

LEGISLATURE OF NEBRASKA
ONE HUNDRED FIFTH LEGISLATURE
FIRST SESSION

LEGISLATIVE BILL 289

Introduced by Pansing Brooks, 28; Brasch, 16; Linehan, 39; Morfeld, 46;
Scheer, 19; Walz, 15; Watermeier, 1; Wishart, 27.

Read first time January 11, 2017

Committee: Judiciary

1 A BILL FOR AN ACT relating to crimes and offenses; to amend sections
2 28-802, 28-830, 28-831, and 43-1303, Reissue Revised Statutes of
3 Nebraska; to change provisions and penalties relating to pandering,
4 human trafficking, labor trafficking, and sex trafficking; to
5 prohibit solicitation of a trafficking victim; to provide a penalty;
6 to harmonize provisions; and to repeal the original sections.
7 Be it enacted by the people of the State of Nebraska,

1 Section 1. Section 28-802, Reissue Revised Statutes of Nebraska, is
2 amended to read:

3 28-802 (1) A person commits pandering if such person:

4 (a) Entices another person to become a prostitute;~~or~~

5 (b) Procures or harbors therein an inmate for a house of
6 prostitution or for any place where prostitution is practiced or allowed;
7 ~~or~~

8 (c) Inveigles, entices, persuades, encourages, or procures any
9 person to come into or leave this state for the purpose of prostitution
10 or debauchery; or

11 (d) Receives or gives or agrees to receive or give any money or
12 other thing of value for procuring or attempting to procure any person to
13 become a prostitute or commit an act of prostitution or come into this
14 state or leave this state for the purpose of prostitution or debauchery.

15 (2) Pandering is a Class ~~III~~ II felony ~~for a first offense, unless~~
16 ~~the person being enticed, procured, harbored, or otherwise persuaded to~~
17 ~~become a prostitute is under the age of eighteen years, in which case~~
18 ~~pandering is a Class II felony for a first offense. Pandering is a Class~~
19 ~~II felony for a second or subsequent offense.~~

20 Sec. 2. Section 28-830, Reissue Revised Statutes of Nebraska, is
21 amended to read:

22 28-830 For purposes of sections 28-830 and 28-831, the following
23 definitions apply:

24 (1) Actor means a person who solicits, procures, or supervises the
25 services or labor of another person;

26 (2) Commercial sexual activity means any sex act on account of which
27 anything of value is given, promised to, or received by any person;

28 (3) Debt bondage means inducing another person to provide:

29 (a) Commercial sexual activity in payment toward or satisfaction of
30 a real or purported debt; or

31 (b) Labor or services in payment toward or satisfaction of a real or

1 purported debt if:

2 (i) The reasonable value of the labor or services is not applied
3 toward the liquidation of the debt; or

4 (ii) The length of the labor or services is not limited and the
5 nature of the labor or services is not defined;

6 (4) Financial harm means theft by extortion as described by section
7 28-513;

8 (5) Forced labor or services means labor or services that are
9 performed or provided by another person and are obtained or maintained
10 through:

11 (a) Inflicting or threatening to inflict serious personal injury, as
12 defined by section 28-318, on another person;

13 (b) Physically restraining or threatening to physically restrain the
14 other person;

15 (c) Abusing or threatening to abuse the legal process against
16 another person to cause arrest or deportation for violation of federal
17 immigration law;

18 (d) Controlling or threatening to control another person's access to
19 a controlled substance listed in Schedule I, II or III of section 28-405;

20 (e) Exploiting another person's substantial functional impairment as
21 defined in section 28-368 or substantial mental impairment as defined in
22 section 28-369;

23 (f) Knowingly destroying, concealing, removing, confiscating, or
24 possessing any actual or purported passport or other immigration document
25 or any other actual or purported government identification document of
26 the other person; or

27 (g) Causing or threatening to cause financial harm to another
28 person, including debt bondage;

29 (6) Labor or services means work or activity of economic or
30 financial value;

31 (7) Labor trafficking means knowingly recruiting, enticing,

1 harboring, transporting, providing, or obtaining by any means or
2 attempting to recruit, entice, harbor, transport, provide, or obtain by
3 any means a person eighteen years of age or older intending or knowing
4 that the person will be subjected to forced labor or services;

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

10 (9) Maintain means, in relation to labor or services, to secure
11 continued performance thereof, regardless of any initial agreement by the
12 other person to perform such type of service;

