depictions
2 of sexually explicit conduct, and the Child Pornography
3 Prevention Act; to prohibit certain Internet use by
4 sexually violent predators; to eliminate a statute of
5 limitations for incest; to provide for confidentiality of
6 certain property or material of a sexual nature held by
7 law enforcement; to change provisions relating to the Sex
8 Offender Registration Act; to prohibit certain convicted
9 or charged individuals from providing transportation
10 services for the Department of Health and Human Services;
11 to provide a penalty; to harmonize provisions; to
12 provide a duty for the Revisor of Statutes; to provide
13 operative dates; to provide severability; to repeal the
14 original sections; to outright repeal section 28-321,
15 Reissue Revised Statutes of Nebraska; and to declare an
16 emergency.

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

1 Section 1. Section 21-20,177, Reissue Revised Statutes of
2 Nebraska, is amended to read:

3 21-20,177 (1) The registered agent of a foreign
4 corporation authorized to transact business in this state shall
5 be the corporation's agent for service of process, notice, or
6 demand required or permitted by law to be served on the foreign
7 corporation. By being authorized to transact business in this
8 state, the foreign corporation's agent for service of process
9 shall also consent to service of process directed to the foreign
10 corporation's agent in Nebraska for a search warrant issued
11 pursuant to sections 28-807 to 28-829, or for any other validly
12 issued and properly served subpoena, including those authorized
13 under section 86-2,112, for records or documents that are in the
14 possession of the foreign corporation and are located inside or
15 outside of this state. The consent to service of a subpoena or
16 search warrant applies to a foreign corporation that is a party or
17 nonparty to the matter for which the search warrant is sought.

18 (2) A foreign corporation may be served by registered
19 or certified mail, return receipt requested, addressed to the
20 secretary of the foreign corporation or the designated custodian
21 of records at its principal office shown in its application for a
22 certificate of authority or in its most recent annual report if the
23 foreign corporation has:

24 (a) No registered agent or its registered agent cannot
25 with reasonable diligence be served;

1 (b) Withdrawn from transacting business in this state
2 under section 21-20,178; or

3 (c) Had its certificate of authority revoked under
4 section 21-20,180.

5 (3) Service shall be perfected under subsection (2) of
6 this section at the earliest of:

7 (a) The date the foreign corporation receives the mail;

8 (b) The date shown on the return receipt if signed on
9 behalf of the foreign corporation; or

10 (c) Five days after its deposit in the United States
11 mail as evidenced by the postmark if mailed postage prepaid and
12 correctly addressed.

13 (4) This section shall not be construed to prescribe the
14 only means or necessarily the required means of serving a foreign
15 corporation.

16 Sec. 2. Section 21-20,179, Reissue Revised Statutes of
17 Nebraska, is amended to read:

18 21-20,179 The Secretary of State may commence a
19 proceeding under section 21-20,180 to revoke the certificate of
20 authority of a foreign corporation authorized to transact business
21 in this state if:

22 (1) The foreign corporation is without a registered agent
23 or registered office in this state for sixty days or more;

24 (2) The foreign corporation does not inform the Secretary
25 of State under section 21-20,175 or 21-20,176 that its registered

1 agent or registered office has changed, that its registered agent
 2 has resigned, or that its registered office has been discontinued
 3 within sixty days of the change, resignation, or discontinuance;

4 (3) An incorporator, director, officer, or agent of the
 5 foreign corporation signed a document he or she knew was false in
 6 any material respect with intent that the document be delivered to
 7 the Secretary of State for filing; ~~or~~

8 (4) The foreign corporation or its agent for service of
 9 process does not comply with section 21-20,177; or

10 ~~(4)~~ (5) The Secretary of State receives a duly
 11 authenticated certificate from the official having custody of
 12 the corporate records in the state or country under whose law
 13 the foreign corporation is incorporated stating that it has been
 14 dissolved or has disappeared as the result of a merger.

15 Sec. 3. (1) The following evidence is not admissible
 16 in any civil or criminal proceeding involving alleged sexual
 17 misconduct except as provided in subsections (2) and (3) of this
 18 section:

19 (a) Evidence offered to prove that any victim engaged in
 20 other sexual behavior; and

21 (b) Evidence offered to prove any victim's sexual
 22 predisposition.

23 (2)(a) In a criminal case, the following evidence is
 24 admissible, if otherwise admissible under the Nebraska Evidence
 25 Rules:

1 (i) Evidence of specific instances of sexual behavior by
2 the victim offered to prove that a person other than the accused
3 was the source of semen, injury, or other physical evidence;

4 (ii) Evidence of specific instances of sexual behavior of
5 the victim with respect to the accused offered by the accused to
6 prove consent of the victim if it is first established to the court
7 that such behavior is similar to the behavior involved in the case
8 and tends to establish a pattern of behavior of the victim relevant
9 to the issue of consent; and

10 (iii) Evidence, the exclusion of which would violate the
11 constitutional rights of the accused.

12 (b) In a civil case, evidence offered to prove the sexual
13 behavior or sexual predisposition of any victim is admissible if it
14 is otherwise admissible under the Nebraska Evidence Rules and its
15 probative value substantially outweighs the danger of harm to any
16 victim and of unfair prejudice to any party. Evidence of a victim's
17 reputation is admissible only if it has been placed in controversy
18 by the victim.

19 (3)(a) A party intending to offer evidence under
20 subsection (2) of this section shall:

21 (i) File a written motion at least fifteen days before
22 trial specifically describing the evidence and stating the purpose
23 for which it is offered unless the court, for good cause, requires
24 a different time for filing or permits filing during trial; and

25 (ii) Serve the motion on all parties and notify

1 the victim or, when appropriate, the victim's guardian or
2 representative.

3 (b) Before admitting evidence under this section, the
4 court shall conduct a hearing in camera outside the presence of any
5 jury.

6 Sec. 4. For purposes of sections 5 and 6 of this act,
7 offense of sexual assault means sexual assault under section 28-319
8 or 28-320, sexual assault of a child under section 28-319.01 or
9 28-320.01, sexual assault by use of an electronic communication
10 device under section 28-320.02, sexual abuse of an inmate or
11 parolee under sections 28-322.01 to 28-322.03, and sexual abuse of
12 a protected individual under section 28-322.04.

13 Sec. 5. (1) In a criminal case in which the accused
14 is accused of an offense of sexual assault, evidence of the
15 accused's commission of another offense or offenses of sexual
16 assault is admissible if there is clear and convincing evidence
17 otherwise admissible under the Nebraska Evidence Rules that the
18 accused committed the other offense or offenses. If admissible,
19 such evidence may be considered for its bearing on any matter to
20 which it is relevant.

21 (2) In a case in which the prosecution intends to
22 offer evidence under this section, the prosecuting attorney shall
23 disclose the evidence to the accused, including statements of
24 witnesses or a summary of the substance of any testimony that is
25 expected to be offered, at least fifteen days before the scheduled

1 date of trial or at such later time as the court may allow for good
2 cause.

3 (3) Before admitting evidence of the accused's commission
4 of another offense or offenses of sexual assault under this
5 section, the court shall conduct a hearing outside the presence of
6 any jury. At the hearing, the rules of evidence shall apply and the
7 court shall apply a section 27-403 balancing and admit the evidence
8 unless the risk of prejudice substantially outweighs the probative
9 value of the evidence. In assessing the balancing, the court may
10 consider any relevant factor such as (a) the probability that the
11 other offense occurred, (b) the proximity in time and intervening
12 circumstances of the other offenses, and (c) the similarity of the
13 other acts to the crime charged.

14 (4) This section shall not be construed to limit the
15 admission or consideration of evidence under any other section of
16 the Nebraska Evidence Rules.

17 Sec. 6. (1) In a civil case in which a claim for damages
18 or other relief is predicated on a party's alleged commission of
19 conduct constituting an offense of sexual assault, evidence of
20 that party's commission of another offense or offenses of sexual
21 assault is admissible if there is clear and convincing evidence
22 otherwise admissible under the Nebraska Evidence Rules that the
23 party committed the other offense or offenses. If admissible, such
24 evidence may be considered for its bearing on any matter to which
25 it is relevant.

