

LEGISLATIVE BILL 378

Approved by the Governor May 23, 1979

Introduced by Judiciary Committee, Nichol, 48, Chmn.;
Haberman, 44; Stoney, 4; Wagner, 41; Reutzel,
15

AN ACT relating to sexual offenders; to require presentence investigations; to provide for sentences or commitments and release therefrom as prescribed; to amend section 28-305, Revised Statutes Supplement, 1978; to repeal the original section, and also Chapter 29, article 29, Reissue Revised Statutes of Nebraska, 1943, and amendments thereto; and to declare an emergency.

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

Section 1. As used in sections 1 to 11 of this act, unless the context otherwise requires:

(1) Sexual offense shall mean:

(a) Any of the crimes set forth in sections 28-319, 28-320, or 28-305; or

(b) The commission of any felony as defined by law in which the sexual excitement of the person committing the crime is a substantial motivational factor; and

(2) Mentally-disordered sex offender shall mean any person who has a mental disorder and who, because of the mental disorder, has been determined to be disposed to repeated commission of sexual offenses which are likely to cause substantial injury to the health of others.

Sec. 2. After a person is convicted of a felony sexual offense, the court, prior to sentencing, shall order a presentence investigation which shall include an evaluation to determine whether the defendant is a mentally-disordered sex offender. If the underlying offense is a misdemeanor the procedures under this act shall be discretionary with the court.

Sec. 3. To conduct the evaluation the court shall appoint a panel of two physicians, licensed to practice medicine and surgery who have had at least three years of special training in treatment of mental disorders or one such physician and one clinical psychologist who has had at least three years of special

training in treatment of mental disorders, to conduct individual psychiatric examinations of the defendant. The panel shall file with the court a written report as to whether in its opinion, the defendant is a mentally-disordered sex offender. Such reports shall include the facts on which the conclusions are based and shall be filed at least ten days prior to the date set for the sentencing of the defendant. Copies of the reports shall be furnished to counsel for the defendant. If the defendant, or counsel for the defendant, disagrees with the conclusions of the court-appointed panel he or she may file a motion with the court requesting an additional evaluation by two other physicians of the defendant's choice licensed to practice medicine who have had at least three years of special training in the treatment of mental disorders or one such physician and one clinical psychologist who has had at least three years of special training in treatment of mental disorders. Such evaluation shall be at defendant's expense unless otherwise ordered by the court. Such additional evaluation shall be made part of the presentence investigation and shall be filed with the court at least ten days prior to the date set for sentencing. Copies of such report shall be furnished to the county attorney.

Sec. 4. If the court determines that the defendant is not a mentally-disordered sex offender, or is a mentally-disordered sex offender whose disorder is nontreatable, or that treatment is not available in the state, based on the information and conclusions in the presentence investigation, the court shall sentence the defendant as provided by law on the offense for which he or she has been convicted.

Sec. 5. If the court determines that: (1) The defendant is a mentally-disordered sex offender based on the information and conclusions in the presentence investigation; (2) the disorder is treatable; and (3) such treatment is available in the state, the court shall, after first sentencing the defendant as provided by law for the offense for which he or she has been convicted, commit the defendant for treatment to one of the regional centers until such time as the court determines based on the report filed by the Sentencing Review Committee established under section 6 of this act that the defendant is no longer mentally disordered or until the defendant has received the maximum benefit of treatment, except that no sentence to treatment shall exceed the maximum length of such offender's sentence. If the defendant is discharged from the regional center prior to the maximum length of such offender's sentence further disposition shall be consistent with sections 9

and 10 of this act.

The entire proceeding to determine whether the defendant is a mentally-disordered sex offender and treatable shall be deemed a critical stage of a criminal prosecution at which the defendant shall be accorded all the rights a defendant has in sentencing proceedings. The court's decision that the defendant is a mentally-disordered sex offender and the decision to commit the defendant for treatment may be appealed. On appeal the presentence investigation shall be made part of the record of the court.

Sec. 6. The Governor shall appoint a Sentencing Review Committee. The committee shall consist of:

(1) One attorney;

(2) One psychologist;

(3) Two physicians with qualifications similar to those described in section 3 of this act; and

(4) One lay person.