13 (10) Minor means a person younger than eighteen years of age;

14 ~~(11) Obtain means, in relation to labor or services, to secure~~
15 ~~performance thereof;~~

16 ~~(12) Services means an ongoing relationship between the actor and~~
17 ~~another person in which the person performs activities under the~~
18 ~~supervision of or for the benefit of the actor. Commercial sexual~~
19 ~~activity and sexually explicit performances are forms of services under~~
20 ~~this section. Nothing in this subdivision shall be construed to legalize~~
21 ~~prostitution;~~

22 (11) ~~(13)~~ Sex trafficking means knowingly
23 recruiting, enticing, harboring, transporting, providing, or obtaining by
24 any means or knowingly attempting to recruit, entice, harbor, transport,
25 provide, or obtain by any means a person eighteen years of age or older
26 for the purpose of having such person engage in commercial sexual
27 activity, sexually explicit performance, or the production of pornography
28 or
29 to cause or attempt to cause a person eighteen years of age or older to
30 engage in commercial sexual activity, sexually explicit performance, or
31 the production of pornography against his or her will;

1 (12) ~~(14)~~ Sex trafficking of a minor means knowingly
2 recruiting, enticing, harboring, transporting, providing, soliciting, or
3 obtaining by any means or ~~knowingly~~ attempting to recruit, entice,
4 harbor, transport, provide, solicit, or obtain by any means a minor for
5 the purpose of having such minor engage in commercial sexual activity,
6 sexually explicit performance, or the production of pornography or
7 to cause or attempt to cause a minor to engage in commercial sexual
8 activity, sexually explicit performance, or the production of
9 pornography;

10 (13) ~~(15)~~ Sexually-explicit performance means a live or public play,
11 dance, show, or other exhibition intended to arouse or gratify sexual
12 desire or to appeal to prurient interests; and

13 (14) ~~(16)~~ Trafficking victim means a person subjected to any act or
14 acts prohibited by section 28-831.

15 Sec. 3. Section 28-831, Reissue Revised Statutes of Nebraska, is
16 amended to read:

17 28-831 (1) Any person who engages in labor trafficking of a minor or
18 sex trafficking of a minor is guilty of a Class IC ~~II~~ felony, except, if
19 the actor uses overt force or the threat of force or the trafficking
20 victim has not yet attained the age of sixteen years the actor . ~~Any~~
21 ~~person who otherwise engages in labor trafficking of a minor or sex~~
22 ~~trafficking of a minor~~ is guilty of a Class IB ~~IIA~~ felony.

23 (2) Any person who engages in labor trafficking or sex trafficking
24 by inflicting or threatening to inflict serious personal injury, as
25 defined in section 28-318, on another person or physically restrains or
26 threatens to physically restrain another person is guilty of a Class ID
27 ~~IIA~~ felony. Any person who otherwise engages in labor trafficking or sex
28 trafficking is guilty of a Class II ~~III~~ felony.

29 (3) Any person who knowingly or recklessly solicits a trafficking
30 victim to engage in commercial sexual activity, sexually explicit
31 performance, or the production of pornography commits solicitation of a

1 trafficking victim. Solicitation of a trafficking victim includes
2 solicitation through any means and through any intermediary. Any person
3 who commits solicitation of a trafficking victim is guilty of a Class II
4 felony.

5 (4) ~~(3)~~ Any person, other than a trafficking victim, who knowingly
6 or recklessly benefits from or participates in a venture which has, as
7 part of the venture, an act that is in violation of this section is
8 guilty of a Class IIA ~~IIIA~~ felony.

9 (5) The crimes defined in this section shall be treated as separate
10 and distinct offenses and sentences imposed under this section shall be
11 consecutive to any other sentence imposed.

12 (6) It is not a defense in a prosecution under subsection (1), (3),
13 or (4) of this section that a minor consented to engage in commercial
14 sexual activity or that the defendant believed the child was an adult.

