

LEGISLATURE OF NEBRASKA
ONE HUNDRED SIXTH LEGISLATURE
FIRST SESSION

LEGISLATIVE BILL 630

FINAL READING

Introduced by Morfeld, 46.

Read first time January 23, 2019

Committee: Judiciary

1 A BILL FOR AN ACT relating to crimes and offenses; to amend sections
2 28-311.08, 28-513, 28-813.01, 28-1463.03, 28-1463.05, and 29-4003,
3 Reissue Revised Statutes of Nebraska, and section 28-1310, Revised
4 Statutes Cumulative Supplement, 2018; to change elements of, penalty
5 provisions for, and defenses to offenses involving unlawful
6 intrusion and sexually explicit conduct; to change provisions
7 relating to theft and extortion and intimidation by telephone call
8 or electronic communication; to change applicability of certain
9 provisions of the Sex Offender Registration Act; to provide and
10 change penalties; to harmonize provisions; and to repeal the
11 original sections.
12 Be it enacted by the people of the State of Nebraska,

1 Section 1. Section 28-311.08, Reissue Revised Statutes of Nebraska,
2 is amended to read:

3 28-311.08 (1) It shall be unlawful for any person to knowingly
4 intrude upon any other person without his or her consent ~~or knowledge~~ in
5 a place of solitude or seclusion. Violation of this subsection is a Class
6 I misdemeanor. A second or subsequent violation of this subsection is a
7 Class IV felony.

8 (2) It shall be unlawful for any person to knowingly and
9 intentionally photograph, film, or otherwise record, ~~or live broadcast~~ an
10 image or video of the intimate area of any other person without his or
11 her knowledge and consent when his or her intimate area would not be
12 generally visible to the public regardless of whether such other person
13 is located in a public or private place. Violation of this subsection is
14 a Class IV felony.

15 (3) It shall be unlawful for any person to knowingly and
16 intentionally distribute or otherwise make public an image or video of
17 another person recorded in violation of subsection (2) of this section
18 without that person's consent. A first or second violation of this
19 subsection is a Class IIA felony. A third or subsequent violation of this
20 subsection is a Class II felony.

21 (4) It shall be unlawful for any person to knowingly and
22 intentionally distribute or otherwise make public an image or video of
23 another person's intimate area or of another person engaged in sexually
24 explicit conduct (a) if the other person had a reasonable expectation
25 that the image would remain private, (b) knowing the other person did not
26 consent to distributing or making public the image or video, and (c) if
27 distributing or making public the image or video serves no legitimate
28 purpose. Violation of this subsection is a Class I misdemeanor. A second
29 or subsequent violation of this subsection is a Class IV felony.

30 (5) It shall be unlawful for any person to threaten to distribute or
31 otherwise make public an image or video of another person's intimate area

1 or of another person engaged in sexually explicit conduct with the intent
2 to intimidate, threaten, or harass any person. Violation of this
3 subsection is a Class I misdemeanor.

4 ~~(3) For purposes of this section:~~

5 ~~(a) Intimate area means the naked or undergarment-clad genitalia,~~
6 ~~public area, buttocks, or female breast of an individual;~~

7 ~~(b) Intrude means either the:~~

8 ~~(i) Viewing of another person in a state of undress as it is~~
9 ~~occurring; or~~

10 ~~(ii) Recording by video, photographic, digital, or other electronic~~
11 ~~means of another person in a state of undress; and~~

12 ~~(c) Place of solitude or seclusion means a place where a person~~
13 ~~would intend to be in a state of undress and have a reasonable~~
14 ~~expectation of privacy, including, but not limited to, any facility,~~
15 ~~public or private, used as a restroom, tanning booth, locker room, shower~~
16 ~~room, fitting room, or dressing room.~~

17 ~~(4)(a) Violation of this section involving an intrusion as defined~~
18 ~~in subdivision (3)(b)(i) of this section or violation under subsection~~
19 ~~(2) of this section is a Class I misdemeanor.~~

20 ~~(b) Subsequent violation of this section involving an intrusion as~~
21 ~~defined in subdivision (3)(b)(i) of this section, subsequent violation~~
22 ~~under subsection (2) of this section, or violation of this section~~
23 ~~involving an intrusion as defined in subdivision (3)(b)(ii) of this~~
24 ~~section is a Class IV felony.~~

25 ~~(c) Violation of this section is a Class IIA felony if video or an~~
26 ~~image recorded in violation of this section is distributed to another~~
27 ~~person or otherwise made public in any manner which would enable it to be~~
28 ~~viewed by another person.~~

29 ~~(6) (5) As part of sentencing following a conviction for a violation~~
30 ~~of subsection (1), (2), or (3) of this section, the court shall make a~~
31 ~~finding as to the ages of the defendant and the victim at the time the~~

1 offense occurred. If the defendant is found to have been nineteen years
2 of age or older and the victim is found to have been less than eighteen
3 years of age at such time, then the defendant shall be required to
4 register under the Sex Offender Registration Act.