Of the persons first appointed, the Governor shall appoint two members to serve for two years and three persons to serve for four years. Upon completion of the initial terms, all members shall serve for four years.

The committee shall meet quarterly.

Sec. 7. The members of the Sentencing Review Committee shall serve without pay, but shall be reimbursed for their expenses as provided in section 84-306.01, Revised Statutes Supplement, 1978, for state employees.

Sec. 8. (1) The Sentencing Review Committee shall annually or upon motion of the defendant review all records of mentally-disordered sex offenders.

(2) Prior to any review the regional center shall prepare and provide to the committee all data, including test results, which are relevant to the issues of whether the defendant still has a mental disorder or whether the defendant has received the maximum benefit of treatment. The committee, before making a final determination, may request from the appropriate regional center any additional information it deems necessary.

(3) The committee shall file a written report with the sentencing court on the results of its review. Such reports shall include reasons for the conclusions. The court shall, upon motion of either party, conduct a hearing on defendant's status upon receiving such written report from the Sentencing Review Committee. The court shall conduct such a hearing upon its own motion at least every four years.

Sec. 9. If the committee determines that the defendant no longer has a mental disorder or that the defendant has received the maximum benefit of treatment, the defendant shall be returned to the sentencing court for further disposition, which could include sending the defendant to the Nebraska Penal and Correctional Complex for the remainder of his or her sentence, or such further disposition not inconsistent with the terms of this act. Credit shall be given for the time spent in treatment.

Sec. 10. Ninety days prior to the release from custody of any mentally-disordered sex offender who has (1) previously been adjudged untreatable and sentenced pursuant to section 4 of this act, (2) been determined to have received the maximum benefit from treatment and sentencing pursuant to section 9 of this act, (3) been sentenced to treatment pursuant to section 5 of this act, but whose time in treatment will, within ninety days, exceed the maximum length of time such offender could have been sentenced on the underlying criminal conviction, the Board of Parole, Department of Correctional Services, or other unit of government having final release authority shall give notice to the county attorney who prosecuted the underlying criminal charge that the release of such offender is so pending. Upon receipt of such notice from the releasing authority, the county attorney shall cause mental health commitment proceedings to be commenced on behalf of such offender pursuant to the Nebraska Mental Health Commitment Act.

Sec. 11. All persons now committed under Chapter 29, article 29, as either a sexual psychopath or a sexual sociopath, shall forthwith be returned to the district court which committed them for review and disposition consistent with the terms of this act. No person now committed, voluntarily or involuntarily, shall be released until the requirements of section 10 of this act have been met.

Sec. 12. That section 28-805, Revised Statutes Supplement, 1978, be amended to read as follows:

28-805. (1) Any person not a minor commits the offense of debauching a minor if he or she shall debauch

or deprave the morals of any boy or girl under the age of seventeen years by:

(a) Lewdly inducing such boy or girl carnally to know any other person; or

(b) Soliciting any such boy or girl to visit a house of prostitution or other place where prostitution, debauchery, or other immoral practices are permitted or encouraged, for the purpose of prostitution or sexual penetration; or

(c) Arranging or assisting in arranging any meeting for such purpose between any such boy or girl and any female or male of dissolute character or any inmate of any place where prostitution, debauchery, or other immoral practices are permitted or encouraged; or

(d) Arranging or aiding or assisting in arranging any meeting between any such boy or girl and any other person for the purpose of sexual penetration.

~~(2) The penalty imposed by this section shall not be applicable to any person who is found to be a sexual sociopath. Any person found to be a sexual sociopath shall be treated as provided for in Chapter 29, article 29.~~

(3) (2) Debauching a minor is a Class I misdemeanor.

Sec. 13. That original section 29-805, Revised Statutes Supplement, 1978, and also Chapter 29, article 29, Reissue Revised Statutes of Nebraska, 1943, and amendments thereto, are repealed.

Sec. 14. Since an emergency exists, this act shall be in full force and take effect, from and after its passage and approval, according to law.