1 (2) A party who intends to offer evidence under this
2 section shall disclose the evidence to the party against whom it
3 will be offered, including statements of witnesses or a summary of
4 the substance of any testimony that is expected to be offered, at
5 least fifteen days before the scheduled date of trial or at such
6 later time as the court may allow for good cause.

7 (3) Before admitting evidence of a party's commission of
8 another offense or offenses of sexual assault under this section,
9 the court shall conduct a hearing outside the presence of any
10 jury. At the hearing, the rules of evidence shall apply and the
11 court shall apply a section 27-403 balancing and admit the evidence
12 unless the risk of prejudice substantially outweighs the probative
13 value of the evidence. In assessing the balancing, the court may
14 consider any relevant factor such as (a) the probability that the
15 other offense occurred, (b) the proximity in time and intervening
16 circumstances of the other offenses, and (c) the similarity of the
17 other acts to the crime charged.

18 (4) This section shall not be construed to limit the
19 admission or consideration of evidence under any other section of
20 the Nebraska Evidence Rules.

21 Sec. 7. Section 27-404, Reissue Revised Statutes of
22 Nebraska, is amended to read:

23 27-404 (1) Evidence of a person's character or a trait of
24 his or her character is not admissible for the purpose of proving
25 that he or she acted in conformity therewith on a particular

1 occasion, except:

2 (a) Evidence of a pertinent trait of his or her character
3 offered by an accused, or by the prosecution to rebut the same;

4 (b) Evidence of a pertinent trait of character of the
5 victim of the crime offered by an accused or by the prosecution to
6 rebut the same, or evidence of a character trait of peacefulness of
7 the victim offered by the prosecution in a homicide case to rebut
8 evidence that the victim was the first aggressor. In the case of a
9 sexual assault case, reputation, ~~or~~ opinion, or other evidence of
10 ~~the past sexual behavior of the victim of the sexual assault will~~
11 ~~not be admissible,~~ is governed by section 3 of this act; or

12 (c) Evidence of the character of a witness as provided in
13 sections 27-607 to 27-609.

14 (2) Evidence of other crimes, wrongs, or acts is not
15 admissible to prove the character of a person in order to show
16 that he or she acted in conformity therewith. It may, however,
17 be admissible for other purposes, such as proof of motive,
18 opportunity, intent, preparation, plan, knowledge, identity, or
19 absence of mistake or accident.

20 (3) When such evidence is admissible pursuant to this
21 section, in criminal cases evidence of other crimes, wrongs, or
22 acts of the accused may be offered in evidence by the prosecution
23 if the prosecution proves to the court by clear and convincing
24 evidence that the accused committed the crime, wrong, or act. Such
25 proof shall first be made outside the presence of any jury.

1 (4) Regarding the admissibility in a civil or criminal
2 action of evidence of a person's commission of another offense or
3 offenses of sexual assault under sections 28-319 to 28-322.04, see
4 sections 4 to 6 of this act.

5 Sec. 8. Section 27-1103, Reissue Revised Statutes of
6 Nebraska, is amended to read:

7 27-1103 These rules and sections 3 to 6 of this act may
8 be known and cited as the Nebraska Evidence Rules.

9 Sec. 9. Section 28-101, Reissue Revised Statutes of
10 Nebraska, is amended to read:

11 28-101 Sections 28-101 to 28-1350 and section 14 of this
12 act shall be known and may be cited as the Nebraska Criminal Code.

13 Sec. 10. Section 28-311, Reissue Revised Statutes of
14 Nebraska, is amended to read:

15 28-311 (1) No person, by any means and without privilege
16 to do so, shall knowingly solicit, coax, entice, or lure or attempt
17 to solicit, coax, entice, or lure any child under the age of
18 fourteen years to enter into any vehicle, whether or not the person
19 knows the age of the child. 7 if+

20 (2) It is an affirmative defense to a charge under this
21 section that:

22 (a) The person ~~does not~~ had the express or implied
23 permission of the parent, guardian, or other legal custodian of the
24 child in undertaking the activity; ~~and~~

25 (b)(i) The person is ~~not~~ a law enforcement officer,

1 emergency services provider as defined in section 71-507,
 2 firefighter, or other person who regularly provides emergency
 3 services, is ~~not~~ the operator of a bookmobile or other such vehicle
 4 operated by the state or a political subdivision and used for
 5 informing, educating, organizing, or transporting children, is ~~not~~
 6 a paid employee of, or a volunteer for, a nonprofit or religious
 7 organization which provides activities for children, ~~and or is not~~
 8 an employee or agent of or a volunteer acting under the direction
 9 of any board of education ~~or~~ and (ii) the person ~~is a person~~ listed
 10 in subdivision ~~(1)(b)(i)~~ (2)(b)(i) of this section ~~but,~~ was, at the
 11 time the person ~~undertakes~~ undertook the activity, he ~~or she is~~
 12 ~~not~~ acting within the scope of his or her lawful duties in that
 13 capacity; ~~or-~~

14 ~~(2) It is an affirmative defense to a charge under this~~
 15 ~~section that the~~ (c) The person undertook the activity in response
 16 to a bona fide emergency situation or ~~that~~ the person undertook the
 17 activity in response to a reasonable belief that it was necessary
 18 to preserve the health, safety, or welfare of the child.

19 (3) Any person who violates this section commits criminal
 20 child enticement and is guilty of a Class I ~~misdemeanor.~~ IIIA
 21 felony. If such person has previously been convicted of (a)
 22 criminal child enticement under this section, (b) sexual assault
 23 of a child in the first degree under section 28-319.01, (c)
 24 sexual assault of a child in the second or third degree under
 25 section 28-320.01, (d) child enticement by means of an electronic

1 communication device under section 28-320.02, or ~~(d)~~ (e) assault
2 under section 28-308, 28-309, or 28-310, kidnapping under section
3 28-313, or false imprisonment under section 28-314 or 28-315 when
4 the victim was under eighteen years of age when such person
5 violates this section, such person is guilty of a Class ~~IV~~ III
6 felony.

7 Sec. 11. Section 28-318, Reissue Revised Statutes of
8 Nebraska, is amended to read:

9 28-318 As used in sections 28-317 to ~~28-321~~, 28-322.04,
10 unless the context otherwise requires:

11 (1) Actor means a person accused of sexual assault;

12 (2) Intimate parts means the genital area, groin, inner
13 thighs, buttocks, or breasts;

14 (3) Past sexual behavior means sexual behavior other than
15 the sexual behavior upon which the sexual assault is alleged;

16 (4) Serious personal injury means great bodily injury or
17 disfigurement, extreme mental anguish or mental trauma, pregnancy,
18 disease, or loss or impairment of a sexual or reproductive organ;

19 (5) Sexual contact means the intentional touching of the
20 victim's sexual or intimate parts or the intentional touching of
21 the victim's clothing covering the immediate area of the victim's
22 sexual or intimate parts. Sexual contact shall also mean the
23 touching by the victim of the actor's sexual or intimate parts or
24 the clothing covering the immediate area of the actor's sexual or
25 intimate parts when such touching is intentionally caused by the

1 actor. Sexual contact shall include only such conduct which can be
2 reasonably construed as being for the purpose of sexual arousal or
3 gratification of either party. Sexual contact shall also include
4 the touching of a child with the actor's sexual or intimate parts
5 on any part of the child's body for purposes of sexual assault of a
6 child under sections 28-319.01 and 28-320.01;

7 (6) Sexual penetration means sexual intercourse in its
8 ordinary meaning, cunnilingus, fellatio, anal intercourse, or any
9 intrusion, however slight, of any part of the actor's or victim's
10 body or any object manipulated by the actor into the genital
11 or anal openings of the victim's body which can be reasonably
12 construed as being for nonmedical or nonhealth purposes. Sexual
13 penetration shall not require emission of semen;

14 (7) Victim means the person alleging to have been
15 sexually assaulted;

16 (8) Without consent means:

17 (a)(i) The victim was compelled to submit due to the
18 use of force or threat of force or coercion, or (ii) the victim
19 expressed a lack of consent through words, or (iii) the victim
20 expressed a lack of consent through conduct, or (iv) the consent,
21 if any was actually given, was the result of the actor's deception
22 as to the identity of the actor or the nature or purpose of the act
23 on the part of the actor;

24 (b) The victim need only resist, either verbally or
25 physically, so as to make the victim's refusal to consent genuine

1 and real and so as to reasonably make known to the actor the
2 victim's refusal to consent; and

3 (c) A victim need not resist verbally or physically where
4 it would be useless or futile to do so; and

5 (9) Force or threat of force means (a) the use of
6 physical force which overcomes the victim's resistance or (b) the
7 threat of physical force, express or implied, against the victim or
8 a third person that places the victim in fear of death or in fear
9 of serious personal injury to the victim or a third person where
10 the victim reasonably believes that the actor has the present or
11 future ability to execute the threat.