5 ~~(7) (6)~~ No person shall be prosecuted under pursuant to subdivision
6 ~~(4)(b) or (c)~~ of this section unless the indictment for such offense is
7 found by a grand jury or a complaint filed before a magistrate within
8 three years after the later of:

9 (a) The commission of the crime;

10 (b) Law enforcement's or a victim's receipt of actual or
11 constructive notice of either the existence of a video or other
12 electronic recording made in violation of this section or the
13 distribution of images, video, or other electronic recording made in
14 violation of this section; or

15 (c) The youngest victim of a violation of this section reaching the
16 age of twenty-one years.

17 (8) For purposes of this section:

18 (a) Intimate area means the naked or undergarment-clad genitalia,
19 pubic area, buttocks, or female breast of an individual;

20 (b) Intrude means either:

21 (i) Viewing another person in a state of undress as it is occurring;

22 or

23 (ii) Recording another person in a state of undress by video,
24 photographic, digital, or other electronic means; and

25 (c) Place of solitude or seclusion means a place where a person
26 would intend to be in a state of undress and have a reasonable
27 expectation of privacy, including, but not limited to, any facility,
28 public or private, used as a restroom, tanning booth, locker room, shower
29 room, fitting room, or dressing room.

30 Sec. 2. Section 28-513, Reissue Revised Statutes of Nebraska, is
31 amended to read:

1 28-513 (1) A person commits theft if he or she obtains property,
2 money, or other thing of value of another by threatening to:

3 (a) Inflict bodily injury on anyone or commit any other criminal
4 offense;~~or~~

5 (b) Accuse anyone of a criminal offense;~~or~~

6 (c) Expose any secret tending to subject any person to hatred,
7 contempt or ridicule, or to impair his or her credit or business repute;
8 ~~or~~

9 (d) Take or withhold action as an official, or cause an official to
10 take or withhold action;~~or~~

11 (e) Bring about or continue a strike, boycott, or other collective
12 unofficial action, if the property, money, or other thing of value is not
13 demanded or received for the benefit of the group in whose interest the
14 actor purports to act;~~or~~

15 (f) Testify or provide information or withhold testimony or
16 information with respect to another's legal claim or defense;or ~~or~~

17 (g) Distribute or otherwise make public an image or video of a
18 person's intimate area or of a person engaged in sexually explicit
19 conduct without that person's consent.

20 (2) It is an affirmative defense to prosecution based on subdivision
21 (1)(b), (1)(c), or (1)(d) of this section that the property, money, or
22 other thing of value obtained by threat of accusation, exposure, lawsuit,
23 or other invocation of official action was honestly claimed as
24 restitution or indemnification for harm done in the circumstances to
25 which such accusation, exposure, lawsuit, or other official action
26 relates, or as compensation for property or lawful services.

27 Sec. 3. Section 28-813.01, Reissue Revised Statutes of Nebraska, is
28 amended to read:

29 28-813.01 (1) It shall be unlawful for a person nineteen years of
30 age or older to knowingly possess any visual depiction of sexually
31 explicit conduct, ~~as defined in section 28-1463.02,~~ which has a child, ~~as~~

1 ~~defined in such section,~~ as one of its participants or portrayed
2 observers. Violation of this subsection is a Class IIA felony.

3 (2) It shall be unlawful for a person under nineteen years of age to
4 knowingly and intentionally possess any visual depiction of sexually
5 explicit conduct which has a child other than the defendant as one of its
6 participants or portrayed observers. Violation of this subsection is (2)
7 ~~(a) Any person who is under nineteen years of age at the time he or she~~
8 ~~violates this section shall be guilty of a Class I misdemeanor IV felony~~
9 ~~for each offense. A second or subsequent conviction under this subsection~~
10 is a Class IV felony.

11 (3) It shall be an affirmative defense to a charge made pursuant to
12 subsection (2) of this section that:

13 (a)(i) The defendant was less than nineteen years of age; (ii) the
14 visual depiction of sexually explicit conduct portrays a child who is
15 fifteen years of age or older; (iii) the visual depiction was knowingly
16 and voluntarily generated by the child depicted therein; (iv) the visual
17 depiction was knowingly and voluntarily provided by the child depicted in
18 the visual depiction; (v) the visual depiction contains only one child;
19 (vi) the defendant has not provided or made available the visual
20 depiction to another person except the child depicted who originally sent
21 the visual depiction to the defendant; and (vii) the defendant did not
22 coerce the child in the visual depiction to either create or send the
23 visual depiction; or

24 (b)(i) The defendant was less than eighteen years of age; (ii) the
25 difference in age between the defendant and the child portrayed is less
26 than four years; (iii) the visual depiction was knowingly and voluntarily
27 generated by the child depicted therein; (iv) the visual depiction was
28 knowingly and voluntarily provided by the child depicted in the visual
29 depiction; (v) the visual depiction contains only one child; (vi) the
30 defendant has not provided or made available the visual depiction to
31 another person except the child depicted who originally sent the visual

1 depiction to the defendant; and (vii) the defendant did not coerce the
2 child in the visual depiction to either create or send the visual
3 depiction.

