

LEGISLATURE OF NEBRASKA
ONE HUNDRED SIXTH LEGISLATURE
SECOND SESSION

LEGISLATIVE BILL 766

Introduced by Lindstrom, 18.

Read first time January 08, 2020

Committee:

1 A BILL FOR AN ACT relating to sex offenses; to amend sections 28-319 and
2 28-320.01, Reissue Revised Statutes of Nebraska, and sections
3 27-412, 28-318, and 29-110, Revised Statutes Supplement, 2019; to
4 change provisions relating to sexual assault under the Nebraska
5 Evidence Rules; to define a term; to prohibit sexual assault of a
6 minor by an authority figure as prescribed; to change provisions
7 relating to sexual assault of a child in the second or third degree;
8 to change the statute of limitations for failure to make a report of
9 child abuse or neglect; and to repeal the original sections.
10 Be it enacted by the people of the State of Nebraska,

1 Section 1. Section 27-412, Revised Statutes Supplement, 2019, is
2 amended to read:

3 27-412 (1) The following evidence is not admissible in any civil or
4 criminal proceeding involving alleged sexual misconduct except as
5 provided in subsections (2) and (3) of this section:

6 (a) Evidence offered to prove that any victim engaged in other
7 sexual behavior; and

8 (b) Evidence offered to prove any victim's sexual predisposition.

9 (2)(a) In a criminal case, the following evidence is admissible, if
10 otherwise admissible under the Nebraska Evidence Rules:

11 (i) Evidence of specific instances of sexual behavior by the victim
12 offered to prove that a person other than the accused was the source of
13 semen, injury, or other physical evidence;

14 (ii) Evidence of specific instances of sexual behavior of the victim
15 with respect to the accused offered by the accused to prove consent of
16 the victim if it is first established to the court that such behavior is
17 similar to the behavior involved in the case and tends to establish a
18 pattern of behavior of the victim relevant to the issue of consent; and

19 (iii) Evidence, the exclusion of which would violate the
20 constitutional rights of the accused.

21 (b) In a civil case, evidence offered to prove the sexual behavior
22 or sexual predisposition of any victim is admissible if it is otherwise
23 admissible under the Nebraska Evidence Rules and its probative value
24 substantially outweighs the danger of harm to any victim and of unfair
25 prejudice to any party. Evidence of a victim's reputation is admissible
26 only if it has been placed in controversy by the victim.

27 (3)(a) A party intending to offer evidence under subsection (2) of
28 this section shall:

29 (i) File a written motion at least fifteen days before trial
30 specifically describing the evidence and stating the purpose for which it
31 is offered unless the court, for good cause, requires a different time

1 for filing or permits filing during trial; and

2 (ii) Serve the motion on all parties and notify the victim or, when
3 appropriate, the victim's guardian or representative.

4 (b) Before admitting evidence under this section, the court shall
5 conduct a hearing in camera outside the presence of any jury.

6 (4) Evidence of the victim's consent is not admissible in any civil
7 proceeding involving alleged:

8 (a) Sexual penetration when the actor is nineteen years of age or
9 older and the victim is less than sixteen years of age; ~~or~~

10 (b) Sexual contact when the actor is nineteen years of age or older
11 and the victim is less than fifteen years of age; or -

12 (c) Sexual penetration or sexual contact when the actor is an
13 authority figure and the victim is under nineteen years of age. For
14 purposes of this subdivision, authority figure has the same meaning as in
15 section 28-318.

16 Sec. 2. Section 28-318, Revised Statutes Supplement, 2019, is
17 amended to read:

18 28-318 As used in sections 28-317 to 28-322.05, unless the context
19 otherwise requires:

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

21 (2) Authority figure means an actor in a position of trust and
22 authority over a victim, and includes, but is not limited to, the
23 victim's guardian or foster parent, temporary caretaker, coach,
24 counselor, principal, teacher, or health care provider as defined in
25 section 28-902;

26 (3) (2) Intimate parts means the genital area, groin, inner thighs,
27 buttocks, or breasts;

28 (4) (3) Past sexual behavior means sexual behavior other than the
29 sexual behavior upon which the sexual assault is alleged;

30 (5) (4) Serious personal injury means great bodily injury or
31 disfigurement, extreme mental anguish or mental trauma, pregnancy,

1 disease, or loss or impairment of a sexual or reproductive organ;