12 Sec. 12. Section 28-319.01, Reissue Revised Statutes of
13 Nebraska, is amended to read:

14 28-319.01 (1) A person commits sexual assault of a child
15 in the first degree:

16 (a) When if he or she subjects another person under
17 twelve years of age to sexual penetration and the actor is at least
18 nineteen years of age or older; or-

19 (b) When he or she subjects another person who is at
20 least twelve years of age but less than sixteen years of age to
21 sexual penetration and the actor is twenty-five years of age or
22 older.

23 (2) Sexual assault of a child in the first degree is a
24 Class IB felony with a mandatory minimum sentence of fifteen years
25 in prison for the first offense.

1 (3) Any person who is found guilty of sexual assault of a
2 child in the first degree under this section and who has previously
3 been convicted (a) under this section, (b) under section 28-319 of
4 first degree or attempted first degree sexual assault, (c) under
5 section 28-320.01 before July 14, 2006, of sexual assault of a
6 child or attempted sexual assault of a child, (d) under section
7 28-320.01 on or after July 14, 2006, of sexual assault of a child
8 in the second or third degree or attempted sexual assault of a
9 child in the second or third degree, or (e) in any other state or
10 federal court under laws with essentially the same elements as this
11 section, section 28-319, or section 28-320.01 as it existed before,
12 on, or after July 14, 2006, shall be guilty of a Class IB felony
13 with a mandatory minimum sentence of twenty-five years in prison.

14 (4) In any prosecution under this section, the age of the
15 actor shall be an essential element of the offense that must be
16 proved beyond a reasonable doubt.

17 Sec. 13. Section 28-320.02, Reissue Revised Statutes of
18 Nebraska, is amended to read:

19 28-320.02 (1) No person shall knowingly solicit, coax,
20 entice, or lure (a) a child sixteen years of age or younger
21 or (b) a peace officer who is believed by such person to be a
22 child sixteen years of age or younger, by means of a ~~computer~~ an
23 electronic communication device as that term is defined in section
24 ~~28-1343, 28-833,~~ to engage in an act which would be in violation of
25 section 28-319, 28-319.01, or 28-320.01 or subsection (1) or (2) of

1 section 28-320. A person shall not be convicted of both a violation
2 of this subsection and a violation of section 28-319, 28-319.01,
3 or 28-320.01 or subsection (1) or (2) of section 28-320 if the
4 violations arise out of the same set of facts or pattern of conduct
5 and the individual solicited, coaxed, enticed, or lured under this
6 subsection is also the victim of the sexual assault under section
7 28-319, 28-319.01, or 28-320.01 or subsection (1) or (2) of section
8 28-320.

9 (2) A person who violates this section is guilty of
10 a Class ~~IIIA~~ ID felony. If a person who violates this section
11 has previously been convicted of a violation of this section or
12 section 28-308, 28-309, 28-310, 28-311, 28-313, 28-314, 28-315,
13 28-319, 28-319.01, ~~or 28-320.01,~~ 28-813.01, 28-833, 28-1463.03, or
14 28-1463.05 or subsection (1) or (2) of section 28-320, the person
15 is guilty of a Class ~~III~~ IC felony.

16 Sec. 14. (1) Any person required to register under the
17 Sex Offender Registration Act who is found to be a sexually
18 violent predator under subdivision (4)(c) of section 29-4005 or is
19 required to register because of a conviction for one or more of the
20 following offenses, including any substantially equivalent offense
21 committed in another state, territory, commonwealth, or other
22 jurisdiction of the United States and knowingly and intentionally
23 uses a social networking web site or service, instant messaging, or
24 chat room service that allows a person who is less than eighteen
25 years of age to access or use its social networking web site,

1 instant messaging, or chat room service, commits the offense of
2 unlawful use of the Internet by a prohibited sex offender:

3 (a) Kidnapping of a minor pursuant to section 28-313;

4 (b) Sexual assault of a child in the first degree
5 pursuant to section 28-319.01;

6 (c) Sexual assault of a child in the second or third
7 degree pursuant to section 28-320.01;

8 (d) Incest of a minor pursuant to section 28-703;

9 (e) Pandering of a minor pursuant to section 28-802;

10 (f) Visual depiction of sexually explicit conduct of a
11 child pursuant to section 28-1463.03 or 28-1463.05;

12 (g) Possessing any visual depiction of sexually explicit
13 conduct pursuant to section 28-813.01;

14 (h) Criminal child enticement pursuant to section 28-311;

15 (i) Child enticement by means of an electronic
16 communication device pursuant to section 28-320.02;

17 (j) Enticement by electronic communication device
18 pursuant to section 28-833; or

19 (k) An attempt or conspiracy to commit an offense listed
20 in subdivisions (1)(a) through (1)(j) of this section.

21 (2) Unlawful use of the Internet by a prohibited sex
22 offender is a Class I misdemeanor for a first offense. Any second
23 or subsequent conviction under this section is a Class IIIA felony.

24 Sec. 15. Section 28-813.01, Reissue Revised Statutes of
25 Nebraska, is amended to read:

1 28-813.01 (1) It shall be unlawful for a person to
2 knowingly possess any visual depiction of sexually explicit
3 conduct, as defined in section 28-1463.02, which has a child, as
4 defined in such section, as one of its participants or portrayed
5 observers.

6 ~~(2)~~ (2) (a) Any person who is under nineteen years of age
7 at the time he or she violates this section shall be guilty of a
8 Class IV felony for each offense.

9 (b) Any person who is nineteen years of age or older at
10 the time he or she violates this section shall be guilty of a Class
11 III felony for each offense.

12 (c) Any person who violates this section and has
13 previously been convicted of a violation of this section or
14 section 28-308, 28-309, 28-310, 28-311, 28-313, 28-314, 28-315,
15 28-319, 28-319.01, 28-320.01, 28-833, 28-1463.03, or 28-1463.05 or
16 subsection (1) or (2) of section 28-320 shall be guilty of a Class
17 IC felony for each offense.

18 (3) It shall be an affirmative defense to a charge made
19 pursuant to this section that:

20 (a) The visual depiction portrays no person other than
21 the defendant; or

22 (b) (i) The defendant was less than nineteen years of age;
23 (ii) the visual depiction of sexually explicit conduct portrays
24 a child who is fifteen years of age or older; (iii) the visual
25 depiction was knowingly and voluntarily generated by the child

1 depicted therein; (iv) the visual depiction was knowingly and
2 voluntarily provided by the child depicted in the visual depiction;
3 (v) the visual depiction contains only one child; (vi) the
4 defendant has not provided or made available the visual depiction
5 to another person except the child depicted who originally sent the
6 visual depiction to the defendant; and (vii) the defendant did not
7 coerce the child in the visual depiction to either create or send
8 the visual depiction.

9 Sec. 16. Section 28-1010, Reissue Revised Statutes of
10 Nebraska, is amended to read:

11 28-1010 A person commits indecency with an animal when
12 such person subjects an animal to sexual penetration as defined in
13 ~~subdivision (6) of~~ section 28-318. Indecency with an animal is a
14 Class III misdemeanor.