15 Sec. 4. Section 43-1303, Reissue Revised Statutes of Nebraska, is
16 amended to read:

17 43-1303 (1) The office shall maintain the statewide register of all
18 foster care placements occurring within the state, and there shall be a
19 weekly report made to the registry of all foster care placements by the
20 Department of Health and Human Services, any child-placing agency, or any
21 court in a form as developed by the office in consultation with
22 representatives of entities required to make such reports. For each child
23 entering and leaving foster care, such report shall consist of
24 identifying information, placement information, the plan or permanency
25 plan developed by the person or court in charge of the child pursuant to
26 section 43-1312, and information on whether any such child was a person
27 immune from criminal prosecution under subsection (5) of section 28-801
28 or was considered a trafficking victim as defined in ~~subdivision (16)~~ of
29 section 28-830. The department, the Office of Probation Administration,
30 and every court and child-placing agency shall report any foster care
31 placement within three working days. The report shall contain the

1 following information:

2 (a) Child identification information, including name, date of birth,
3 gender, race, religion, and ethnicity;

4 (b) Identification information for parents and stepparents,
5 including name, address, and status of parental rights;

6 (c) Placement information, including initial placement date, current
7 placement date, and the name and address of the foster care placement;

8 (d) Court status information, including which court has
9 jurisdiction, initial custody date, court hearing date, and results of
10 the court hearing;

11 (e) Agency or other entity having custody of the child; and

12 (f) Case worker, probation officer, or person providing direct case
13 management or supervision functions.

14 (2)(a) The Foster Care Review Office shall designate a local board
15 to conduct foster care file audit case reviews for each case of children
16 in foster care placement.

17 (b) The office may adopt and promulgate rules and regulations for
18 the following:

19 (i) Establishment of training programs for local board members which
20 shall include an initial training program and periodic inservice training
21 programs;

22 (ii) Development of procedures for local boards;

23 (iii) Establishment of a central record-keeping facility for all
24 local board files, including foster care file audit case reviews;

25 (iv) Accumulation of data and the making of annual reports on
26 children in foster care placements. Such reports shall include, but not
27 be limited to, (A) personal data on length of time in foster care, (B)
28 number of placements, (C) frequency and results of foster care file audit
29 case reviews and court review hearings, (D) number of children supervised
30 by the foster care programs in the state annually, (E) trend data
31 impacting foster care, services, and placements, (F) analysis of the

1 data, and (G) recommendations for improving the foster care system in
2 Nebraska;

3 (v) Accumulation of data and the making of quarterly reports
4 regarding the children in foster care placements;

5 (vi) To the extent not prohibited by section 43-1310, evaluation of
6 the judicial and administrative data collected on foster care and the
7 dissemination of such data to the judiciary, public and private agencies,
8 the department, and members of the public; and

9 (vii) Manner in which the office shall determine the appropriateness
10 of requesting a court review hearing as provided for in section 43-1313.

11 (3) A local board shall send a written report to the office for each
12 foster care file audit case review conducted by the local board. A court
13 shall send a written report to the office for each foster care review
14 hearing conducted by the court.

15 (4) The office shall report and make recommendations to the
16 Legislature, the department, the Office of Probation Administration, the
17 courts, local boards, and county welfare offices. Such reports and
18 recommendations shall include, but not be limited to, the annual judicial
19 and administrative data collected on foster care pursuant to subsections
20 (2) and (3) of this section and the annual evaluation of such data. The
21 report and recommendations submitted to the Legislature shall be
22 submitted electronically. In addition, the Foster Care Review Office
23 shall provide copies of such reports and recommendations to each court
24 having the authority to make foster care placements. The executive
25 director of the office shall also provide, at a time specified by the
26 Health and Human Services Committee of the Legislature, regular
27 electronic updates regarding child welfare data and information at least
28 quarterly, and a fourth-quarter report which shall be the annual report.
29 The executive director shall include issues, policy concerns, and
30 problems which have come to the office and the executive director from
31 analysis of the data. The executive director shall recommend alternatives

1 to the identified problems and related needs of the office and the foster
2 care system to the committee. The Health and Human Services Committee
3 shall coordinate and prioritize data and information requests submitted
4 to the office by members of the Legislature. The annual report of the
5 office shall be completed by December 1 each year and shall be submitted
6 electronically to the committee.

7 (5) The executive director of the office or his or her designees
8 from the office may visit and observe foster care facilities in order to
9 ascertain whether the individual physical, psychological, and
10 sociological needs of each foster child are being met.

11 (6) At the request of any state agency, the executive director of
12 the office or his or her designees from the office may conduct a case
13 file review process and data analysis regarding any state ward or ward of
14 the court whether placed in-home or out-of-home at the time of the case
15 file review.

16 Sec. 5. Original sections 28-802, 28-830, 28-831, and 43-1303,
17 Reissue Revised Statutes of Nebraska, are repealed.