4 ~~(b) Any person who is nineteen years of age or older at the time he~~
5 ~~or she violates this section shall be guilty of a Class IIA felony for~~
6 ~~each offense.~~

7 (4) ~~(c)~~ Any person who violates subsection (1) or (2) of this
8 section and has previously been convicted of a violation of this section
9 or section 28-308, 28-309, 28-310, 28-311, 28-313, 28-314, 28-315,
10 28-319, 28-319.01, 28-320.01, 28-833, 28-1463.03, or 28-1463.05 or
11 subsection (1) or (2) of section 28-320 shall be guilty of a Class IC
12 felony for each offense.

13 ~~(3) It shall be an affirmative defense to a charge made pursuant to~~
14 ~~this section that:~~

15 ~~(a) The visual depiction portrays no person other than the~~
16 ~~defendant; or~~

17 ~~(b)(i) The defendant was less than nineteen years of age; (ii) the~~
18 ~~visual depiction of sexually explicit conduct portrays a child who is~~
19 ~~fifteen years of age or older; (iii) the visual depiction was knowingly~~
20 ~~and voluntarily generated by the child depicted therein; (iv) the visual~~
21 ~~depiction was knowingly and voluntarily provided by the child depicted in~~
22 ~~the visual depiction; (v) the visual depiction contains only one child;~~
23 ~~(vi) the defendant has not provided or made available the visual~~
24 ~~depiction to another person except the child depicted who originally sent~~
25 ~~the visual depiction to the defendant; and (vii) the defendant did not~~
26 ~~coerce the child in the visual depiction to either create or send the~~
27 ~~visual depiction.~~

28 (5) ~~(4)~~ In addition to the penalties provided in this section, a
29 sentencing court may order that any money, securities, negotiable
30 instruments, firearms, conveyances, or electronic communication devices
31 as defined in section 28-833 or any equipment, components, peripherals,

1 software, hardware, or accessories related to electronic communication
2 devices be forfeited as a part of the sentence imposed if it finds by
3 clear and convincing evidence adduced at a separate hearing in the same
4 prosecution, conducted pursuant to section 28-1601, that any or all such
5 property was derived from, used, or intended to be used to facilitate a
6 violation of this section.

7 (6) The definitions in section 28-1463.02 shall apply to this
8 section.

9 Sec. 4. Section 28-1310, Revised Statutes Cumulative Supplement,
10 2018, is amended to read:

11 28-1310 (1) A person commits the offense of intimidation by
12 telephone call or electronic communication if, with intent to intimidate,
13 threaten, or harass an individual, the person telephones such individual
14 or transmits an electronic communication directly to such individual,
15 whether or not conversation or an electronic response ensues, and the
16 person:

17 (a) Uses obscene language or suggests any obscene act;

18 (b) Threatens to inflict physical or mental injury to such
19 individual or any other person or physical injury to the property of such
20 individual or any other person; or

21 (c) Attempts to extort property, money, or other thing of value from
22 such individual or any other person.

23 (2) The offense shall be deemed to have been committed either at the
24 place where the call or electronic communication was initiated or where
25 it was received.

26 (3) Intimidation by telephone call or electronic communication is a
27 Class III misdemeanor.

28 (4) For purposes of this section, electronic communication means any
29 writing, sound, visual image, or data of any nature that is received or
30 transmitted by an electronic communication device as defined in section
31 28-833.

1 Sec. 5. Section 28-1463.03, Reissue Revised Statutes of Nebraska, is
2 amended to read:

3 28-1463.03 (1) It shall be unlawful for a person to knowingly make,
4 publish, direct, create, provide, or in any manner generate any visual
5 depiction of sexually explicit conduct which has a child other than the
6 defendant as one of its participants or portrayed observers.

7 (2) It shall be unlawful for a person knowingly to purchase, rent,
8 sell, deliver, distribute, display for sale, advertise, trade, or provide
9 to any person any visual depiction of sexually explicit conduct which has
10 a child other than the defendant as one of its participants or portrayed
11 observers.

12 (3) It shall be unlawful for a person to knowingly employ, force,
13 authorize, induce, or otherwise cause a child to engage in any visual
14 depiction of sexually explicit conduct which has a child as one of its
15 participants or portrayed observers.

