

ONE HUNDRED THIRD LEGISLATURE - FIRST SESSION - 2013
COMMITTEE STATEMENT
LB255

Hearing Date: Wednesday February 20, 2013
Committee On: Judiciary
Introducer: McGill
One Liner: Change provisions relating to hearsay, child abuse, and offenses relating to morals

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

Vote Results:
Aye: 6 Senators Ashford, Coash, Davis, McGill, Seiler, Chambers
Nay:
Absent: 2 Senators Christensen, Lathrop
Present Not Voting:

Proponents:
SEN. AMANDA MCGILL
MARK YOUNG

LAZARO SPINDOLA
JUDY GAIASHKIBOS
RACHAEL STRONG
KHLOE KEELER
CHRISTIE HARGESHEIMER
AL RISKOWSKI

JIM CUNNINGHAM
ROBERT SANFORD
SRIANI TIDBALL

Representing:
INTRODUCER
NE COUNTY ATTORNEYS ASSOCIATION, HALL
COUNTY ATTORNEY
LATINO AMERICAN COMMISSION
NEBRASKA COMMISSION ON INDIAN AFFAIRS
NEBRASKA INDIAN COMMISSION
NCIA
AMNESTY INTERNATIONAL, ONE BILLION RISING
NE FAMILY COUNCIL, FAMILY FIRST,
INTERCHURCH MINISTRIES
NE CATHOLIC CONFERENCE
NEBRASKA FAMILY COUNCIL
SELF

Opponents:
DENISE FROST

Representing:
NE CRIMINAL DEFENSE ATTORNEYS
ASSOCIATION

Neutral:
JERRY SOUCIE

Representing:
SELF

Summary of purpose and/or changes:

LB 255 would make the following changes to sections 27-804 (Hearsay exceptions; enumerated; declarant unavailable; unavailability, defined.), 28-707 (Child abuse; privileges not available; penalties.), 28-801 (Prostitution; penalty.), 28-801.01 (Solicitation of prostitution; penalty.), 28-802 (Pandering; penalty.), 28-804 (Keeping a place of prostitution; penalty.), 28-805 (Debauching a minor; penalty.), 28-830 (Human trafficking; forced labor or services; terms, defined.), 28-831 (Human trafficking; forced labor or services; prohibited acts; penalties.), 28-1354 (Terms, defined; Public Protection Act), 43-248 (Temporary custody of juvenile without warrant; when.) and 43-250 (Temporary custody; disposition; custody requirements.) of the Nebraska Revised Statutes:

Section 1. 27-804(2) is amended to add subsection (e) which provides that a witness is deemed unavailable and the following not deemed hearsay when: "A statement offered against a party that wrongfully caused or acquiesced in wrongfully causing, the declarant's unavailability as a witness and intended the result." This section also adds female pronouns to make the statute gender neutral.

Section 2. Amends 28-707 to provide that a person commits the offense of child abuse if they place a child in a situation to be a trafficking victim as defined under 28-830.

Section 3. Amends 28-801 to reference an exception to the charge of prostitution, provided under the newly created subsection (5) of this section, as well as provides an affirmative defense to charges of prostitution in the newly created subsection (3) of this section, which are as follow:

Subsection (3) provides that an affirmative defense against prosecution is available to persons who are victims of human trafficking or forced labor or services.

Subsection (5) provides that if a law enforcement officer determines that a person charged or suspected of prostitution under subsection (1) of this section is under the age of 18, such person shall be immune from prosecution for prostitution under this section and shall be subject to temporary custody as provided under 43-248 and further disposition of the Nebraska Juvenile Code.

Subsection (5) also requires a law enforcement officer who takes a person under 18 year of age into custody, to contact HHS with an allegation of a violation of 28-831 and HHS shall investigate this allegation within 24 hours under the Child Protection Act.