2 (6) (5) Sexual contact means the intentional touching of the
3 victim's sexual or intimate parts or the intentional touching of the
4 victim's clothing covering the immediate area of the victim's sexual or
5 intimate parts. Sexual contact also means the touching by the victim of
6 the actor's sexual or intimate parts or the clothing covering the
7 immediate area of the actor's sexual or intimate parts when such touching
8 is intentionally caused by the actor. Sexual contact includes only such
9 conduct which can be reasonably construed as being for the purpose of
10 sexual arousal or gratification of either party. Sexual contact also
11 includes the touching of a child with the actor's sexual or intimate
12 parts on any part of the child's body for purposes of sexual assault of a
13 child under sections 28-319.01 and 28-320.01;

14 (7) (6) Sexual penetration means sexual intercourse in its ordinary
15 meaning, cunnilingus, fellatio, anal intercourse, or any intrusion,
16 however slight, of any part of the actor's or victim's body or any object
17 manipulated by the actor into the genital or anal openings of the
18 victim's body which can be reasonably construed as being for nonmedical,
19 nonhealth, or non-law-enforcement ~~nonlaw-enforcement~~ purposes. Sexual
20 penetration shall not require emission of semen;

21 (8) (7) Victim means the person alleging to have been sexually
22 assaulted;

23 (9) (8) Without consent means:

24 (a)(i) The victim was compelled to submit due to the use of force or
25 threat of force or coercion, or (ii) the victim expressed a lack of
26 consent through words, or (iii) the victim expressed a lack of consent
27 through conduct, or (iv) the consent, if any was actually given, was the
28 result of the actor's deception as to the identity of the actor or the
29 nature or purpose of the act on the part of the actor;

30 (b) The victim need only resist, either verbally or physically, so
31 as to make the victim's refusal to consent genuine and real and so as to

1 reasonably make known to the actor the victim's refusal to consent; and

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

4 (10) ~~(9)~~ Force or threat of force means (a) the use of physical
5 force which overcomes the victim's resistance or (b) the threat of
6 physical force, express or implied, against the victim or a third person
7 that places the victim in fear of death or in fear of serious personal
8 injury to the victim or a third person where the victim reasonably
9 believes that the actor has the present or future ability to execute the
10 threat.

11 Sec. 3. Section 28-319, Reissue Revised Statutes of Nebraska, is
12 amended to read:

13 28-319 (1) A Any person commits sexual assault in the first degree
14 if such person ~~who~~ subjects another person to sexual penetration;

15 (a) Without ~~without~~ the consent of the victim; ~~τ~~

16 (b) When the actor ~~who~~ knew or should have known that the victim was
17 mentally or physically incapable of resisting or appraising the nature of
18 his or her conduct; ~~τ~~ ~~or~~

19 (c) When ~~when~~ the actor is nineteen years of age or older and the
20 victim is at least twelve but less than sixteen years of age; or

21 (d) When the actor is an authority figure and the victim is under
22 nineteen years of age is guilty of sexual assault in the first degree.

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

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

31 Sec. 4. Section 28-320.01, Reissue Revised Statutes of Nebraska, is

1 amended to read:

2 28-320.01 (1) A person commits sexual assault of a child in the
3 second or third degree if he or she subjects another person:

4 (a) Under fifteen fourteen years of age or younger to sexual contact
5 and the actor is at least nineteen years of age or older; or -

6 (b) Under nineteen years of age to sexual contact and the actor is
7 an authority figure.

8 (2)(a) {2} Sexual assault of a child is in the second degree if:

9 (i) The the actor causes serious personal injury to the victim; or -

10 (ii) The actor commits three or more separate violations of
11 subsection (1) of this section with the same victim over a period of
12 three months or longer, regardless of whether serious personal injury to
13 the victim results.

14 (b) Sexual assault of a child in the second degree is a Class II
15 felony for the first offense.

16 (c) In a trial before a jury, a person shall not be convicted for a
17 violation of subdivision (2)(a)(ii) of this section unless the jury
18 unanimously agrees that the requisite number of violations occurred over
19 the requisite time period. However, the jury need not agree as to which
20 violations constitute the requisite number of violations.

21 (d) A person shall not be convicted of both a violation of
22 subdivision (2)(a)(ii) of this section and any other subdivision of this
23 section if the violations involve the same victim and arise out of the
24 same set of facts or pattern of conduct.

