

AMENDMENTS TO LB519

(Amendments to Standing Committee amendments, AM1460)

Introduced by Wishart, 27.

1 1. Insert the following sections:

2 Sec. 2. Section 27-404, Reissue Revised Statutes of Nebraska, is
3 amended to read:

4 27-404 (1) Evidence of a person's character or a trait of his or her
5 character is not admissible for the purpose of proving that he or she
6 acted in conformity therewith on a particular occasion, except:

7 (a) Evidence of a pertinent trait of his or her character offered by
8 an accused, or by the prosecution to rebut the same;

9 (b) Evidence of a pertinent trait of character of the victim of the
10 crime offered by an accused or by the prosecution to rebut the same, or
11 evidence of a character trait of peacefulness of the victim offered by
12 the prosecution in a homicide case to rebut evidence that the victim was
13 the first aggressor. In a sexual assault case, reputation, opinion, or
14 other evidence of past sexual behavior of the victim is governed by
15 section 27-412; or

16 (c) Evidence of the character of a witness as provided in sections
17 27-607 to 27-609.

18 (2) Evidence of other crimes, wrongs, or acts is not admissible to
19 prove the character of a person in order to show that he or she acted in
20 conformity therewith. It may, however, be admissible for other purposes,
21 such as proof of motive, opportunity, intent, preparation, plan,
22 knowledge, identity, or absence of mistake or accident.

23 (3) When such evidence is admissible pursuant to this section, in
24 criminal cases evidence of other crimes, wrongs, or acts of the accused
25 may be offered in evidence by the prosecution if the prosecution proves
26 to the court by clear and convincing evidence that the accused committed

1 the crime, wrong, or act. Such proof shall first be made outside the
2 presence of any jury.

3 (4) Regarding the admissibility in a civil or criminal action of
4 evidence of a person's commission of another offense or offenses of
5 sexual assault under sections 28-319 to 28-322.04 and section 7 of this
6 act, see sections 27-413 to 27-415.

7 Sec. 3. Section 27-413, Reissue Revised Statutes of Nebraska, is
8 amended to read:

9 27-413 For purposes of sections 27-414 and 27-415, offense of sexual
10 assault means sexual assault under section 28-319 or 28-320, sexual
11 assault of a child under section 28-319.01 or 28-320.01, sexual assault
12 by use of an electronic communication device under section 28-320.02,
13 sexual abuse of an inmate or parolee under sections 28-322.01 to
14 28-322.03, sexual abuse of a protected individual under section
15 28-322.04, sexual abuse of a detainee under section 8 of this act, an
16 attempt or conspiracy to commit any of the crimes listed in this section,
17 or the commission of or conviction for a crime in another jurisdiction
18 that is substantially similar to any crime listed in this section.

19 Sec. 5. Section 28-115, Reissue Revised Statutes of Nebraska, is
20 amended to read:

21 28-115 (1) Except as provided in subsection (2) of this section, any
22 person who commits any of the following criminal offenses against a
23 pregnant woman shall be punished by the imposition of the next higher
24 penalty classification than the penalty classification prescribed for the
25 criminal offense:

- 26 (a) Assault in the first degree, section 28-308;
- 27 (b) Assault in the second degree, section 28-309;
- 28 (c) Assault in the third degree, section 28-310;
- 29 (d) Sexual assault in the first degree, section 28-319;
- 30 (e) Sexual assault in the second or third degree, section 28-320;
- 31 (f) Sexual assault of a child in the first degree, section

1 28-319.01;

2 (g) Sexual assault of a child in the second or third degree, section
3 28-320.01;

4 (h) Sexual abuse of an inmate or parolee in the first degree,
5 section 28-322.02;

6 (i) Sexual abuse of an inmate or parolee in the second degree,
7 section 28-322.03;

8 (j) Sexual abuse of a protected individual in the first or second
9 degree, section 28-322.04;

10 (k) Sexual abuse of a detainee under section 8 of this act;

11 (l) ~~(k)~~ Domestic assault in the first, second, or third degree,
12 section 28-323;

13 (m) ~~(l)~~ Assault on an officer, an emergency responder, a state
14 correctional employee, a Department of Health and Human Services
15 employee, or a health care professional in the first degree, section
16 28-929;

