

LEGISLATURE OF NEBRASKA
ONE HUNDRED FIFTH LEGISLATURE
SECOND SESSION

LEGISLATIVE BILL 925

Introduced by Pansing Brooks, 28; Hilgers, 21; Howard, 9; Scheer, 19;
Wishart, 27.

Read first time January 09, 2018

Committee: Judiciary

- 1 A BILL FOR AN ACT relating to criminal law; to amend sections 28-320.01,
- 2 28-707, and 29-110, Reissue Revised Statutes of Nebraska; to change
- 3 certain penalty provisions relating to sexual assault of a child in
- 4 the third degree and child abuse; to change provisions relating to
- 5 time limitations for prosecution of visual depiction of sexually
- 6 explicit conduct and sexually explicit acts; and to repeal the
- 7 original sections.
- 8 Be it enacted by the people of the State of Nebraska,

1 Section 1. Section 28-320.01, Reissue Revised Statutes of Nebraska,
2 is amended to read:

3 28-320.01 (1) A person commits sexual assault of a child in the
4 second or third degree if he or she subjects another person fourteen
5 years of age or younger to sexual contact and the actor is at least
6 nineteen years of age or older.

7 (2) Sexual assault of a child is in the second degree if the actor
8 causes serious personal injury to the victim. Sexual assault of a child
9 in the second degree is a Class II felony for the first offense.

10 (3) Sexual assault of a child is in the third degree if the actor
11 does not cause serious personal injury to the victim. Sexual assault of a
12 child in the third degree is a Class IIA ~~IIIA~~ felony for the first
13 offense.

14 (4) Any person who is found guilty of second degree sexual assault
15 of a child under this section and who has previously been convicted (a)
16 under this section, (b) under section 28-319 of first degree or attempted
17 first degree sexual assault, (c) under section 28-319.01 for first degree
18 or attempted first degree sexual assault of a child, or (d) in any other
19 state or federal court under laws with essentially the same elements as
20 this section, section 28-319, or section 28-319.01 shall be guilty of a
21 Class IC felony and shall be sentenced to a mandatory minimum term of
22 twenty-five years in prison.

23 (5) Any person who is found guilty of third degree sexual assault of
24 a child under this section and who has previously been convicted (a)
25 under this section, (b) under section 28-319 of first degree or attempted
26 first degree sexual assault, (c) under section 28-319.01 for first degree
27 or attempted first degree sexual assault of a child, or (d) in any other
28 state or federal court under laws with essentially the same elements as
29 this section, section 28-319, or section 28-319.01 shall be guilty of a
30 Class IC felony.

31 Sec. 2. Section 28-707, Reissue Revised Statutes of Nebraska, is

1 amended to read:

2 28-707 (1) A person commits child abuse if he or she knowingly,
3 intentionally, or negligently causes or permits a minor child to be:

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

6 (b) Cruelly confined or cruelly punished;

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

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

12 (e) Placed in a situation to be sexually abused as defined in
13 section 28-319, 28-319.01, or 28-320.01; or

14 (f) Placed in a situation to be a trafficking victim as defined in
15 section 28-830.

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

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

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

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

29 (6) Child abuse is a Class II ~~IIA~~ felony if the offense is committed
30 negligently and results in the death of such child.

31 (7) Child abuse is a Class II felony if the offense is committed

1 knowingly and intentionally and results in serious bodily injury as
2 defined in such section.

3 (8) Child abuse is a Class IB felony if the offense is committed
4 knowingly and intentionally and results in the death of such child.

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

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

11 29-110 (1) Except as otherwise provided by law, no person shall be
12 prosecuted for any felony unless the indictment is found by a grand jury
13 within three years next after the offense has been done or committed or
14 unless a complaint for the same is filed before the magistrate within
15 three years next after the offense has been done or committed and a
16 warrant for the arrest of the defendant has been issued.

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

26 (3) Except as otherwise provided by law, no person shall be
27 prosecuted for kidnapping under section 28-313, false imprisonment under
28 section 28-314 or 28-315, child abuse under section 28-707, pandering
29 under section 28-802, debauching a minor under section 28-805, labor
30 trafficking or sex trafficking under section 28-831, or an offense under
31 section 28-813, ~~28-813.01~~, or ~~28-1463.03~~ when the victim is under sixteen

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

9 (4) Except as otherwise provided by law, no person shall be
10 prosecuted for an offense under section 28-813.01 or 28-1463.05 (a)
11 unless the indictment for such offense is found by a grand jury within
12 seven years next after the offense has been committed or within seven
13 years next after the victim's eighteenth birthday, whichever is later, or
14 (b) unless a complaint for such offense is filed before the magistrate
15 within seven years next after the offense has been committed or within
16 seven years next after the victim's eighteenth birthday, whichever is
17 later, and a warrant for the arrest of the defendant has been issued.