25 (3) Sexual assault of a child is in the third degree if the actor
26 does not cause serious personal injury to the victim. Sexual assault of a
27 child in the third degree is a Class IIIA felony for the first offense.

28 (4) Any person who is found guilty of second degree sexual assault
29 of a child under this section and who has previously been convicted (a)
30 under this section, (b) under section 28-319 of first degree or attempted
31 first degree sexual assault, (c) under section 28-319.01 for first degree

1 or attempted first degree sexual assault of a child, or (d) in any other
2 state or federal court under laws with essentially the same elements as
3 this section, section 28-319, or section 28-319.01 shall be guilty of a
4 Class IC felony and shall be sentenced to a mandatory minimum term of
5 twenty-five years in prison.

6 (5) Any person who is found guilty of third degree sexual assault of
7 a child under this section and who has previously been convicted (a)
8 under this section, (b) under section 28-319 of first degree or attempted
9 first degree sexual assault, (c) under section 28-319.01 for first degree
10 or attempted first degree sexual assault of a child, or (d) in any other
11 state or federal court under laws with essentially the same elements as
12 this section, section 28-319, or section 28-319.01 shall be guilty of a
13 Class IC felony.

14 Sec. 5. Section 29-110, Revised Statutes Supplement, 2019, is
15 amended to read:

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

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

31 (3) Except as otherwise provided by law, no person shall be

1 prosecuted for kidnapping under section 28-313, false imprisonment under
2 section 28-314 or 28-315, child abuse under section 28-707, pandering
3 under section 28-802, debauching a minor under section 28-805, or an
4 offense under section 28-813 when the victim is under sixteen years of
5 age at the time of the offense (a) unless the indictment for such offense
6 is found by a grand jury within seven years next after the offense has
7 been committed or within seven years next after the victim's sixteenth
8 birthday, whichever is later, or (b) unless a complaint for such offense
9 is filed before the magistrate within seven years next after the offense
10 has been committed or within seven years next after the victim's
11 sixteenth birthday, whichever is later, and a warrant for the arrest of
12 the defendant has been issued.

13 (4) Except as otherwise provided by law, no person shall be
14 prosecuted for a violation of subsection (2) or (3) of section 28-831 (a)
15 unless the indictment for such offense is found by a grand jury within
16 seven years next after the offense has been committed or within seven
17 years next after the victim's eighteenth birthday, whichever is later, or
18 (b) unless a complaint for such offense is filed before the magistrate
19 within seven years next after the offense has been committed or within
20 seven years next after the victim's eighteenth birthday, whichever is
21 later, and a warrant for the arrest of the defendant has been issued.

22 (5) Except as otherwise provided by law, no person shall be
23 prosecuted for an offense under section 28-813.01 or 28-1463.05 (a)
24 unless the indictment for such offense is found by a grand jury within
25 seven years next after the offense has been committed or within seven
26 years next after the victim's eighteenth birthday, whichever is later, or
27 (b) unless a complaint for such offense is filed before the magistrate
28 within seven years next after the offense has been committed or within
29 seven years next after the victim's eighteenth birthday, whichever is
30 later, and a warrant for the arrest of the defendant has been issued.

31 (6) No person shall be prosecuted for a violation of the Securities

1 Act of Nebraska under section 8-1117 unless the indictment for such
2 offense is found by a grand jury within five years next after the offense
3 has been done or committed or unless a complaint for such offense is
4 filed before the magistrate within five years next after the offense has
5 been done or committed and a warrant for the arrest of the defendant has
6 been issued.

7 (7) No person shall be prosecuted for criminal impersonation under
8 section 28-638, identity theft under section 28-639, or identity fraud
9 under section 28-640 unless the indictment for such offense is found by a
10 grand jury within five years next after the offense has been done or
11 committed or unless a complaint for such offense is filed before the
12 magistrate within five years next after the offense has been done or
13 committed and a warrant for the arrest of the defendant has been issued.

14 (8) No person shall be prosecuted for a violation of section 68-1017
15 if the aggregate value of all funds and other benefits obtained or
16 attempted to be obtained is five hundred dollars or more unless the
17 indictment for such offense is found by a grand jury within five years
18 next after the offense has been done or committed or unless a complaint
19 for such offense is filed before the magistrate within five years next
20 after the offense has been done or committed and a warrant for the arrest
21 of the defendant has been issued.