17 (n) ~~(m)~~ Assault on an officer, an emergency responder, a state
18 correctional employee, a Department of Health and Human Services
19 employee, or a health care professional in the second degree, section
20 28-930;

21 (o) ~~(n)~~ Assault on an officer, an emergency responder, a state
22 correctional employee, a Department of Health and Human Services
23 employee, or a health care professional in the third degree, section
24 28-931;

25 (p) ~~(o)~~ Assault on an officer, an emergency responder, a state
26 correctional employee, a Department of Health and Human Services
27 employee, or a health care professional using a motor vehicle, section
28 28-931.01;

29 (q) ~~(p)~~ Assault by a confined person, section 28-932;

30 (r) ~~(q)~~ Confined person committing offenses against another person,
31 section 28-933; and

1 (s) ~~(r)~~ Proximately causing serious bodily injury while operating a
2 motor vehicle, section 60-6,198.

3 (2) The enhancement in subsection (1) of this section does not apply
4 to any criminal offense listed in subsection (1) of this section that is
5 already punishable as a Class I, IA, or IB felony. If any criminal
6 offense listed in subsection (1) of this section is punishable as a Class
7 I misdemeanor, the penalty under this section is a Class IIIA felony.

8 (3) The prosecution shall allege and prove beyond a reasonable doubt
9 that the victim was pregnant at the time of the offense.

10 Sec. 6. Section 28-318, Reissue Revised Statutes of Nebraska, is
11 amended to read:

12 28-318 As used in sections 28-317 to 28-322.04 and section 8 of this
13 act, unless the context otherwise requires:

14 (1) Actor means a person accused of sexual assault;

15 (2) Intimate parts means the genital area, groin, inner thighs,
16 buttocks, or breasts;

17 (3) Past sexual behavior means sexual behavior other than the sexual
18 behavior upon which the sexual assault is alleged;

19 (4) Serious personal injury means great bodily injury or
20 disfigurement, extreme mental anguish or mental trauma, pregnancy,
21 disease, or loss or impairment of a sexual or reproductive organ;

22 (5) Sexual contact means the intentional touching of the victim's
23 sexual or intimate parts or the intentional touching of the victim's
24 clothing covering the immediate area of the victim's sexual or intimate
25 parts. Sexual contact ~~shall~~ also means ~~mean~~ the touching by the victim of
26 the actor's sexual or intimate parts or the clothing covering the
27 immediate area of the actor's sexual or intimate parts when such touching
28 is intentionally caused by the actor. Sexual contact includes ~~shall~~
29 ~~include~~ only such conduct which can be reasonably construed as being for
30 the purpose of sexual arousal or gratification of either party. Sexual
31 contact ~~shall~~ also includes ~~include~~ the touching of a child with the

1 actor's sexual or intimate parts on any part of the child's body for
2 purposes of sexual assault of a child under sections 28-319.01 and
3 28-320.01;

4 (6) Sexual penetration means sexual intercourse in its ordinary
5 meaning, cunnilingus, fellatio, anal intercourse, or any intrusion,
6 however slight, of any part of the actor's or victim's body or any object
7 manipulated by the actor into the genital or anal openings of the
8 victim's body which can be reasonably construed as being for nonmedical,
9 ~~or nonhealth,~~ or non-law enforcement purposes. Sexual penetration shall
10 not require emission of semen;

11 (7) Victim means the person alleging to have been sexually
12 assaulted;

13 (8) Without consent means:

14 (a)(i) The victim was compelled to submit due to the use of force or
15 threat of force or coercion, or (ii) the victim expressed a lack of
16 consent through words, or (iii) the victim expressed a lack of consent
17 through conduct, or (iv) the consent, if any was actually given, was the
18 result of the actor's deception as to the identity of the actor or the
19 nature or purpose of the act on the part of the actor;

20 (b) The victim need only resist, either verbally or physically, so
21 as to make the victim's refusal to consent genuine and real and so as to
22 reasonably make known to the actor the victim's refusal to consent; and

23 (c) A victim need not resist verbally or physically where it would
24 be useless or futile to do so; and

25 (9) Force or threat of force means (a) the use of physical force
26 which overcomes the victim's resistance or (b) the threat of physical
27 force, express or implied, against the victim or a third person that
28 places the victim in fear of death or in fear of serious personal injury
29 to the victim or a third person where the victim reasonably believes that
30 the actor has the present or future ability to execute the threat.