Section 4. Amends 28-801.01 to change the penalties provided for conviction under this section in the following manner:

If person has no prior convictions, penalty remains a Class I misdemeanor but the fine provided under this section increases from \$250 to \$500. However, a new increase in penalty is provided if the person solicited is under 18 years of age, then a person convicted under this section is guilty of a Class IIIA felony (5yrs/\$10,000/Both) and pays a fine of not less than \$2,500. If person is placed on probation, they must pay the increased fine amount of \$500 for Class I misdemeanor and \$2,500 for a Class IIIA felony. This section also strikes the requirement that a person attend and complete a mental health and substance abuse assessment.

If person has one or more prior convictions then the current conviction would increase from a Class IV felony to a Class IIIA felony and the fine to be paid increases from \$500 to \$2,500. If the person is placed on probation the fine to be paid increases from \$500 to \$2,500.

This section requires the court in which conviction for solicitation or attempted solicitation of prostitution to create, maintain and publish a list of names and addresses of persons convicted under this section. This list must be updated quarterly and the person named to the list shall remain on the list for 6 months. Notice of registry on the list is to be mailed to the registrants last known address.

Section 5. Amends 28-802 to increase the penalty for pandering from a Class IV felony (5yrs/\$10,000/Both) to a Class IIIA felony (5yrs/\$10,000/Both) requires the payment of a fine of not less than \$5,000.

Increases the penalty for pandering when the person persuaded to become a prostitute is under 18 years of age, from a Class III felony (1-20yrs/\$25,000/Both) to a Class II felony (1-50yrs). The penalty for second or subsequent offenses under this section increases from a Class III felony(1-20 yrs/\$25,000/Both) to a Class ID felony (3-50 years).

A person placed on probation under this section, as a condition of probation must be pay a \$5,000 fine.

Section 6. Amends 28-804, to increase the penalty for keeping a place of prostitution from a Class I misdemeanor (1yr/\$1,000/Both) to a Class IIIA felony (5yrs/\$10,000/Both) for a first offense and pay not less than a \$5,000 fine. If a person using a place of prostitution is under 18, then the penalty is a Class II felony (1-50 yrs). If the court grants probation under this section, probation must include the payment of a fine of not less than \$5,000.

Section 7. Amends 28-805 to increase the penalty for debauching a minor from a Class I misdemeanor (1yr/\$1,000/Both) to a Class II felony (1-50 yrs.). Second and subsequent offenses will be Class ID felonies (3-50 yrs).

Section 8. Amends 28-830 to add the following definitions:

(6) "Labor trafficking" means knowingly recruiting, enticing, harboring, transporting, providing, or obtaining by any means or attempting to recruit, entice, harbor, transport, provide, or obtain by any means a person eighteen years of age or older intending or knowing that the person will be subjected to forced labor or services;

(7) "Labor trafficking of a minor" means knowingly recruiting, enticing, harboring, transporting, providing, or obtaining by any means or attempting to recruit, entice, harbor, transport, provide, or obtain by any means a minor intending or knowing that the minor will be subjected to forced labor or services;

(12) "Sex trafficking" means knowingly recruiting, enticing, harboring, transporting, providing, or obtaining by any means or knowingly attempting to recruit, entice, harbor, transport, provide, or obtain by any means a person eighteen years of age or older for the purpose of having such person engage in commercial sexual activity, sexually-explicit performance, or the production of pornography or to cause or attempt to cause a person to engage in commercial sexual activity, sexually-explicit performance, or the production of pornography;

(13) "Sex trafficking of a minor" means knowingly recruiting, enticing, harboring, transporting, providing, or obtaining by any means or knowingly attempting to recruit, entice, harbor, transport, provide, or obtain by any means a minor for the purpose of having such minor engage in commercial sexual activity, sexually-explicit performance, or the production of pornography or to cause or attempt to cause a minor to engage in commercial sexual activity, sexually-explicit performance, or the production of pornography.

Section 9. Amends 28-831 to provide a prohibition against a person "engaging in labor trafficking or sex trafficking" instead of the previous reference of "forced labor or services". This section also strikes that a person had to "knowingly" engage in the crime provided under this section and now just engaging in the crime is sufficient to obtain a conviction, went from "specific intent" to "general intent".

