

LEGISLATURE OF NEBRASKA
ONE HUNDRED FOURTH LEGISLATURE
SECOND SESSION

LEGISLATIVE BILL 843

FINAL READING
(SECOND)

Introduced by Pansing Brooks, 28; Scheer, 19; Fox, 7; Brasch, 16; Cook, 13; Craighead, 6; Crawford, 45; Ebke, 32; Howard, 9; Sullivan, 41; Campbell, 25.

Read first time January 08, 2016

Committee: Judiciary

1 A BILL FOR AN ACT relating to crimes and offenses; to amend section
2 81-2010.03, Reissue Revised Statutes of Nebraska, section 28-801,
3 Revised Statutes Cumulative Supplement, 2014, and sections 81-1415,
4 81-1416, and 81-1423, Revised Statutes Supplement, 2015; to provide
5 immunity from prosecution for prostitution; to transfer, change, and
6 eliminate provisions relating to payment for sexual assault forensic
7 medical examinations; to create a fund and a program; to provide for
8 an administrator; to harmonize provisions; to provide operative
9 dates; to repeal the original sections; and to outright repeal
10 sections 13-607 and 13-608, Reissue Revised Statutes of Nebraska.
11 Be it enacted by the people of the State of Nebraska,

1 Section 1. Section 28-801, Revised Statutes Cumulative Supplement,
2 2014, is amended to read:

3 28-801 (1) Except as provided in subsection (5) of this section, any
4 person who performs, offers, or agrees to perform any act of sexual
5 contact or sexual penetration, as those terms are defined in section
6 28-318, with any person not his or her spouse, in exchange for money or
7 other thing of value, commits prostitution.

8 (2) Any person convicted of violating subsection (1) of this section
9 shall be punished as follows:

10 (a) If such person has had no prior convictions or has had one prior
11 conviction, such person shall be guilty of a Class II misdemeanor. If the
12 court places such person on probation, such order of probation shall
13 include, as one of its conditions, that such person shall satisfactorily
14 attend and complete an appropriate mental health and substance abuse
15 assessment conducted by a licensed mental health professional or
16 substance abuse professional authorized to complete such assessment; and

17 (b) If such person has had two or more prior convictions, such
18 person shall be guilty of a Class I misdemeanor. If the court places such
19 person on probation, such order of probation shall include, as one of its
20 conditions, that such person shall satisfactorily attend and complete an
21 appropriate mental health and substance abuse assessment conducted by a
22 licensed mental health professional or substance abuse professional
23 authorized to complete such assessment.

24 (3) It is an affirmative defense to prosecution under this section
25 that such person was a trafficking victim as defined in section 28-830.

26 (4) For purposes of this section, prior conviction means any
27 conviction on or after July 14, 2006, for violation of subsection (1) of
28 this section or any conviction on or after July 14, 2006, for violation
29 of a city or village ordinance relating to prostitution.

30 (5) If the law enforcement officer determines, after a reasonable
31 detention for investigative purposes, that a person suspected of or

1 charged with a violation of subsection (1) of this section is (a) a
2 person engaging in those acts as a direct result of being a trafficking
3 victim as defined in section 28-830, such person shall be immune from
4 prosecution for a prostitution offense or (b) a person under eighteen
5 years of age, such person shall be immune from prosecution for a
6 prostitution offense under this section and shall be subject to temporary
7 custody under section 43-248 and further disposition under the Nebraska
8 Juvenile Code. A law enforcement officer who takes a person under
9 eighteen years of age into custody under this section shall immediately
10 report an allegation of a violation of section 28-831 to the Department
11 of Health and Human Services which shall commence an investigation within
12 twenty-four hours under the Child Protection and Family Safety Act.

13 Sec. 2. Section 81-2010.03, Reissue Revised Statutes of Nebraska, is
14 amended to read:

15 ~~81-2010.03~~ (1) The full out-of-pocket cost or expense that may be
16 charged to a sexual assault victim in connection with a forensic medical
17 examination shall be paid from the Sexual Assault Payment Program Cash
18 Fund. A report of a forensic medical examination shall not be remitted to
19 the patient or his or her insurance for payment for by the Nebraska State
20 Patrol if the patrol is the primary investigating law enforcement agency
21 investigating the reported sexual assault.

22 (2) Except as provided under section 81-2010, all forensic DNA tests
23 shall be performed by a laboratory which is accredited by the American
24 Society of Crime Laboratory Directors/ ~~LAB~~-Laboratory Accreditation
25 Board ~~or the National Forensic Science Technology Center~~ or by any other
26 national accrediting body or public agency which has requirements that
27 are substantially equivalent to or more comprehensive than those of the
28 society ~~or center~~.

29 (3) The full out-of-pocket cost or expense to be paid from the
30 Sexual Assault Payment Program Cash Fund for a forensic medical
31 examination described in subsection (1) of this section shall include:

1 (a) An examiner's fee for:

2 (i) Examination of physical trauma;

3 (ii) Determination of penetration or force;

4 (iii) Patient interview; and

5 (iv) Collection and evaluation of evidence;

6 (b) An examination facility fee for the:

7 (i) Emergency room, clinic room, office room, or child advocacy
8 center; and

9 (ii) Pelvic tray and other medically required supplies; and

10 (c) The laboratory fees for collection and processing of specimens
11 for criminal evidence, the determination of the presence of any sexually
12 transmitted disease, and pregnancy testing.

13 (4) There is established within the Department of Justice, under the
14 direction of the Attorney General, the position of administrator for the
15 Sexual Assault Payment Program. The purpose of the program and the
16 responsibilities of the administrator shall be to coordinate the
17 distribution of forensic medical examination kits to health care
18 providers at no cost to the providers, oversee forensic medical
19 examination training throughout the state, and coordinate payments from
20 the Sexual Assault Payment Program Cash Fund.

