

LEGISLATURE OF NEBRASKA
ONE HUNDRED SIXTH LEGISLATURE
FIRST SESSION

LEGISLATIVE BILL 173

Introduced by Pansing Brooks, 28.

Read first time January 11, 2019

Committee: Judiciary

- 1 A BILL FOR AN ACT relating to sexual assault; to amend sections 28-318,
- 2 28-319, and 28-320, Reissue Revised Statutes of Nebraska; to define
- 3 and redefine the terms of coercion and without consent; to provide
- 4 for applicability; to harmonize provisions; and to repeal the
- 5 original sections.
- 6 Be it enacted by the people of the State of Nebraska,

1 Section 1. Section 28-318, Reissue Revised Statutes of Nebraska, is
2 amended to read:

3 28-318 As used in sections 28-317 to 28-322.04, unless the context
4 otherwise requires:

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

6 (2) Coercion means to compel another to submit against their will
7 and does not require a showing of physical force;

8 (3) Force or threat of force means (a) the use of physical force
9 which overcomes the victim's resistance or (b) the threat of physical
10 force, express or implied, against the victim or a third person that
11 places the victim in fear of death or in fear of serious personal injury
12 to the victim or a third person where the victim reasonably believes that
13 the actor has the present or future ability to execute the threat;

14 (4) ~~(2)~~ Intimate parts means the genital area, groin, inner thighs,
15 buttocks, or breasts;

16 (5) ~~(3)~~ Past sexual behavior means sexual behavior other than the
17 sexual behavior upon which the sexual assault is alleged;

18 (6) ~~(4)~~ Serious personal injury means great bodily injury or
19 disfigurement, extreme mental anguish or mental trauma, pregnancy,
20 disease, or loss or impairment of a sexual or reproductive organ;

21 (7) ~~(5)~~ Sexual contact means the intentional touching of the
22 victim's sexual or intimate parts or the intentional touching of the
23 victim's clothing covering the immediate area of the victim's sexual or
24 intimate parts. Sexual contact ~~shall~~ also means ~~mean~~ the touching by the
25 victim of the actor's sexual or intimate parts or the clothing covering
26 the immediate area of the actor's sexual or intimate parts when such
27 touching is intentionally caused by the actor. Sexual contact includes
28 ~~shall include~~ only such conduct which can be reasonably construed as
29 being for the purpose of sexual arousal or gratification of either party.
30 Sexual contact ~~shall~~ also includes ~~include~~ the touching of a child with
31 the actor's sexual or intimate parts on any part of the child's body for

1 purposes of sexual assault of a child under sections 28-319.01 and
2 28-320.01;

3 (8) ~~(6)~~ Sexual penetration means sexual intercourse in its ordinary
4 meaning, cunnilingus, fellatio, anal intercourse, or any intrusion,
5 however slight, of any part of the actor's or victim's body or any object
6 manipulated by the actor into the genital or anal openings of the
7 victim's body which can be reasonably construed as being for nonmedical
8 or nonhealth purposes. Sexual penetration shall not require emission of
9 semen;

10 (9) ~~(7)~~ Victim means the person alleging to have been sexually
11 assaulted; and

12 (10)(a) ~~(8)~~ Without consent means:

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

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

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

26 (iv) Consent to engage in sexual contact or sexual penetration was
27 not knowingly, voluntarily, or freely given.

28 (b) Lack of consent may be inferred based on all of the surrounding
29 circumstances and all of the surrounding circumstances must be considered
30 in determining whether a person gave consent.

31 ~~(9)~~ ~~Force or threat of force means (a) the use of physical force~~

1 ~~which overcomes the victim's resistance or (b) the threat of physical~~
2 ~~force, express or implied, against the victim or a third person that~~
3 ~~places the victim in fear of death or in fear of serious personal injury~~
4 ~~to the victim or a third person where the victim reasonably believes that~~
5 ~~the actor has the present or future ability to execute the threat.~~

6 Sec. 2. Section 28-319, Reissue Revised Statutes of Nebraska, is
7 amended to read:

8 28-319 (1) Any person who subjects another person to sexual
9 penetration (a) without the consent of the victim, (b) who knew or should
10 have known that the victim was mentally or physically incapable of
11 resisting or appraising the nature of his or her conduct, or (c) when the
12 actor is nineteen years of age or older and the victim is at least twelve
13 but less than sixteen years of age is guilty of sexual assault in the
14 first degree. Without consent of the victim may be inferred based upon
15 all the surrounding circumstances, and all the surrounding circumstances
16 must be considered in determining whether the victim gave consent.

17 (2) Sexual assault in the first degree is a Class II felony. The
18 sentencing judge shall consider whether the actor caused serious personal
19 injury to the victim in reaching a decision on the sentence.

20 (3) Any person who is found guilty of sexual assault in the first
21 degree for a second time when the first conviction was pursuant to this
22 section or any other state or federal law with essentially the same
23 elements as this section shall be sentenced to a mandatory minimum term
24 of twenty-five years in prison.

25 Sec. 3. Section 28-320, Reissue Revised Statutes of Nebraska, is
26 amended to read:

27 28-320 (1) Any person who subjects another person to sexual contact
28 (a) without consent of the victim, or (b) who knew or should have known
29 that the victim was physically or mentally incapable of resisting or
30 appraising the nature of his or her conduct is guilty of sexual assault
31 in either the second degree or third degree. Without consent of the

1 victim may be inferred based upon all the surrounding circumstances, and
2 all the surrounding circumstances must be considered in determining
3 whether the victim gave consent.

4 (2) Sexual assault shall be in the second degree and is a Class IIA
5 felony if the actor shall have caused serious personal injury to the
6 victim.

7 (3) Sexual assault shall be in the third degree and is a Class I
8 misdemeanor if the actor shall not have caused serious personal injury to
9 the victim.

10 Sec. 4. Original sections 28-318, 28-319, and 28-320, Reissue
11 Revised Statutes of Nebraska, are repealed.