22 (9) No person shall be prosecuted for knowing and intentional abuse,
23 neglect, or exploitation of a vulnerable adult or senior adult under
24 section 28-386 unless the indictment for such offense is found by a grand
25 jury within six years next after the offense has been done or committed
26 or unless a complaint for such offense is filed before the magistrate
27 within six years next after the offense has been done or committed and a
28 warrant for the arrest of the defendant has been issued.

29 (10) No person shall be prosecuted for failing to make a report of
30 child abuse or neglect under section 28-717 unless:

31 (a) The indictment for such offense is found by a grand jury within

1 one year and six months next after the later of (i) the date the offense
2 has been committed or (ii) the date such failure to report is first
3 discovered by law enforcement; or

4 (b) Unless a complaint for such offense is filed before the
5 magistrate within one year and six months next after the later of (i) the
6 date the offense has been committed or (ii) the date such failure to
7 report is first discovered by law enforcement, and a warrant for the
8 arrest of the defendant has been issued.

9 (11) ~~(10)~~ There shall not be any time limitations for prosecution or
10 punishment for treason, murder, arson, forgery, sexual assault in the
11 first or second degree under section 28-319 or 28-320, sexual assault of
12 a child in the second or third degree under section 28-320.01, incest
13 under section 28-703, sexual assault of a child in the first degree under
14 section 28-319.01, labor trafficking of a minor or sex trafficking of a
15 minor under subsection (1) of section 28-831, or an offense under section
16 28-1463.03; nor shall there be any time limitations for prosecution or
17 punishment for sexual assault in the third degree under section 28-320
18 when the victim is under sixteen years of age at the time of the offense.

19 (12) ~~(11)~~ The time limitations prescribed in this section shall
20 include all inchoate offenses pursuant to the Nebraska Criminal Code and
21 compounding a felony pursuant to section 28-301.

22 (13) ~~(12)~~ The time limitations prescribed in this section shall not
23 extend to any person fleeing from justice.

24 (14) ~~(13)~~ When any suit, information, or indictment for any crime or
25 misdemeanor is limited by any statute to be brought or exhibited within
26 any other time than is limited by this section, then the suit,
27 information, or indictment shall be brought or exhibited within the time
28 limited by such statute.

29 (15) ~~(14)~~ If any suit, information, or indictment is quashed or the
30 proceedings set aside or reversed on writ of error, the time during the
31 pendency of such suit, information, or indictment so quashed, set aside,

1 or reversed shall not be reckoned within this statute so as to bar any
2 new suit, information, or indictment for the same offense.

3 (16) ~~(15)~~ The changes made to this section by Laws 2004, LB 943,
4 shall apply to offenses committed prior to April 16, 2004, for which the
5 statute of limitations has not expired as of such date and to offenses
6 committed on or after such date.

7 (17) ~~(16)~~ The changes made to this section by Laws 2005, LB 713,
8 shall apply to offenses committed prior to September 4, 2005, for which
9 the statute of limitations has not expired as of such date and to
10 offenses committed on or after such date.

11 (18) ~~(17)~~ The changes made to this section by Laws 2009, LB 97, and
12 Laws 2006, LB 1199, shall apply to offenses committed prior to May 21,
13 2009, for which the statute of limitations has not expired as of such
14 date and to offenses committed on or after such date.

15 (19) ~~(18)~~ The changes made to this section by Laws 2010, LB809,
16 shall apply to offenses committed prior to July 15, 2010, for which the
17 statute of limitations has not expired as of such date and to offenses
18 committed on or after such date.

19 (20) ~~(19)~~ The changes made to this section by Laws 2016, LB934,
20 shall apply to offenses committed prior to April 19, 2016, for which the
21 statute of limitations has not expired as of such date and to offenses
22 committed on or after such date.

23 (21) ~~(20)~~ The changes made to this section by Laws 2019, LB519,
24 shall apply to offenses committed prior to September 1, 2019, for which
25 the statute of limitations has not expired as of such date and to
26 offenses committed on or after such date.

27 (22) The changes made to this section by this legislative bill shall
28 apply to offenses committed prior to the effective date of this act for
29 which the statute of limitations has not expired as of such date and to
30 offenses committed on or after such date.

31 Sec. 6. Original sections 28-319 and 28-320.01, Reissue Revised

- 1 Statutes of Nebraska, and sections 27-412, 28-318, and 29-110, Revised
- 2 Statutes Supplement, 2019, are repealed.