21 (5) The Sexual Assault Payment Program Cash Fund is created. The
22 fund shall be administered by the commission. The fund shall consist of
23 any money appropriated to it by the Legislature and any money received by
24 the commission for the program, including federal and other public and
25 private funds. The fund shall be used for the payment of the full out-of-
26 pocket costs or expenses for forensic medical examinations pursuant to
27 subsection (3) of this section, for the purpose set forth in subsection
28 (4) of this section, and for the purchase of forensic medical examination
29 kits. The fund shall be used to pay only those charges determined by the
30 commission to be reasonable and fair. The fund shall be used to pay up to
31 two hundred dollars for the examiner's fee and up to three hundred

1 dollars for the examination facility fee. The examiner and facility shall
2 provide additional documentation as determined by the commission for
3 payment of charges in excess of such amounts. The fund may also be used
4 to facilitate programs that reduce or prevent the crimes of domestic
5 violence, dating violence, sexual assault, stalking, child abuse, child
6 sexual assault, human trafficking, labor trafficking, or sex trafficking
7 or that enhance the safety of victims of such crimes. Any money in the
8 fund available for investment shall be invested by the state investment
9 officer pursuant to the Nebraska Capital Expansion Act and the Nebraska
10 State Funds Investment Act.

11 Sec. 3. Section 81-1415, Revised Statutes Supplement, 2015, is
12 amended to read:

13 81-1415 As used in sections 81-1415 to 81-1426.01 and section 2 of
14 this act, unless the context otherwise requires: Commission means the
15 Nebraska Commission on Law Enforcement and Criminal Justice.

16 Sec. 4. Section 81-1416, Revised Statutes Supplement, 2015, is
17 amended to read:

18 81-1416 There is hereby created the Nebraska Commission on Law
19 Enforcement and Criminal Justice. The commission shall educate the
20 community at large to the problems encountered by law enforcement
21 authorities, promote respect for law and encourage community involvement
22 in the administration of criminal justice. The commission shall be an
23 agency of the state, and the exercise by the commission of the powers
24 conferred by the provisions of sections 81-1415 to 81-1426.01 and section
25 2 of this act shall be deemed to be an essential governmental function of
26 the state.

27 Sec. 5. Section 81-1423, Revised Statutes Supplement, 2015, is
28 amended to read:

29 81-1423 The commission shall have authority to:

30 (1) Adopt and promulgate rules and regulations for its organization
31 and internal management and rules and regulations governing the exercise

1 of its powers and the fulfillment of its purposes under sections 81-1415
2 to 81-1426.01 and section 2 of this act;

3 (2) Delegate to one or more of its members such powers and duties as
4 it may deem proper;

5 (3) Coordinate and jointly pursue its activities with the Governor's
6 Policy Research Office;

7 (4) Appoint and abolish such advisory committees as may be necessary
8 for the performance of its functions and delegate appropriate powers and
9 duties to them;

10 (5) Plan improvements in the administration of criminal justice and
11 promote their implementation;

12 (6) Make or encourage studies of any aspect of the administration of
13 criminal justice;

14 (7) Conduct research and stimulate research by public and private
15 agencies which shall be designed to improve the administration of
16 criminal justice;

17 (8) Coordinate activities relating to the administration of criminal
18 justice among agencies of state and local government;

19 (9) Cooperate with the federal and other state authorities
20 concerning the administration of criminal justice;

21 (10) Accept and administer loans, grants, and donations from the
22 United States, its agencies, the State of Nebraska, its agencies, and
23 other sources, public and private, for carrying out any of its functions,
24 except that no communications equipment shall be acquired and no approval
25 for acquisition of communications equipment shall be granted without
26 receiving the written approval of the Director of Communications of the
27 office of Chief Information Officer;

28 (11) Enter into contracts, leases, and agreements necessary,
29 convenient, or desirable for carrying out its purposes and the powers
30 granted under sections 81-1415 to 81-1426.01 and section 2 of this act
31 with agencies of state or local government, corporations, or persons;

1 (12) Acquire, hold, and dispose of personal property in the exercise
2 of its powers;

3 (13) Conduct random annual audits of criminal justice agencies to
4 verify the accuracy and completeness of criminal history record
5 information maintained by such agencies and to determine compliance with
6 laws and regulations dealing with the dissemination, security, and
7 privacy of criminal history information;

8 (14) Do all things necessary to carry out its purposes and for the
9 exercise of the powers granted in sections 81-1415 to 81-1426.01 and
10 section 2 of this act, except that no activities or transfers or
11 expenditures of funds available to the commission shall be inconsistent
12 with legislative policy as reflected in substantive legislation,
13 legislative intent legislation, or appropriations legislation;

14 (15) Exercise budgetary and administrative control over the Crime
15 Victim's Reparations Committee and the Jail Standards Board; and

16 (16) Do all things necessary to carry out sections 81-1843 to
17 81-1851.

18 Sec. 6. Sections 2, 3, 4, 5, 8, and 9 of this act become operative
19 on July 1, 2017. The other sections of this act become operative on their
20 effective date.

21 Sec. 7. Original section 28-801, Revised Statutes Cumulative
22 Supplement, 2014, is repealed.

23 Sec. 8. Original section 81-2010.03, Reissue Revised Statutes of
24 Nebraska, and sections 81-1415, 81-1416, and 81-1423, Revised Statutes
25 Supplement, 2015, are repealed.

26 Sec. 9. The following sections are outright repealed: Sections
27 13-607 and 13-608, Reissue Revised Statutes of Nebraska.