

## LEGISLATIVE BILL 843

Approved by the Governor April 13, 2016

Introduced by Pansing Brooks, 28; Scheer, 19; Fox, 7; Brasch, 16; Cook, 13; Craighead, 6; Crawford, 45; Ebke, 32; Howard, 9; Sullivan, 41; Campbell, 25.

A BILL FOR AN ACT relating to crimes and offenses; to amend section 81-2010.03, Reissue Revised Statutes of Nebraska, section 28-801, Revised Statutes Cumulative Supplement, 2014, and sections 81-1415, 81-1416, and 81-1423, Revised Statutes Supplement, 2015; to provide immunity from prosecution for prostitution; to transfer, change, and eliminate provisions relating to payment for sexual assault forensic medical examinations; to create a fund and a program; to provide for an administrator; to harmonize provisions; to provide operative dates; to repeal the original sections; and to outright repeal sections 13-607 and 13-608, Reissue Revised Statutes of Nebraska.

Be it enacted by the people of the State of Nebraska,

Section 1. Section 28-801, Revised Statutes Cumulative Supplement, 2014, is amended to read:

28-801 (1) Except as provided in subsection (5) of this section, any person who performs, offers, or agrees to perform any act of sexual contact or sexual penetration, as those terms are defined in section 28-318, with any person not his or her spouse, in exchange for money or other thing of value, commits prostitution.

(2) Any person convicted of violating subsection (1) of this section shall be punished as follows:

(a) If such person has had no prior convictions or has had one prior conviction, such person shall be guilty of a Class II misdemeanor. If the court places such person on probation, such order of probation shall include, as one of its conditions, that such person shall satisfactorily attend and complete an appropriate mental health and substance abuse assessment conducted by a licensed mental health professional or substance abuse professional authorized to complete such assessment; and

(b) If such person has had two or more prior convictions, such person shall be guilty of a Class I misdemeanor. If the court places such person on probation, such order of probation shall include, as one of its conditions, that such person shall satisfactorily attend and complete an appropriate mental health and substance abuse assessment conducted by a licensed mental health professional or substance abuse professional authorized to complete such assessment.

(3) It is an affirmative defense to prosecution under this section that such person was a trafficking victim as defined in section 28-830.

(4) For purposes of this section, prior conviction means any conviction on or after July 14, 2006, for violation of subsection (1) of this section or any conviction on or after July 14, 2006, for violation of a city or village ordinance relating to prostitution.

(5) If the law enforcement officer determines, after a reasonable detention for investigative purposes, that a person suspected of or charged with a violation of subsection (1) of this section is (a) a person engaging in those acts as a direct result of being a trafficking victim as defined in section 28-830, such person shall be immune from prosecution for a prostitution offense or (b) a person under eighteen years of age, such person shall be immune from prosecution for a prostitution offense under this section and shall be subject to temporary custody under section 43-248 and further disposition under the Nebraska Juvenile Code. A law enforcement officer who takes a person under eighteen years of age into custody under this section shall immediately report an allegation of a violation of section 28-831 to the Department of Health and Human Services which shall commence an investigation within twenty-four hours under the Child Protection and Family Safety Act.

Sec. 2. Section 81-2010.03, Reissue Revised Statutes of Nebraska, is amended to read:

~~81-2010.03~~ (1) The full out-of-pocket cost or expense that may be charged to a sexual assault victim in connection with a forensic medical examination shall be paid from the Sexual Assault Payment Program Cash Fund. A report of a forensic medical examination shall not be remitted to the patient or his or her insurance for payment for by the Nebraska State Patrol if the patrol is the primary investigating law enforcement agency investigating the reported sexual assault.

(2) Except as provided under section 81-2010, all forensic DNA tests shall be performed by a laboratory which is accredited by the American Society of Crime Laboratory Directors/ ~~LAB~~-Laboratory Accreditation Board ~~or the National Forensic Science Technology Center~~ or by any other national accrediting body or public agency which has requirements that are substantially equivalent to or more comprehensive than those of the society ~~or center~~.

(3) The full out-of-pocket cost or expense to be paid from the Sexual Assault Payment Program Cash Fund for a forensic medical examination described

in subsection (1) of this section shall include:

- (a) An examiner's fee for:
  - (i) Examination of physical trauma;
  - (ii) Determination of penetration or force;
  - (iii) Patient interview; and
  - (iv) Collection and evaluation of evidence;
- (b) An examination facility fee for the:
  - (i) Emergency room, clinic room, office room, or child advocacy center;

and

- (ii) Pelvic tray and other medically required supplies; and
- (c) The laboratory fees for collection and processing of specimens for criminal evidence, the determination of the presence of any sexually transmitted disease, and pregnancy testing.

(4) There is established within the Department of Justice, under the direction of the Attorney General, the position of administrator for the Sexual Assault Payment Program. The purpose of the program and the responsibilities of the administrator shall be to coordinate the distribution of forensic medical examination kits to health care providers at no cost to the providers, oversee forensic medical examination training throughout the state, and coordinate payments from the Sexual Assault Payment Program Cash Fund.