15 Sec. 17. Section 28-1463.02, Reissue Revised Statutes of
16 Nebraska, is amended to read:

17 28-1463.02 As used in the Child Pornography Prevention
18 Act, unless the context otherwise requires:

19 (1) Child, in the case of a participant, ~~shall mean~~ means
20 any person under the age of eighteen years and, in the case of a
21 portrayed observer, ~~shall mean~~ means any person under the age of
22 sixteen years;

23 (2) Erotic fondling ~~shall mean~~ means touching a person's
24 clothed or unclothed genitals or pubic area, breasts if the
25 person is a female, or developing breast area if the person

1 is a female child, for the purpose of real or simulated overt
2 sexual gratification or sexual stimulation of one or more persons
3 involved. Erotic fondling shall not be construed to include
4 physical contact, even if affectionate, which is not for the
5 purpose of real or simulated overt sexual gratification or sexual
6 stimulation of one or more of the persons involved;

7 (3) Erotic nudity ~~shall mean~~ means the display of the
8 human male or female genitals or pubic area, the human female
9 breasts, or the developing breast area of the human female child,
10 for the purpose of real or simulated overt sexual gratification or
11 sexual stimulation of one or more of the persons involved;

12 (4) Sadomasochistic abuse ~~shall mean~~ means flagellation
13 or torture by or upon a nude person or a person clad in
14 undergarments, a mask, or bizarre costume, or the condition of
15 being fettered, bound, or otherwise physically restrained when
16 performed to predominantly appeal to the morbid interest;

17 (5) Sexually explicit conduct ~~shall mean:~~ means: (a) Real
18 or simulated intercourse, whether genital-genital, oral-genital,
19 anal-genital, or oral-anal between persons of the same or opposite
20 sex or between a human and an animal or with an artificial
21 genital; (b) real or simulated masturbation; (c) real or simulated
22 sadomasochistic abuse; (d) erotic fondling; (e) erotic nudity; or
23 (f) real or simulated defecation or urination for the purpose of
24 sexual gratification or sexual stimulation of one or more of the
25 persons involved; and

1 (6) Visual depiction ~~shall mean~~ means live performance or
2 photographic representation and includes any undeveloped film or
3 videotape or data stored on a computer disk or by other electronic
4 means which is capable of conversion into a visual image and
5 also includes any photograph, film, video, picture, digital image,
6 or computer-displayed image, video, or picture, whether made or
7 produced by electronic, mechanical, computer, digital, or other
8 means.

9 Sec. 18. Section 28-1463.03, Reissue Revised Statutes of
10 Nebraska, is amended to read:

11 28-1463.03 (1) It shall be unlawful for a person to
12 knowingly make, publish, direct, create, provide, or in any manner
13 generate any visual depiction of sexually explicit conduct which
14 has a child as one of its participants or portrayed observers.

15 (2) It shall be unlawful for a person knowingly to
16 purchase, rent, sell, deliver, distribute, display for sale,
17 advertise, trade, or provide to any person any visual depiction
18 of sexually explicit conduct which has a child as one of its
19 participants or portrayed observers.

20 (3) It shall be unlawful for a person to knowingly
21 employ, force, authorize, induce, or otherwise cause a child to
22 engage in any visual depiction of sexually explicit conduct which
23 has a child as one of its participants or portrayed observers.

24 (4) It shall be unlawful for a parent, stepparent, legal
25 guardian, or any person with custody and control of a child,

1 knowing the content thereof, to consent to such child engaging in
2 any visual depiction of sexually explicit conduct which has a child
3 as one of its participants or portrayed observers.

4 (5) It shall be an affirmative defense to a charge
5 brought pursuant to subsection (1) of this section if the defendant
6 was less than eighteen years of age at the time the visual
7 depiction was created and the visual depiction of sexually explicit
8 conduct includes no person other than the defendant.

9 (6) It shall be an affirmative defense to a charge
10 brought pursuant to subsection (2) of this section if (a) the
11 defendant was less than eighteen years of age, (b) the visual
12 depiction of sexually explicit conduct includes no person other
13 than the defendant, (c) the defendant had a reasonable belief at
14 the time the visual depiction was sent to another that it was being
15 sent to a willing recipient, and (d) the recipient was at least
16 fifteen years of age at the time the visual depiction was sent.

17 Sec. 19. Section 28-1463.04, Reissue Revised Statutes of
18 Nebraska, is amended to read:

19 28-1463.04 (1) Any person who is under nineteen years
20 of age at the time he or she violates section 28-1463.03 shall
21 be guilty of a Class III felony for the first offense and shall
22 be guilty of a Class II felony for each subsequent offense. each
23 offense.

24 (2) Any person who is nineteen years of age or older at
25 the time he or she violates section 28-1463.03 shall be guilty of a

1 Class ID felony for each offense.

2 (3) Any person who violates section 28-1463.03 and has
3 previously been convicted of a violation of section 28-1463.03 or
4 section 28-308, 28-309, 28-310, 28-311, 28-313, 28-314, 28-315,
5 28-319, 28-319.01, 28-320.01, 28-813, 28-833, or 28-1463.05 or
6 subsection (1) or (2) of section 28-320 shall be guilty of a Class
7 IC felony for each offense.

8 Sec. 20. Section 28-1463.05, Reissue Revised Statutes of
9 Nebraska, is amended to read:

10 28-1463.05 (1) It shall be unlawful for a person to
11 knowingly possess with intent to rent, sell, deliver, distribute,
12 trade, or provide to any person any visual depiction of sexually
13 explicit conduct which has a child as one of its participants or
14 portrayed observers.

15 ~~(2)~~ (2) (a) Any person who is under nineteen years of age
16 at the time he or she violates this section shall be guilty of a
17 Class IIIA felony for each offense.

18 (b) Any person who is nineteen years of age or older at
19 the time he or she violates this section shall be guilty of a Class
20 III felony for each offense.

21 (c) Any person who violates this section and has
22 previously been convicted of a violation of this section or section
23 28-308, 28-309, 28-310, 28-311, 28-313, 28-314, 28-315, 28-319,
24 28-319.01, 28-320.01, 28-813, 28-833, or 28-1463.03 or subsection
25 (1) or (2) of section 28-320 shall be guilty of a Class IC felony

1 for each offense.

2 Sec. 21. Section 29-110, Reissue Revised Statutes of
3 Nebraska, is amended to read:

4 29-110 (1) Except as otherwise provided by law, no person
5 shall be prosecuted for any felony unless the indictment is found
6 by a grand jury within three years next after the offense has
7 been done or committed or unless a complaint for the same is filed
8 before the magistrate within three years next after the offense
9 has been done or committed and a warrant for the arrest of the
10 defendant has been issued.

11 (2) Except as otherwise provided by law, no person shall
12 be prosecuted, tried, or punished for any misdemeanor or other
13 indictable offense below the grade of felony or for any fine or
14 forfeiture under any penal statute unless the suit, information,
15 or indictment for such offense is instituted or found within one
16 year and six months from the time of committing the offense or
17 incurring the fine or forfeiture or within one year for any offense
18 the punishment of which is restricted by a fine not exceeding one
19 hundred dollars and to imprisonment not exceeding three months.

20 (3) Except as otherwise provided by law, no person
21 shall be prosecuted for kidnapping under section 28-313, false
22 imprisonment under section 28-314 or 28-315, child abuse under
23 section 28-707, pandering under section 28-802, debauching a
24 minor under section 28-805, or an offense under section 28-813,
25 28-813.01, or 28-1463.03 when the victim is under sixteen years of

1 age at the time of the offense (a) unless the indictment for such
2 offense is found by a grand jury within seven years next after the
3 offense has been committed or within seven years next after the
4 victim's sixteenth birthday, whichever is later, or (b) unless a
5 complaint for such offense is filed before the magistrate within
6 seven years next after the offense has been committed or within
7 seven years next after the victim's sixteenth birthday, whichever
8 is later, and a warrant for the arrest of the defendant has been
9 issued.

10 (4) No person shall be prosecuted for a violation of
11 the Securities Act of Nebraska under section 8-1117 unless the
12 indictment for such offense is found by a grand jury within five
13 years next after the offense has been done or committed or unless
14 a complaint for such offense is filed before the magistrate within
15 five years next after the offense has been done or committed and a
16 warrant for the arrest of the defendant has been issued.