31 Sec. 7. Section 28-322.01, Reissue Revised Statutes of Nebraska, is

1 amended to read:

2 28-322.01 (1) A person commits the offense of sexual abuse of an
3 inmate or parolee if such person subjects an inmate or parolee to sexual
4 penetration or sexual contact as those terms are defined in section
5 28-318. It is not a defense to a charge under this section that the
6 inmate or parolee consented to such sexual penetration or sexual contact.

7 (2) An otherwise lawful pat-down or body cavity search by a person
8 is not a violation of this section.

9 Sec. 8. (1) For purposes of this section:

10 (a) Detainee means an individual who has been:

11 (i) Arrested by a person;

12 (ii) Detained by a person, regardless of whether the detainee has
13 been arrested or charged; or

14 (iii) Placed into the custody of a person, regardless of whether the
15 detainee has been arrested or charged;

16 (b) Law enforcement agency means an agency or department of this
17 state or of any political subdivision of this state which is responsible
18 for the prevention and detection of crime; the enforcement of the penal,
19 traffic, or highway laws of this state or any political subdivision of
20 this state; and the enforcement of arrest warrants. Law enforcement
21 agency includes a police department, an office of the town marshal, an
22 office of the county sheriff, the Nebraska State Patrol, and any
23 department to which a deputy state sheriff is assigned as provided in
24 section 84-106; and

25 (c) Person means an individual:

26 (i) Who is employed by a law enforcement agency, including an
27 individual working under contract with the agency;

28 (ii) To whom the law enforcement agency has authorized or delegated
29 authority to make arrests, to place a detainee in detention or custody,
30 or to otherwise exercise control over a detainee or a detainee's
31 activities; and

1 (iii) Who is not the spouse of a detainee.

2 (2) A person commits the offense of sexual abuse of a detainee if
3 the person engages in sexual penetration or sexual contact with a
4 detainee. It is not a defense to a charge under this section that the
5 detainee consented to such sexual penetration or sexual contact.

6 (3) An otherwise lawful pat-down or body cavity search by a person
7 is not a violation of this section.

8 (4) Any person who engages in sexual penetration with a detainee is
9 guilty of sexual abuse of a detainee in the first degree. Sexual abuse of
10 a detainee in the first degree is a Class IIA felony.

11 (5) Any person who engages in sexual contact with a detainee is
12 guilty of sexual abuse of a detainee in the second degree. Sexual abuse
13 of a detainee in the second degree is a Class IIIA felony.

14 Sec. 15. Section 29-4003, Reissue Revised Statutes of Nebraska, is
15 amended to read:

16 29-4003 (1)(a) The Sex Offender Registration Act applies to any
17 person who on or after January 1, 1997:

18 (i) Has ever pled guilty to, pled nolo contendere to, or been found
19 guilty of any of the following:

20 (A) Kidnapping of a minor pursuant to section 28-313, except when
21 the person is the parent of the minor and was not convicted of any other
22 offense in this section;

23 (B) False imprisonment of a minor pursuant to section 28-314 or
24 28-315;

25 (C) Sexual assault pursuant to section 28-319 or 28-320;

26 (D) Sexual assault of a child in the second or third degree pursuant
27 to section 28-320.01;

28 (E) Sexual assault of a child in the first degree pursuant to
29 section 28-319.01;

30 (F) Sexual abuse of a vulnerable adult or senior adult pursuant to
31 subdivision (1)(c) of section 28-386;

1 (G) Incest of a minor pursuant to section 28-703;

2 (H) Pandering of a minor pursuant to section 28-802;

3 (I) Visual depiction of sexually explicit conduct of a child
4 pursuant to section 28-1463.03 or 28-1463.05;

5 (J) Knowingly possessing any visual depiction of sexually explicit
6 conduct which has a child as one of its participants or portrayed
7 observers pursuant to section 28-813.01;

8 (K) Criminal child enticement pursuant to section 28-311;