16 (4) It shall be unlawful for a parent, stepparent, legal guardian,
17 or any person with custody and control of a child, knowing the content
18 thereof, to consent to such child engaging in any visual depiction of
19 sexually explicit conduct which has a child as one of its participants or
20 portrayed observers.

21 ~~(5) It shall be an affirmative defense to a charge brought pursuant~~
22 ~~to subsection (1) of this section if the defendant was less than eighteen~~
23 ~~years of age at the time the visual depiction was created and the visual~~
24 ~~depiction of sexually explicit conduct includes no person other than the~~
25 ~~defendant.~~

26 ~~(6) It shall be an affirmative defense to a charge brought pursuant~~
27 ~~to subsection (2) of this section if (a) the defendant was less than~~
28 ~~eighteen years of age, (b) the visual depiction of sexually explicit~~
29 ~~conduct includes no person other than the defendant, (c) the defendant~~
30 ~~had a reasonable belief at the time the visual depiction was sent to~~
31 ~~another that it was being sent to a willing recipient, and (d) the~~

1 ~~recipient was at least fifteen years of age at the time the visual~~
2 ~~depiction was sent.~~

3 Sec. 6. Section 28-1463.05, Reissue Revised Statutes of Nebraska, is
4 amended to read:

5 28-1463.05 (1) It shall be unlawful for a person to knowingly
6 possess with intent to rent, sell, deliver, distribute, trade, or provide
7 to any person any visual depiction of sexually explicit conduct which has
8 a child other than the defendant as one of its participants or portrayed
9 observers.

10 (2)(a) Any person who is under nineteen years of age at the time he
11 or she violates this section shall be guilty of a Class IIIA felony for
12 each offense.

13 (b) Any person who is nineteen years of age or older at the time he
14 or she violates this section shall be guilty of a Class IIA felony for
15 each offense.

16 (c) Any person who violates this section and has previously been
17 convicted of a violation of this section or section 28-308, 28-309,
18 28-310, 28-311, 28-313, 28-314, 28-315, 28-319, 28-319.01, 28-320.01,
19 28-813, 28-833, or 28-1463.03 or subsection (1) or (2) of section 28-320
20 shall be guilty of a Class IC felony for each offense.

21 Sec. 7. Section 29-4003, Reissue Revised Statutes of Nebraska, is
22 amended to read:

23 29-4003 (1)(a) The Sex Offender Registration Act applies to any
24 person who on or after January 1, 1997:

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

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

30 (B) False imprisonment of a minor pursuant to section 28-314 or
31 28-315;

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

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

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

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

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

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

10 (I) Visual depiction of sexually explicit conduct of a child
11 pursuant to section 28-1463.03 or subdivision (2)(b) or (c) of section
12 28-1463.05;

13 (J) Knowingly possessing any visual depiction of sexually explicit
14 conduct which has a child as one of its participants or portrayed
15 observers pursuant to subsection (1) or (4) of section 28-813.01;

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

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

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

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

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)(a)(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 (iii) Is incarcerated in a jail, a penal or correctional facility,

1 or any other public or private institution or is under probation or
2 parole as a result of pleading guilty to or being found guilty of a
3 registrable offense under subdivision (1)(a)(i) or (ii) of this section
4 prior to January 1, 1997; or

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

8 (b) In addition to the registrable offenses under subdivision (1)(a)
9 of this section, the Sex Offender Registration Act applies to any person
10 who on or after January 1, 2010:

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

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

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

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

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

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

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

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

21 (VIII) Violation of section 28-311.08 requiring registration under
22 the act pursuant to subsection (6) ~~(5)~~ of section 28-311.08;

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

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

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

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

29 (XIII) Sexual abuse of a protected individual pursuant to section
30 28-322.04;

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

1 (XV) Child abuse pursuant to subdivision (1)(d) or (e) of section
2 28-707;

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

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

8 (B) In order for the Sex Offender Registration Act to apply to the
9 offenses listed in subdivisions (1)(b)(i)(A)(I), (II), (III), (IV), (V),
10 (VI), (VII), (IX), and (X) of this section, a court shall have found that
11 evidence of sexual penetration or sexual contact, as those terms are
12 defined in section 28-318, was present in the record, which shall include
13 consideration of the factual basis for a plea-based conviction and
14 information contained in the presentence report;

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)(b)(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; or

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

26 (2) A person appealing a conviction of a registrable offense under
27 this section shall be required to comply with the act during the appeals
28 process.

29 Sec. 8. Original sections 28-311.08, 28-513, 28-813.01, 28-1463.03,
30 28-1463.05, and 29-4003, Reissue Revised Statutes of Nebraska, and
31 section 28-1310, Revised Statutes Cumulative Supplement, 2018, are

1 repealed.