17 (5) There shall not be any time limitations for
18 prosecution or punishment for treason, murder, arson, forgery,
19 sexual assault in the first or second degree under section 28-319
20 or 28-320, sexual assault of a child in the second or third degree
21 under section 28-320.01, incest under section 28-703, or sexual
22 assault of a child in the first degree under section 28-319.01; nor
23 shall there be any time limitations for prosecution or punishment
24 for sexual assault in the third degree under section 28-320 when
25 the victim is under sixteen years of age at the time of the

1 offense.

2 (6) The time limitations prescribed in this section shall
3 include all inchoate offenses pursuant to the Nebraska Criminal
4 Code and compounding a felony pursuant to section 28-301.

5 (7) The time limitations prescribed in this section shall
6 not extend to any person fleeing from justice.

7 (8) When any suit, information, or indictment for any
8 crime or misdemeanor is limited by any statute to be brought or
9 exhibited within any other time than is limited by this section,
10 then the suit, information, or indictment shall be brought or
11 exhibited within the time limited by such statute.

12 (9) If any suit, information, or indictment is quashed or
13 the proceedings set aside or reversed on writ of error, the time
14 during the pendency of such suit, information, or indictment so
15 quashed, set aside, or reversed shall not be reckoned within this
16 statute so as to bar any new suit, information, or indictment for
17 the same offense.

18 (10) The changes made to this section by Laws 2004, LB
19 943, shall apply to offenses committed prior to April 16, 2004, for
20 which the statute of limitations has not expired as of such date
21 and to offenses committed on or after such date.

22 (11) The changes made to this section by Laws 2005, LB
23 713, shall apply to offenses committed prior to September 4, 2005,
24 for which the statute of limitations has not expired as of such
25 date and to offenses committed on or after such date.

1 (12) The changes made to this section by this legislative
2 bill and Laws 2006, LB 1199, shall apply to offenses committed
3 prior to the operative date of this section for which the statute
4 of limitations has not expired as of such date and to offenses
5 committed on or after such date.

6 Sec. 22. (1) In any judicial or administrative
7 proceeding, any property or material that constitutes a visual
8 depiction of sexually explicit conduct, as defined in section
9 28-1463.02, and which has a child, as defined in such section,
10 as one of its participants or portrayed observers, shall remain
11 constantly and continuously in the care, custody, and control
12 of law enforcement, the prosecuting attorney, or the court
13 having properly received it into evidence, except as provided in
14 subsection (3) of this section.

15 (2) All courts and administrative agencies shall
16 unequivocally deny any request by the defendant, his or her
17 attorney, or any other person, agency, or organization, regardless
18 of whether such defendant, attorney, or other person, agency,
19 or organization is a party in interest or not, to acquire
20 possession of, copy, photograph, duplicate, or otherwise reproduce
21 any property or material that constitutes a visual depiction of
22 sexually explicit conduct, as defined in section 28-1463.02, and
23 which has a child, as defined in such section, as one of its
24 participants or portrayed observers, so long as the state makes
25 the property or material reasonably available to the defendant in

1 a criminal proceeding. Nothing in this section shall be deemed to
2 prohibit the review of the proscribed materials or property by a
3 federal court when considering a habeas corpus claim.

4 (3) (a) For purposes of this section, property or material
5 are deemed to be reasonably available to a defendant if the state
6 provides ample opportunity for inspection, viewing, examination,
7 and analysis of the property or material, at a law enforcement
8 or state-operated facility, to the defendant, his or her attorney,
9 and any individual the defendant seeks to use for the purpose of
10 furnishing expert testimony.

11 (b) Notwithstanding the provisions of this subsection, a
12 court may order a copy of the property or material to be delivered
13 to a person identified as a defense expert for the purpose of
14 evaluating the evidence, subject to the same restrictions placed
15 upon law enforcement. The defense expert shall return all copies
16 and materials to law enforcement upon completion of the evaluation.

17 (4) On or before July 1, 2009, the Supreme Court shall
18 adopt and promulgate rules and regulations regarding the proper
19 control, care, custody, transfer, and disposition of property or
20 material that constitutes a visual depiction of sexually explicit
21 conduct, as defined in section 28-1463.02, and which has a child,
22 as defined in such section, as one of its participants or portrayed
23 observers, that has been received into evidence at any judicial
24 or administrative proceeding. Among the issues addressed by these
25 rules and regulations, the Supreme Court should devise procedures

1 regarding the preparation and delivery of bills of exception
2 containing evidence as described in this section, as well as
3 procedures for storing, accessing, and disposing of such bills of
4 exception after preparation and receipt.

5 Sec. 23. Section 29-4001, Reissue Revised Statutes of
6 Nebraska, is amended to read:

7 29-4001 Sections 29-4001 to 29-4014 and section 24 of
8 this act shall be known and may be cited as the Sex Offender
9 Registration Act.

10 Sec. 24. For purposes of the Sex Offender Registration
11 Act:

12 (1) Blog means a web site contained on the Internet
13 that is created, maintained, and updated in a log, journal, diary,
14 or newsletter format by an individual, group of individuals,
15 or corporate entity for the purpose of conveying information or
16 opinions to Internet users who visit their web site;

17 (2) Chat room means a web site or server space on the
18 Internet or communication network primarily designated for the
19 virtually instantaneous exchange of text or voice transmissions
20 or computer file attachments amongst two or more computers or
21 electronic communication device users;

22 (3) Chat room identifiers means the username, password,
23 symbol, image, or series of symbols, letters, numbers, or text
24 characters used by a chat room participant to identify himself or
25 herself in a chat room or to identify the source of any content

1 transmitted from a computer or electronic communication device to
2 the web site or server space upon which the chat room is dedicated;

3 (4) Domain name means a series of text-based symbols,
4 letters, numbers, or text characters used to provide recognizable
5 names to numerically addressed Internet resources that are
6 registered by the Internet Corporation for Assigned Names and
7 Numbers;

8 (5) Email means the exchange of electronic text messages
9 and computer file attachments between computers or other electronic
10 communication devices over a communications network, such as a
11 local area computer network or the Internet;

12 (6) Email address means the string of letters, numbers,
13 and symbols used to specify the source or destination of an email
14 message that is transmitted over a communication network;

15 (7) Instant messaging means a direct, dedicated, and
16 private communication service, accessed with a computer or
17 electronic communication device, that enables a user of the service
18 to send and receive virtually instantaneous text transmissions or
19 computer file attachments to other selected users of the service
20 through the Internet or a computer communications network;

21 (8) Instant messaging identifiers means the username,
22 password, symbol, image, or series of symbols, letters, numbers,
23 images, or text characters used by an instant messaging user to
24 identify their presence to other instant messaging users or the
25 source of any content sent from their computer or electronic

1 communication device to another instant messaging user; and

2 (9) Social networking web site means a web page or
3 collection of web sites contained on the Internet (a) that enables
4 users or subscribers to create, display, and maintain a profile or
5 Internet domain containing biographical data, personal information,
6 photos, or other types of media, (b) that can be searched,
7 viewed, or accessed by other users or visitors to the web site,
8 with or without the creator's permission, consent, invitation, or
9 authorization, and (c) that may permit some form of communication,
10 such as direct comment on the profile page, instant messaging, or
11 email, between the creator of the profile and users who have viewed
12 or accessed the creator's profile.