18 (5) (4) No person shall be prosecuted for a violation of the
19 Securities Act of Nebraska under section 8-1117 unless the indictment for
20 such offense is found by a grand jury within five years next after the
21 offense has been done or committed or unless a complaint for such offense
22 is filed before the magistrate within five years next after the offense
23 has been done or committed and a warrant for the arrest of the defendant
24 has been issued.

25 (6) (5) No person shall be prosecuted for criminal impersonation
26 under section 28-638, identity theft under section 28-639, or identity
27 fraud under section 28-640 unless the indictment for such offense is
28 found by a grand jury within five years next after the offense has been
29 done or committed or unless a complaint for such offense is filed before
30 the magistrate within five years next after the offense has been done or
31 committed and a warrant for the arrest of the defendant has been issued.

1 (7) ~~(6)~~ No person shall be prosecuted for a violation of section
2 68-1017 if the aggregate value of all funds and other benefits obtained
3 or attempted to be obtained is five hundred dollars or more unless the
4 indictment for such offense is found by a grand jury within five years
5 next after the offense has been done or committed or unless a complaint
6 for such offense is filed before the magistrate within five years next
7 after the offense has been done or committed and a warrant for the arrest
8 of the defendant has been issued.

9 (8) ~~(7)~~ No person shall be prosecuted for knowing and intentional
10 abuse, neglect, or exploitation of a vulnerable adult or senior adult
11 under section 28-386 unless the indictment for such offense is found by a
12 grand jury within six years next after the offense has been done or
13 committed or unless a complaint for such offense is filed before the
14 magistrate within six years next after the offense has been done or
15 committed and a warrant for the arrest of the defendant has been issued.

16 (9) ~~(8)~~ There shall not be any time limitations for prosecution or
17 punishment for treason, murder, arson, forgery, sexual assault in the
18 first or second degree under section 28-319 or 28-320, sexual assault of
19 a child in the second or third degree under section 28-320.01, incest
20 under section 28-703, ~~or~~ sexual assault of a child in the first degree
21 under section 28-319.01, labor trafficking of a minor or sex trafficking
22 of a minor under section 28-831, or an offense under section 28-1463.03;
23 nor shall there be any time limitations for prosecution or punishment for
24 sexual assault in the third degree under section 28-320 when the victim
25 is under sixteen years of age at the time of the offense.

26 (10) ~~(9)~~ The time limitations prescribed in this section shall
27 include all inchoate offenses pursuant to the Nebraska Criminal Code and
28 compounding a felony pursuant to section 28-301.

29 (11) ~~(10)~~ The time limitations prescribed in this section shall not
30 extend to any person fleeing from justice.

31 (12) ~~(11)~~ When any suit, information, or indictment for any crime or

1 misdemeanor is limited by any statute to be brought or exhibited within
2 any other time than is limited by this section, then the suit,
3 information, or indictment shall be brought or exhibited within the time
4 limited by such statute.

5 ~~(13)~~ (12) If any suit, information, or indictment is quashed or the
6 proceedings set aside or reversed on writ of error, the time during the
7 pendency of such suit, information, or indictment so quashed, set aside,
8 or reversed shall not be reckoned within this statute so as to bar any
9 new suit, information, or indictment for the same offense.

10 ~~(14)~~ (13) The changes made to this section by Laws 2004, LB 943,
11 shall apply to offenses committed prior to April 16, 2004, for which the
12 statute of limitations has not expired as of such date and to offenses
13 committed on or after such date.

14 ~~(15)~~ (14) The changes made to this section by Laws 2005, LB 713,
15 shall apply to offenses committed prior to September 4, 2005, for which
16 the statute of limitations has not expired as of such date and to
17 offenses committed on or after such date.

18 ~~(16)~~ (15) The changes made to this section by Laws 2009, LB 97, and
19 Laws 2006, LB 1199, shall apply to offenses committed prior to May 21,
20 2009, for which the statute of limitations has not expired as of such
21 date and to offenses committed on or after such date.

22 ~~(17)~~ (16) The changes made to this section by Laws 2010, LB809,
23 shall apply to offenses committed prior to July 15, 2010, for which the
24 statute of limitations has not expired as of such date and to offenses
25 committed on or after such date.

26 ~~(18)~~ (17) The changes made to this section by Laws 2016, LB934,
27 shall apply to offenses committed prior to April 19, 2016, for which the
28 statute of limitations has not expired as of such date and to offenses
29 committed on or after such date.

30 (19) The changes made to this section by this legislative bill shall
31 apply to offenses committed prior to the effective date of this act for

1 which the statute of limitations has not expired as of such date and to
2 offenses committed on or after such date.

3 Sec. 4. Original sections 28-320.01, 28-707, and 29-110, Reissue
4 Revised Statutes of Nebraska, are repealed.