

LEGISLATURE OF NEBRASKA

ONE HUNDRED SECOND LEGISLATURE

SECOND SESSION

LEGISLATIVE BILL 799

Final Reading

Introduced by Cornett, 45; Fulton, 29; Howard, 9; Lautenbaugh, 18;
Pahls, 31.

Read first time January 05, 2012

Committee: Judiciary

A BILL

1 FOR AN ACT relating to crimes and offenses; to amend sections 28-201
2 and 28-707, Revised Statutes Cumulative Supplement, 2010;
3 to change penalties for child abuse; to define a term; to
4 harmonize provisions; and to repeal the original
5 sections.

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

1 Section 1. Section 28-201, Revised Statutes Cumulative
2 Supplement, 2010, is amended to read:

3 28-201 (1) A person shall be guilty of an attempt to
4 commit a crime if he or she:

5 (a) Intentionally engages in conduct which would
6 constitute the crime if the attendant circumstances were as he or she
7 believes them to be; or

8 (b) Intentionally engages in conduct which, under the
9 circumstances as he or she believes them to be, constitutes a
10 substantial step in a course of conduct intended to culminate in his
11 or her commission of the crime.

12 (2) When causing a particular result is an element of the
13 crime, a person shall be guilty of an attempt to commit the crime if,
14 acting with the state of mind required to establish liability with
15 respect to the attendant circumstances specified in the definition of
16 the crime, he or she intentionally engages in conduct which is a
17 substantial step in a course of conduct intended or known to cause
18 such a result.

19 (3) Conduct shall not be considered a substantial step
20 under this section unless it is strongly corroborative of the
21 defendant's criminal intent.

22 (4) Criminal attempt is:

23 (a) A Class II felony when the crime attempted is a Class
24 I, IA, IB, IC, or ID felony;

25 (b) A Class III felony when the crime attempted is a

1 Class II felony;

2 (c) A Class IIIA felony when the crime attempted is
3 sexual assault in the second degree under section 28-320, a violation
4 of subdivision (2)(b) of section 28-416, incest under section 28-703,
5 ~~child abuse under subsection (5) of section 28-707,~~ or assault by a
6 confined person with a deadly or dangerous weapon under section
7 28-932;

8 (d) A Class IV felony when the crime attempted is a Class
9 III felony not listed in subdivision (4)(c) of this section;

10 (e) A Class I misdemeanor when the crime attempted is a
11 Class IIIA or Class IV felony;

12 (f) A Class II misdemeanor when the crime attempted is a
13 Class I misdemeanor; and

14 (g) A Class III misdemeanor when the crime attempted is a
15 Class II misdemeanor.

16 Sec. 2. Section 28-707, Revised Statutes Cumulative
17 Supplement, 2010, is amended to read:

18 28-707 (1) A person commits child abuse if he or she
19 knowingly, intentionally, or negligently causes or permits a minor
20 child to be:

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

23 (b) Cruelly confined or cruelly punished;

24 (c) Deprived of necessary food, clothing, shelter, or
25 care;

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

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

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

11 (3) Child abuse is a Class I misdemeanor if the offense
12 is committed negligently and does not result in serious bodily injury
13 as defined in section 28-109 or death.

14 (4) Child abuse is a Class IIIA felony if the offense is
15 committed knowingly and intentionally and does not result in serious
16 bodily injury as defined in section 28-109 or death.

17 (5) Child abuse is a Class IIIA felony if the offense is
18 committed negligently and results in serious bodily injury as defined
19 in section 28-109.

20 (6) Child abuse is a Class III felony if the offense is
21 committed negligently and results in the death of such child.

22 ~~(5)-(7)~~ Child abuse is a Class II felony if the offense
23 is committed knowingly and intentionally and results in serious
24 bodily injury as defined in such section.

25 ~~(6)-(8)~~ Child abuse is a Class IB felony if the offense

1 is committed knowingly and intentionally and results in the death of
2 such child.

3 (9) For purposes of this section, negligently refers to
4 criminal negligence and means that a person knew or should have known
5 of the danger involved and acted recklessly, as defined in section
6 28-109, with respect to the safety or health of the minor child.

7 Sec. 3. Original sections 28-201 and 28-707, Revised
8 Statutes Cumulative Supplement, 2010, are repealed.