(5) The Sexual Assault Payment Program Cash Fund is created. The fund shall be administered by the commission. The fund shall consist of any money appropriated to it by the Legislature and any money received by the commission for the program, including federal and other public and private funds. The fund shall be used for the payment of the full out-of-pocket costs or expenses for forensic medical examinations pursuant to subsection (3) of this section, for the purpose set forth in subsection (4) of this section, and for the purchase of forensic medical examination kits. The fund shall be used to pay only those charges determined by the commission to be reasonable and fair. The fund shall be used to pay up to two hundred dollars for the examiner's fee and up to three hundred dollars for the examination facility fee. The examiner and facility shall provide additional documentation as determined by the commission for payment of charges in excess of such amounts. The fund may also be used to facilitate programs that reduce or prevent the crimes of domestic violence, dating violence, sexual assault, stalking, child abuse, child sexual assault, human trafficking, labor trafficking, or sex trafficking or that enhance the safety of victims of such crimes. Any money in the fund available for investment shall be invested by the state investment officer pursuant to the Nebraska Capital Expansion Act and the Nebraska State Funds Investment Act.

Sec. 3. Section 81-1415, Revised Statutes Supplement, 2015, is amended to read:

81-1415 As used in sections 81-1415 to 81-1426.01 and section 2 of this act, unless the context otherwise requires: Commission means the Nebraska Commission on Law Enforcement and Criminal Justice.

Sec. 4. Section 81-1416, Revised Statutes Supplement, 2015, is amended to read:

81-1416 There is hereby created the Nebraska Commission on Law Enforcement and Criminal Justice. The commission shall educate the community at large to the problems encountered by law enforcement authorities, promote respect for law and encourage community involvement in the administration of criminal justice. The commission shall be an agency of the state, and the exercise by the commission of the powers conferred by the provisions of sections 81-1415 to 81-1426.01 and section 2 of this act shall be deemed to be an essential governmental function of the state.

Sec. 5. Section 81-1423, Revised Statutes Supplement, 2015, is amended to read:

81-1423 The commission shall have authority to:

(1) Adopt and promulgate rules and regulations for its organization and internal management and rules and regulations governing the exercise of its powers and the fulfillment of its purposes under sections 81-1415 to 81-1426.01 and section 2 of this act;

(2) Delegate to one or more of its members such powers and duties as it may deem proper;

(3) Coordinate and jointly pursue its activities with the Governor's Policy Research Office;

(4) Appoint and abolish such advisory committees as may be necessary for the performance of its functions and delegate appropriate powers and duties to them;

(5) Plan improvements in the administration of criminal justice and promote their implementation;

(6) Make or encourage studies of any aspect of the administration of criminal justice;

(7) Conduct research and stimulate research by public and private agencies which shall be designed to improve the administration of criminal justice;

(8) Coordinate activities relating to the administration of criminal justice among agencies of state and local government;

(9) Cooperate with the federal and other state authorities concerning the administration of criminal justice;

(10) Accept and administer loans, grants, and donations from the United States, its agencies, the State of Nebraska, its agencies, and other sources, public and private, for carrying out any of its functions, except that no communications equipment shall be acquired and no approval for acquisition of communications equipment shall be granted without receiving the written

approval of the Director of Communications of the office of Chief Information Officer;

(11) Enter into contracts, leases, and agreements necessary, convenient, or desirable for carrying out its purposes and the powers granted under sections 81-1415 to 81-1426.01 and section 2 of this act with agencies of state or local government, corporations, or persons;

(12) Acquire, hold, and dispose of personal property in the exercise of its powers;

(13) Conduct random annual audits of criminal justice agencies to verify the accuracy and completeness of criminal history record information maintained by such agencies and to determine compliance with laws and regulations dealing with the dissemination, security, and privacy of criminal history information;

(14) Do all things necessary to carry out its purposes and for the exercise of the powers granted in sections 81-1415 to 81-1426.01 and section 2 of this act, except that no activities or transfers or expenditures of funds available to the commission shall be inconsistent with legislative policy as reflected in substantive legislation, legislative intent legislation, or appropriations legislation;

(15) Exercise budgetary and administrative control over the Crime Victim's Reparations Committee and the Jail Standards Board; and

(16) Do all things necessary to carry out sections 81-1843 to 81-1851.

Sec. 6. Sections 2, 3, 4, 5, 8, and 9 of this act become operative on July 1, 2017. The other sections of this act become operative on their effective date.

Sec. 7. Original section 28-801, Revised Statutes Cumulative Supplement, 2014, is repealed.

Sec. 8. Original section 81-2010.03, Reissue Revised Statutes of Nebraska, and sections 81-1415, 81-1416, and 81-1423, Revised Statutes Supplement, 2015, are repealed.

Sec. 9. The following sections are outright repealed: Sections 13-607 and 13-608, Reissue Revised Statutes of Nebraska.