Penalties have increased under this section at least one classification and in one instance increased two levels. Lowest penalty provided under this section is now a Class IV felony (5yrs/\$10,000/Both) and the highest is a Class ID felony (3-50yrs) before this act the lowest penalty was a Class I misdemeanor (1yr/\$1,000/Both) and the highest was a Class II felony (1-50 yrs).

The highest penalties provided under this section are for offenses that engage in labor or sex trafficking of a minor with those penalties ranging from a Class III felony (1-20/ \$25,000/Both) to a Class ID felony (3-50yrs).

Section 10. Amends 28-1354 (5) (j) to switch references from "human trafficking or forced labor or services" to "labor trafficking or sex trafficking."

Section 11. Amends 43-248 to add a new subsection (7) under this section which allows an officer to take a juvenile into temporary custody, "when an officer has reasonable grounds to believe the juvenile is immune from prosecution for prostitution under subsection (5) of 28-801."

Section 12. Amends 43-250 subsection (2) to add a reference to the newly created subsection (7) under 43-248.

Section 13. Provides a new requirement for the Nebraska Commission on Law Enforcement and Criminal Justice to create and maintain a central repository for the collection and analysis of information regarding offenses of labor trafficking, labor trafficking of a minor, sex trafficking and sex trafficking of a minor.

Once repository is created the commission shall develop a procedure to monitor, record, classify, and analyze information relating to those offenses.

Section 14. General repealer of original sections that have been revised by this act.

Section 15. Outright repeals 28-832 (Human trafficking; Attorney General; Department of Health and Human Services; duties.)

(1) The Attorney General, in consultation with the Department of Health and Human Services, shall, no later than one year after July 14, 2006, issue a report outlining how existing victim and witness laws and rules and regulations respond to the needs of trafficking victims and suggesting areas of improvement and modification.

(2) The Department of Health and Human Services, in consultation with the Attorney General, shall, no later than one year after July 14, 2006, issue a report outlining how existing social service programs respond or fail to respond to the needs of trafficking victims and the interplay of such existing programs with federally funded victim service programs and suggesting areas of improvement and modification.

Explanation of amendments:

AM856 To LB 255

AM856 makes the following changes to LB 255:

Deletes changes proposed under sections 1, 7, and 13 of the original copy of this bill and renumbers the remaining sections accordingly.

Amends original section 4, which amends section 28-801.01 (Solicitation of prostitution; penalty.) in the following manner: under subsection 2(a) Solicitation of a Minor increases from a Class I misdemeanor (1yr/\$1,000/Both) to a Class IV felony (5yr/\$10,000/Both).

(Deletes subsections 3(a)-(d) which sections created new responsibilities for the State Patrol which included creating a list of offenders who violated this section.)

Amends original section 5, which amends section 28-802 (Pandering; penalty) by removing the increased penalties and fines called for under this section as introduced, but retains the removal of the phrase "in violation of this section" on page 7, line 1.

Amends original section 6, which amends section 28-804 (Keeping a place of prostitution) to provide that it would be a Class IV felony(5yr/\$10,000/Both) for a violation of this section, "if a person using such a place is under the age of eighteen." Removes the fine increases originally called for under this section.

Amends original section 9, which amends section 28-831 (Human trafficking; forced labor or services; prohibited acts; penalties.) (1) to changes reference to "forced labor or services" and replaces it with "labor trafficking" or "sex trafficking" as defined under changes to section 28-830 under this bill. This amendment also removed the penalty increases called for under this section bill and leaves the penalties as they currently exist.

Creates a new section, which amends section 81-1430 (Task force; established; members; terms; duties;...) to require the task force specified under this section to utilize information and research that is available from the Innocence Lost National Initiative. This section is also amended to require that the task force research and recommend a model of rehabilitative services for victims of human trafficking.

Brad Ashford, Chairperson