9 (L) Child enticement by means of an electronic communication device
10 pursuant to section 28-320.02;

11 (M) Debauching a minor pursuant to section 28-805; or

12 (N) Attempt, solicitation, aiding or abetting, being an accessory,
13 or conspiracy to commit an offense listed in subdivisions (1)(a)(i)(A)
14 through (1)(a)(i)(M) of this section;

15 (ii) Has ever pled guilty to, pled nolo contendere to, or been found
16 guilty of any offense that is substantially equivalent to a registrable
17 offense under subdivision (1)(a)(i) of this section by any village, town,
18 city, state, territory, commonwealth, or other jurisdiction of the United
19 States, by the United States Government, by court-martial or other
20 military tribunal, or by a foreign jurisdiction, notwithstanding a
21 procedure comparable in effect to that described under section 29-2264 or
22 any other procedure to nullify a conviction other than by pardon;

23 (iii) Is incarcerated in a jail, a penal or correctional facility,
24 or any other public or private institution or is under probation or
25 parole as a result of pleading guilty to or being found guilty of a
26 registrable offense under subdivision (1)(a)(i) or (ii) of this section
27 prior to January 1, 1997; or

28 (iv) Enters the state and is required to register as a sex offender
29 under the laws of another village, town, city, state, territory,
30 commonwealth, or other jurisdiction of the United States.

31 (b) In addition to the registrable offenses under subdivision (1)(a)

1 of this section, the Sex Offender Registration Act applies to any person
2 who on or after January 1, 2010:

3 (i)(A) Except as provided in subdivision (1)(b)(i)(B) of this
4 section, has ever pled guilty to, pled nolo contendere to, or been found
5 guilty of any of the following:

6 (I) Murder in the first degree pursuant to section 28-303;

7 (II) Murder in the second degree pursuant to section 28-304;

8 (III) Manslaughter pursuant to section 28-305;

9 (IV) Assault in the first degree pursuant to section 28-308;

10 (V) Assault in the second degree pursuant to section 28-309;

11 (VI) Assault in the third degree pursuant to section 28-310;

12 (VII) Stalking pursuant to section 28-311.03;

13 (VIII) Violation of section 28-311.08 requiring registration under
14 the act pursuant to subsection (5) of section 28-311.08;

15 (IX) Kidnapping pursuant to section 28-313;

16 (X) False imprisonment pursuant to section 28-314 or 28-315;

17 (XI) Sexual abuse of an inmate or parolee in the first degree
18 pursuant to section 28-322.02;

19 (XII) Sexual abuse of an inmate or parolee in the second degree
20 pursuant to section 28-322.03;

21 (XIII) Sexual abuse of a protected individual pursuant to section
22 28-322.04;

23 (XIV) Incest pursuant to section 28-703;

24 (XV) Child abuse pursuant to subdivision (1)(d) or (e) of section
25 28-707;

26 (XVI) Enticement by electronic communication device pursuant to
27 section 28-833; or

28 (XVII) Attempt, solicitation, aiding or abetting, being an
29 accessory, or conspiracy to commit an offense listed in subdivisions (1)
30 (b)(i)(A)(I) through (1)(b)(i)(A)(XVI) of this section.

31 (B) In order for the Sex Offender Registration Act to apply to the

1 offenses listed in subdivisions (1)(b)(i)(A)(I), (II), (III), (IV), (V),
2 (VI), (VII), (IX), and (X) of this section, a court shall have found that
3 evidence of sexual penetration or sexual contact, as those terms are
4 defined in section 28-318, was present in the record, which shall include
5 consideration of the factual basis for a plea-based conviction and
6 information contained in the presentence report;

7 (ii) Has ever pled guilty to, pled nolo contendere to, or been found
8 guilty of any offense that is substantially equivalent to a registrable
9 offense under subdivision (1)(b)(i) of this section by any village, town,
10 city, state, territory, commonwealth, or other jurisdiction of the United
11 States, by the United States Government, by court-martial or other
12 military tribunal, or by a foreign jurisdiction, notwithstanding a
13 procedure comparable in effect to that described under section 29-2264 or
14 any other procedure to nullify a conviction other than by pardon; or

15 (iii) Enters the state and is required to register as a sex offender
16 under the laws of another village, town, city, state, territory,
17 commonwealth, or other jurisdiction of the United States.