13 Sec. 25. Section 29-4003, Reissue Revised Statutes of
14 Nebraska, is amended to read:

15 29-4003 (1) Except as provided in subsection (2) of this
16 section, the Sex Offender Registration Act shall apply to any
17 person who on or after January 1, 1997:

18 (a) Pleads guilty to or is found guilty of:

19 (i) Kidnapping of a minor pursuant to section 28-313,
20 except when the person is the parent of the minor and was not
21 convicted of any other offense in this section;

22 (ii) False imprisonment of a minor pursuant to section
23 28-314 or 28-315;

24 (iii) Sexual assault pursuant to section 28-319 or
25 28-320;

- 1 (iv) Sexual assault of a child in the second or third
2 degree pursuant to section 28-320.01;
- 3 (v) Sexual assault of a child in the first degree
4 pursuant to section 28-319.01;
- 5 (vi) Sexual assault of a vulnerable adult pursuant to
6 subdivision (1)(c) of section 28-386;
- 7 (vii) Incest of a minor pursuant to section 28-703;
- 8 (viii) Pandering of a minor pursuant to section 28-802;
- 9 (ix) Visual depiction of sexually explicit conduct of a
10 child pursuant to section 28-1463.03 or 28-1463.05;
- 11 (x) Knowingly possessing any visual depiction of sexually
12 explicit conduct which has a child as one of its participants or
13 portrayed observers pursuant to section 28-813.01;
- 14 (xi) Criminal child enticement pursuant to section
15 28-311;
- 16 (xii) Child enticement by means of a ~~computer~~ an
17 electronic communication device pursuant to section 28-320.02;
- 18 (xiii) Debauching a minor pursuant to section 28-805; ~~or~~
- 19 (xiv) Enticement by electronic communication device
20 pursuant to section 28-833; or
- 21 ~~(xiv)~~ (xv) Attempt, solicitation, or conspiracy to commit
22 an offense listed in subdivisions (1)(a)(i) through (1)(a)(~~xiii~~)
23 (1)(a)(xiv) of this section;
- 24 (b) Enters the state and has pleaded guilty to or has
25 been found guilty of any offense that is substantially equivalent

1 to a registrable offense under subdivision (1)(a) of this section
2 by any state, territory, commonwealth, or other jurisdiction of the
3 United States, by the United States Government, or by court-martial
4 or other military tribunal, notwithstanding a procedure comparable
5 in effect to that described under section 29-2264 or any other
6 procedure to nullify a conviction other than by pardon;

7 (c) Is incarcerated in a jail, a penal or correctional
8 facility, or any other public or private institution or is under
9 probation or parole as a result of pleading guilty to or being
10 found guilty of a registrable offense under subdivision (1)(a) or
11 (b) of this section prior to January 1, 1997; or

12 (d) Enters the state and is required to register as a sex
13 offender under the laws of another state, territory, commonwealth,
14 or other jurisdiction of the United States.

15 (2) In the case of a person convicted of a violation
16 of section 28-313, 28-314, 28-315, or 28-805, the convicted person
17 shall be subject to the Sex Offender Registration Act, unless the
18 sentencing court determines at the time of sentencing, in light
19 of all the facts, that the convicted person is not subject to the
20 act. The sentencing court shall make such determination part of the
21 sentencing order.

22 (3) A person appealing a conviction of a registrable
23 offense under this section shall be required to comply with the act
24 during the appeals process.

25 Sec. 26. Section 29-4006, Reissue Revised Statutes of

1 Nebraska, is amended to read:

2 29-4006 (1) Registration information required by the Sex
3 Offender Registration Act shall be in a form approved by the sex
4 offender registration and community notification division of the
5 Nebraska State Patrol and shall include the following information:

6 (a) The legal name and all aliases which the person has
7 used or under which the person has been known;

8 (b) A complete description of the person, including date
9 of birth, social security number, motor vehicle operator's license
10 number, photographs, and fingerprints;

11 (c) A listing of each registrable offense under section
12 29-4003 to which the person pleaded guilty or was found guilty, the
13 jurisdiction where each offense was committed, the court in which
14 the person pleaded guilty or was found guilty of each offense, and
15 the name under which the person pleaded guilty or was found guilty
16 of each offense;

17 (d) The name and location of each jail, penal or
18 correctional facility, or public or private institution to which
19 the person was incarcerated for each offense and the actual time
20 served or confined; ~~and~~

21 (e) The address of the person's current residence and
22 place of employment or vocation and any school he or she is
23 attending; ~~and-~~

24 (f) All email addresses, instant messaging identifiers,
25 chat room identifiers, and other Internet communication identifiers

1 that the person uses or plans to use, all domain names registered
2 by the registrant, and all blogs and Internet sites maintained by
3 the person or to which the person has uploaded any content or
4 posted any messages or information.

5 (2) When the person provides any information under
6 subdivision (f) of subsection (1) of this section, the registrant
7 shall sign a consent form, provided by the law enforcement agency
8 receiving this information, authorizing the:

9 (a) Search of all the computers or electronic
10 communication devices possessed by the person; and

11 (b) Installation of hardware or software to monitor
12 the person's Internet usage on all the computers or electronic
13 communication devices possessed by the person.

14 ~~(2)~~ (3) For the duration of the registration period
15 required by the act, registration information shall be verified
16 annually within thirty days after the anniversary date of the
17 person's initial registration date. To properly verify, the
18 following shall occur:

19 (a) The sex offender registration and community
20 notification division of the Nebraska State Patrol shall mail a
21 nonforwardable verification form to the last-reported address of
22 the person;

23 (b) The verification form shall be signed by the person
24 and state whether the address last reported to the division is
25 still correct; and

1 (c) The person shall mail the verification form to the
2 division within ten days after receipt of the form.

3 ~~(3)~~ (4) If the person fails to complete and mail the
4 verification form to the sex offender registration and community
5 notification division of the Nebraska State Patrol within ten days
6 after receipt of the form, or the form cannot be delivered due to
7 the registrant not being at the address last reported, the person
8 shall be in violation of this section unless the person proves that
9 the address last reported to the division is still correct.

10 ~~(4)~~ (5) If the person falsifies the registration or
11 verification form or fails to provide or timely update law
12 enforcement of any of the information required to be provided
13 by the Sex Offender Registration Act, the person shall be in
14 violation of this section.

15 ~~(5)~~ (6) The requirement to verify the address of a
16 sexually violent predator quarterly as provided in section 29-4005
17 and the requirement to verify the address of any other registrant
18 annually as required in this section shall not apply during periods
19 of such registrant's incarceration. Address verification shall be
20 resumed as soon as such incarcerated person is placed on any type
21 of supervised release, parole, or probation or is released from
22 incarceration. Prior to any type of release from incarceration,
23 such person shall report the change of address to the sheriff of
24 the county in which he or she is incarcerated and the sheriff of
25 the county in which he or she resides or is temporarily domiciled.

1 The sheriff shall forward the change of address to the sex offender
2 registration and community notification division of the Nebraska
3 State Patrol.

4 ~~(6)~~ (7) Any person required to register under the Sex
5 Offender Registration Act shall inform the sheriff of any legal
6 change in name, in writing, within five working days after such
7 change, and provide a copy of the legal documentation supporting
8 the change in name. The sheriff shall forward the information to
9 the sex offender registration and community notification division
10 of the Nebraska State Patrol, in writing, within five working days
11 after receipt of the information.

12 (8) Any person required to register under the Sex
13 Offender Registration Act shall inform the sheriff with whom he or
14 she is required to register of any changes in or additions to such
15 person's list of email addresses, instant messaging identifiers,
16 chat room identifiers, and other Internet communication identifiers
17 that the registrant uses or plans to use, all domain names
18 registered by the person, and all blogs and Internet web sites
19 maintained by the person or to which the person has uploaded any
20 content or posted any messages or information, in writing, by the
21 next working day. The sheriff receiving this updated information
22 shall forward the information to the sex offender registration and
23 community notification division of the Nebraska State Patrol, in
24 writing, by the next working day after receipt of the information.

25 Sec. 27. Section 29-4007, Reissue Revised Statutes of

1 Nebraska, is amended to read:

2 29-4007 (1) When sentencing a person convicted of a
3 registrable offense under section 29-4003, the court shall:

4 (a) Provide written notification of the duty to register
5 under the Sex Offender Registration Act at the time of sentencing
6 to any defendant who has pleaded guilty or has been found
7 guilty of a registrable offense under section 29-4003. The written
8 notification shall:

9 (i) Inform the defendant that if he or she moves to
10 another address within the same county or ceases to have a
11 residence or temporary domicile, he or she must report all address
12 changes, including not having a residence or temporary domicile, to
13 the county sheriff in the county where he or she has been residing
14 within five working days after his or her move;

15 (ii) Inform the defendant that if he or she moves to
16 another county in the State of Nebraska, he or she must notify the
17 county sheriff in the county where he or she had been last residing
18 and the county sheriff in the county where he or she is living of
19 his or her current address. The notice must be given within five
20 working days after his or her move;

21 (iii) Inform the defendant that if he or she moves to
22 another state, he or she must report the change of address to the
23 county sheriff of the county where he or she has been residing
24 and must comply with the registration requirements of the state to
25 which he or she is moving. The notice must be given within five

1 working days after his or her move;

2 (iv) Inform the defendant that he or she shall (A) inform
3 the sheriff of the county in which he or she resides, in writing,
4 of each postsecondary educational institution at which he or she
5 is employed, carries on a vocation, or attends school, within five
6 working days after such employment or attendance and (B) notify the
7 sheriff of any change in such employment or attendance status of
8 such person at such postsecondary educational institution;

9 (v) Inform the defendant that if he or she goes to
10 another state to work or goes to another state as a student and
11 still resides or is temporarily domiciled in this state, he or she
12 must comply with the registration requirements of both states; and

13 (vi) Inform the defendant that fingerprints and a
14 photograph will be obtained by any registering entity in order to
15 comply with the registration requirements;

16 (vii) Inform the defendant that he or she must provide a
17 list to all sheriffs with whom he or she must register of all email
18 addresses, instant messaging identifiers, chat room identifiers,
19 and other Internet communication identifiers that the defendant
20 uses or plans to use, all domain names registered by the defendant,
21 and all blogs and Internet web sites maintained by the defendant
22 or to which the defendant has uploaded any content or posted any
23 messages or information;

24 (viii) Inform the defendant that he or she is required to
25 inform the sheriff with whom he or she is required to register of

1 any changes in or additions to his or her list of email addresses,
2 instant messaging identifiers, chat room identifiers, and other
3 Internet communication identifiers that the defendant uses or plans
4 to use, all domain names registered by the defendant, and all blogs
5 and Internet web sites maintained by the defendant or to which
6 the defendant has uploaded any content or posted any messages or
7 information, in writing, by the next working day after such change
8 or addition; and

9 (ix) Inform the defendant that throughout the applicable
10 registration period, if applicable, he or she is prohibited from
11 accessing or using any Internet social networking web site or any
12 instant messaging or chat room service that has the likelihood of
13 allowing the defendant to have contact with any child who is under
14 the age of eighteen years should the Nebraska State Patrol classify
15 such defendant as a level II or level III sex offender or the
16 defendant has been convicted and is currently being sentenced for:

17 (A) Kidnapping of a minor pursuant to section 28-313;

18 (B) False imprisonment of a minor pursuant to section
19 28-314 or 28-315;

20 (C) Sexual assault in the first degree pursuant to
21 subdivision (1)(c) of section 28-319 or sexual assault of a child
22 in the first degree pursuant to section 28-319.01;

23 (D) Sexual assault of a child in the second or third
24 degree pursuant to section 28-320.01;

25 (E) Incest of a minor pursuant to section 28-703;

1 (F) Visual depiction of sexually explicit conduct of a
2 child pursuant to section 28-1463.03 or 28-1463.05;

3 (G) Knowingly possessing any visual depiction of sexually
4 explicit conduct pursuant to section 28-813.01;

5 (H) Criminal child enticement pursuant to section 28-311;

6 (I) Child enticement by means of an electronic
7 communication device pursuant to section 28-320.02;

8 (J) Enticement by electronic communication device
9 pursuant to section 28-833; or

10 (K) Any attempt or conspiracy to commit an offense
11 listed in subdivisions (1) (a) (ix) (A) through (1) (a) (ix) (J) of this
12 section;

13 (b) Require the defendant to read and sign a form stating
14 that the duty of the defendant to register under the Sex Offender
15 Registration Act has been explained;

16 (c) Retain a copy of the written notification signed by
17 the defendant; and

18 (d) If the defendant is adjudicated a sexually violent
19 predator, include the supporting reports and other information
20 supporting this finding.

21 A copy of the signed, written notification and the
22 journal entry of the court shall be provided to the county
23 attorney, the defendant, the sex offender registration and
24 community notification division of the Nebraska State Patrol, and
25 the county sheriff of the county in which the defendant resides

1 or is temporarily domiciled.

2 (2) When a person is convicted of a registrable offense
3 under section 29-4003 and is not subject to immediate incarceration
4 upon sentencing, prior to being released by the court, the
5 sentencing court shall ensure that the defendant is registered
6 by the sheriff of the county in which the defendant is convicted
7 no later than the time of sentencing. The sheriff shall obtain
8 full registration information and documents as required by section
9 29-4006, and forward the information and documents to the sex
10 offender registration and community notification division of the
11 Nebraska State Patrol within five working days.

12 (3) (a) The Department of Correctional Services or a city
13 or county correctional or jail facility shall provide written
14 notification of the duty to register pursuant to the Sex Offender
15 Registration Act to any person committed to its custody for a
16 registrable offense under section 29-4003 prior to the person's
17 release from incarceration. The written notification shall:

18 (i) Inform the person that if he or she moves to another
19 address within the same county, he or she must report all address
20 changes to the county sheriff in the county where he or she has
21 been residing within five working days after his or her move;

22 (ii) Inform the person that if he or she moves to another
23 county in the State of Nebraska, he or she must notify the county
24 sheriff in the county where he or she had been last residing and
25 the county sheriff in the county where he or she is living of

1 his or her current address. The notice must be given within five
2 working days after his or her move;

3 (iii) Inform the person that if he or she moves to
4 another state, he or she must report the change of address to the
5 county sheriff of the county where he or she has been residing
6 and must comply with the registration requirements of the state to
7 which he or she is moving. The notice must be given within five
8 working days after his or her move;

9 (iv) Inform the person that he or she shall (A) inform
10 the sheriff of the county in which he or she resides, in writing,
11 of each postsecondary educational institution at which he or she
12 is employed, carries on a vocation, or attends school, within five
13 working days after such employment or attendance and (B) notify the
14 sheriff of any change in such employment or attendance status of
15 such person at such postsecondary educational institution;

16 (v) Inform the person that if he or she goes to another
17 state to work or goes to another state as a student and still
18 resides or is temporarily domiciled in this state, he or she must
19 comply with the registration requirements of both states; and

20 (vi) Inform the defendant that fingerprints and a
21 photograph will be obtained by any registering entity in order to
22 comply with the registration requirements;—

23 (vii) Inform the defendant that he or she must provide a
24 list to all sheriffs with whom he or she must register of all email
25 addresses, instant messaging identifiers, chat room identifiers,

1 and other Internet communication identifiers that the defendant
2 uses or plans to use, all domain names registered by the defendant,
3 and all blogs and Internet web sites maintained by the defendant
4 or to which the defendant has uploaded any content or posted any
5 messages or information;

6 (viii) Inform the defendant that he or she is required to
7 inform the sheriff with whom he or she is required to register of
8 any changes in or additions to his or her list of email addresses,
9 instant messaging identifiers, chat room identifiers, and other
10 Internet communication identifiers that the defendant uses or plans
11 to use, all domain names registered by the defendant, and all blogs
12 and Internet web sites maintained by the defendant or to which
13 the defendant has uploaded any content or posted any messages or
14 information, in writing, by the next working day after such change
15 or addition; and

16 (ix) Inform the defendant that throughout the applicable
17 registration period, if applicable, he or she is prohibited from
18 accessing or using any Internet social networking web site or any
19 instant messaging or chat room service that has the likelihood of
20 allowing the defendant to have contact with any child who is under
21 the age of eighteen years should the Nebraska State Patrol classify
22 such defendant as a level II or level III sex offender or the
23 defendant has been convicted and is currently being sentenced for:

24 (A) Kidnapping of a minor pursuant to section 28-313;

25 (B) False imprisonment of a minor pursuant to section

1 28-314 or 28-315;

2 (C) Sexual assault in the first degree pursuant to
3 subdivision (1)(c) of section 28-319 or sexual assault of a child
4 in the first degree pursuant to section 28-319.01;

5 (D) Sexual assault of a child in the second or third
6 degree pursuant to section 28-320.01;

7 (E) Incest of a minor pursuant to section 28-703;

8 (F) Visual depiction of sexually explicit conduct of a
9 child pursuant to section 28-1463.03 or 28-1463.05;

10 (G) Knowingly possessing any visual depiction of sexually
11 explicit conduct pursuant to section 28-813.01;

12 (H) Criminal child enticement pursuant to section 28-311;

13 (I) Child enticement by means of an electronic
14 communication device pursuant to section 28-320.02;

15 (J) Enticement by electronic communication device
16 pursuant to section 28-833; or

17 (K) Any attempt or conspiracy to commit an offense
18 listed in subdivisions (3)(a)(ix)(A) through (3)(a)(ix)(J) of this
19 section.