18 (c) In addition to the registrable offenses under subdivisions (1)
19 (a) and (b) of this section, the Sex Offender Registration Act applies to
20 any person who on or after January 1, 2020:

21 (i) Has ever pled guilty to, pled nolo contendere to, or been found
22 guilty of sexual abuse of a detainee under section 8 of this act; or

23 (ii) Has ever pled guilty to, pled nolo contendere to, or been found
24 guilty of any offense that is substantially equivalent to a registrable
25 offense under subdivision (1)(c)(i) of this section by any village, town,
26 city, state, territory, commonwealth, or other jurisdiction of the United
27 States, by the United States Government, by court-martial or other
28 military tribunal, or by a foreign jurisdiction, notwithstanding a
29 procedure comparable in effect to that described under section 29-2264 or
30 any other procedure to nullify a conviction other than by pardon.

31 (2) A person appealing a conviction of a registrable offense under

1 this section shall be required to comply with the act during the appeals
2 process.

3 Sec. 17. Section 83-4,143, Revised Statutes Cumulative Supplement,
4 2018, is amended to read:

5 83-4,143 (1) It is the intent of the Legislature that the court
6 target the felony offender (a) who is eligible and by virtue of his or
7 her criminogenic needs is suitable to be sentenced to intensive
8 supervision probation with placement at the incarceration work camp, (b)
9 for whom the court finds that other conditions of a sentence of intensive
10 supervision probation, in and of themselves, are not suitable, and (c)
11 who, without the existence of an incarceration work camp, would, in all
12 likelihood, be sentenced to prison.

13 (2) When the court is of the opinion that imprisonment is
14 appropriate, but that a brief and intensive period of regimented,
15 structured, and disciplined programming within a secure facility may
16 better serve the interests of society, the court may place an offender in
17 an incarceration work camp for a period not to exceed one hundred eighty
18 days as a condition of a sentence of intensive supervision probation. The
19 court may consider such placement if the offender (a) is a male or female
20 offender convicted of a felony offense in a district court, (b) is
21 medically and mentally fit to participate, with allowances given for
22 reasonable accommodation as determined by medical and mental health
23 professionals, and (c) has not previously been incarcerated for a violent
24 felony crime. Offenders convicted of a crime under sections 28-319 to
25 28-322.04 and section 8 of this act or of any capital crime are not
26 eligible to be placed in an incarceration work camp.

27 (3) It is also the intent of the Legislature that the Board of
28 Parole may recommend placement of felony offenders at the incarceration
29 work camp. The offenders recommended by the board shall be offenders
30 currently housed at other Department of Correctional Services adult
31 correctional facilities and shall complete the incarceration work camp

1 programming prior to release on parole.

2 (4) When the Board of Parole is of the opinion that a felony
3 offender currently incarcerated in a Department of Correctional Services
4 adult correctional facility may benefit from a brief and intensive period
5 of regimented, structured, and disciplined programming immediately prior
6 to release on parole, the board may direct placement of such an offender
7 in an incarceration work camp for a period not to exceed one hundred
8 eighty days as a condition of release on parole. The board may consider
9 such placement if the felony offender (a) is medically and mentally fit
10 to participate, with allowances given for reasonable accommodation as
11 determined by medical and mental health professionals, and (b) has not
12 previously been incarcerated for a violent felony crime. Offenders
13 convicted of a crime under sections 28-319 to 28-322.04 and section 8 of
14 this act or of any capital crime are not eligible to be placed in an
15 incarceration work camp.

16 (5) The Director of Correctional Services may assign a felony
17 offender to an incarceration work camp if he or she believes it is in the
18 best interests of the felony offender and of society, except that
19 offenders convicted of a crime under sections 28-319 to 28-322.04 and
20 section 8 of this act ~~28-321~~ or of any capital crime are not eligible to
21 be assigned to an incarceration work camp pursuant to this subsection.

22 2. On page 2, line 18, strike "section" and insert "sections"; and
23 in line 19 strike "6" and insert "8 and 12".

24 3. Renumber the remaining sections and correct the repealer
25 accordingly.