20 (b) The Department of Correctional Services or a city or
21 county correctional or jail facility shall:

22 (i) Require the person to read and sign the notification
23 form stating that the duty to register under the Sex Offender
24 Registration Act has been explained;

25 (ii) Retain a signed copy of the written notification to

1 register; and

2 (iii) Provide a copy of the notification to register
3 to the person, the sex offender registration and community
4 notification division of the Nebraska State Patrol, and the sheriff
5 of the county in which the person will be residing upon release
6 from the institution. If the person is going to reside outside
7 of the State of Nebraska, then notification to the sheriff is not
8 required.

9 (4) The Department of Motor Vehicles shall cause written
10 notification of the duty to register to be provided on the
11 applications for a motor vehicle operator's license and for a
12 commercial driver's license.

13 (5) All written notification as provided in this section
14 shall be on a form prepared by the Attorney General.

15 Sec. 28. Section 29-4008, Reissue Revised Statutes of
16 Nebraska, is amended to read:

17 29-4008 No person subject to the Sex Offender
18 Registration Act shall knowingly and willfully furnish any false or
19 misleading information in the registration or fail to provide or
20 timely update law enforcement of any of the information required
21 to be provided by the act.

22 Sec. 29. Section 83-4,143, Reissue Revised Statutes of
23 Nebraska, is amended to read:

24 83-4,143 (1) It is the intent of the Legislature that
25 the court target the felony offender (a) who is eligible and

1 by virtue of his or her criminogenic needs is suitable to be
2 sentenced to intensive supervision probation with placement at the
3 incarceration work camp, (b) for whom the court finds that other
4 conditions of a sentence of intensive supervision probation, in
5 and of themselves, are not suitable, and (c) who, without the
6 existence of an incarceration work camp, would, in all likelihood,
7 be sentenced to prison.

8 (2) When the court is of the opinion that imprisonment is
9 appropriate, but that a brief and intensive period of regimented,
10 structured, and disciplined programming within a secure facility
11 may better serve the interests of society, the court may place an
12 offender in an incarceration work camp for a period not to exceed
13 one hundred eighty days as a condition of a sentence of intensive
14 supervision probation. The court may consider such placement if the
15 offender (a) is a male or female offender convicted of a felony
16 offense in a district court, (b) is medically and mentally fit
17 to participate, with allowances given for reasonable accommodation
18 as determined by medical and mental health professionals, and (c)
19 has not previously been incarcerated for a violent felony crime.
20 Offenders convicted of a crime under sections 28-319 to ~~28-321~~
21 28-322.04 or of any capital crime are not eligible to be placed in
22 an incarceration work camp.

23 (3) It is also the intent of the Legislature that the
24 Board of Parole may recommend placement of felony offenders at
25 the incarceration work camp. The offenders recommended by the

1 board shall be offenders currently housed at other Department
2 of Correctional Services adult correctional facilities and shall
3 complete the incarceration work camp programming prior to release
4 on parole.

5 (4) When the Board of Parole is of the opinion that
6 a felony offender currently incarcerated in a Department of
7 Correctional Services adult correctional facility may benefit
8 from a brief and intensive period of regimented, structured, and
9 disciplined programming immediately prior to release on parole, the
10 board may direct placement of such an offender in an incarceration
11 work camp for a period not to exceed one hundred eighty days as
12 a condition of release on parole. The board may consider such
13 placement if the felony offender (a) is medically and mentally fit
14 to participate, with allowances given for reasonable accommodation
15 as determined by medical and mental health professionals, and (b)
16 has not previously been incarcerated for a violent felony crime.
17 Offenders convicted of a crime under sections 28-319 to ~~28-321~~
18 28-322.04 or of any capital crime are not eligible to be placed in
19 an incarceration work camp.

20 Sec. 30. (1) No individual who has been convicted of a
21 felony or of any crime involving moral turpitude, or who has been
22 charged with or indicted for a felony or crime involving moral
23 turpitude and there has been no final resolution of the prosecution
24 of the crime, shall provide transportation services under contract
25 with the Department of Health and Human Services, whether as an

1 employee or as a volunteer, for vulnerable adults as defined in
2 section 28-371 or for persons under nineteen years of age.

3 (2) In order to assure compliance with subsection (1)
4 of this section, any individual who will be providing such
5 transportation services to such vulnerable adults or persons under
6 nineteen years of age and any individual who is providing such
7 services on the operative date of this section shall be subject
8 to a national criminal history record information check by the
9 Department of Health and Human Services through the Nebraska State
10 Patrol.

11 (3) In addition to the national criminal history record
12 information check required in subsection (2) of this section,
13 all individuals employed to provide transportation services under
14 contract with the Department of Health and Human Services to
15 vulnerable adults or persons under nineteen years of age shall
16 submit to a national criminal history record information check
17 every two years during the period of such employment.

18 (4) Individuals shall submit two full sets of
19 fingerprints to the Nebraska State Patrol to be submitted to
20 the Federal Bureau of Investigation for the national criminal
21 history record information check required under this section. The
22 individual shall pay the actual cost of fingerprinting and the
23 national criminal history record information check.

24 (5)(a) Individuals shall authorize release of the results
25 and contents of a national criminal history record information

1 check under this section to the employer and the Department of
2 Health and Human Services as provided in this section.

3 (b) The Nebraska State Patrol shall not release the
4 contents of a national criminal history record information check
5 under this section to the employer or the individual but shall only
6 indicate in writing to the employer and the individual whether the
7 individual has a criminal record.

8 (c) The Nebraska State Patrol shall release the results
9 and the contents of a national criminal history record information
10 check under this section in writing to the department in accordance
11 with applicable federal law.

12 (6) The Department of Health and Human Services may
13 develop and implement policies that provide for administrative
14 exceptions to the prohibition in subsection (1) of this section,
15 including, but not limited to, situations in which relatives of
16 the vulnerable adult or person under nineteen years of age provide
17 transportation services for such vulnerable adult or person under
18 nineteen years of age or situations in which the circumstances
19 of the crime or the elapsed time since the commission of the
20 crime do not warrant the prohibition. Any decision made by the
21 department regarding an administrative exception under this section
22 is discretionary and is not appealable.

23 (7) An individual who does not comply with this section
24 is guilty of a Class V misdemeanor.

25 Sec. 31. The Revisor of Statutes shall assign sections 3

1 to 6 of this act to Chapter 27, article 4, of the Nebraska Evidence
2 Rules.

3 Sec. 32. Sections 3, 4, 5, 6, 7, 8, 11, 29, 31, 34,
4 and 36 of this act become operative on January 1, 2010. Section
5 30 of this act becomes operative three calendar months after the
6 adjournment of this legislative session. The other sections of this
7 act become operative on their effective date.

8 Sec. 33. If any section in this act or any part of any
9 section is declared invalid or unconstitutional, the declaration
10 shall not affect the validity or constitutionality of the remaining
11 portions.

12 Sec. 34. Original sections 27-404, 27-1103, 28-318, and
13 83-4,143, Reissue Revised Statutes of Nebraska, are repealed.

14 Sec. 35. Original sections 21-20,177, 21-20,179, 28-101,
15 28-311, 28-319.01, 28-320.02, 28-813.01, 28-1010, 28-1463.02,
16 28-1463.03, 28-1463.04, 28-1463.05, 29-110, 29-4001, 29-4003,
17 29-4006, 29-4007, and 29-4008, Reissue Revised Statutes of
18 Nebraska, are repealed.

19 Sec. 36. The following section is outright repealed:
20 Section 28-321, Reissue Revised Statutes of Nebraska.

21 Sec. 37. Since an emergency exists, this act takes effect
22 when passed and approved according to law.