

LEGISLATURE OF NEBRASKA
ONE HUNDRED THIRD LEGISLATURE
SECOND SESSION
LEGISLATIVE BILL 706

Introduced by Harr, 8.

Read first time January 08, 2014

Committee: Judiciary

A BILL

1 FOR AN ACT relating to crimes and offenses; to amend sections
2 28-320.02, 28-813.01, 28-1463.04, and 28-1463.05, Revised
3 Statutes Cumulative Supplement, 2012, and sections 28-101
4 and 28-707, Revised Statutes Supplement, 2013; to change
5 provisions and penalties relating to sexual assault,
6 child abuse, sexually explicit conduct, and the Child
7 Pornography Prevention Act; to provide for forfeiture of
8 property as prescribed; and to repeal the original
9 sections.
10 Be it enacted by the people of the State of Nebraska,

1 Section 1. Section 28-101, Revised Statutes Supplement,
2 2013, is amended to read:

3 28-101 Sections 28-101 to 28-1356 and sections 2 to 4 of
4 this act shall be known and may be cited as the Nebraska Criminal
5 Code.

6 Sec. 2. (1) All personal property is subject to
7 forfeiture if it was used or intended for use to commit or facilitate
8 an offense under section 28-320.02, 28-813.01, 28-833, 28-1463.03, or
9 28-1463.05. When a computer or a component part of a computer is used
10 or intended for use to commit or facilitate an offense under such
11 sections, the computer and all software, data, and other property
12 contained in the computer are subject to forfeiture unless prohibited
13 by the Privacy Protection Act of 1980, 42 U.S.C. 2000aa to 2000aa-12,
14 as such sections existed on January 1, 2014, or other state or
15 federal law.

16 (2) Property is subject to forfeiture only if a person
17 with an ownership interest in such property either committed the
18 criminal offense, was privy to the acts or omissions upon which the
19 criminal offense is based, or the acts or omissions occurred with
20 such person's knowledge or consent.

21 Sec. 3. (1) Upon a person's conviction of an offense
22 under section 28-320.02, 28-813.01, 28-833, 28-1463.03, or
23 28-1463.05, and as part of the sentencing order, the trial court
24 shall order the forfeiture of:

25 (a) Any visual depiction of sexually explicit conduct, as

1 defined in section 28-1463.02, which has a child, as defined in such
2 section, as one of its participants or portrayed observers; or

3 (b) Any personal property used or intended for use to
4 commit or facilitate any of the offenses listed in subsection (1) of
5 this section.

6 (2) At least thirty days prior to the sentencing hearing,
7 the prosecutor shall provide the court with a list of all property
8 sought to be forfeited, and allege why the property is subject to
9 forfeiture. The prosecutor shall provide written notice of the
10 forfeiture proceeding and a list of the property sought to be
11 forfeited to the defendant and any person with an ownership interest
12 in such property, if known or reasonably ascertainable. Such notice
13 shall be made at least thirty days prior to the sentencing hearing,
14 and shall include the time, date, and location of the sentencing
15 hearing and notice of the right to request a hearing pursuant to
16 subsection (3) of this section.

17 (3) The defendant or any person claiming an ownership
18 interest in the property sought to be forfeited may request the court
19 to conduct a hearing to determine whether such property is subject to
20 forfeiture. Such request must be made at least ten days prior to the
21 sentencing hearing.

22 (4) Upon a request made pursuant to subsection (3) of
23 this section, the court shall conduct a hearing prior to sentencing
24 to determine, by a preponderance of the evidence, whether such
25 property is subject to forfeiture under section 2 of this act. If no

1 such request is made, the court, as part of its sentencing order,
2 shall order the property to be forfeited without a separate hearing.

3 (5) Upon a determination that such property is subject to
4 forfeiture, or where no request is made pursuant to subsection (3) of
5 this section, the court shall order the investigating or prosecuting
6 agency to take custody of the property and to dispose of such
7 property in accordance with the agency's policies following the
8 exhaustion of defendant's direct appeal rights. However, the court's
9 order to dispose of such property shall not apply to any property
10 which has been admitted as evidence in the criminal proceedings.

11 (6) If a person, other than the defendant, claiming an
12 ownership interest in a piece of property ordered forfeited by the
13 court did not receive notice as required by subsection (2) of this
14 section, such person shall have standing to request the court to hold
15 a hearing in accordance with subsection (4) of this section, if the
16 actual disposal of such property has not yet occurred.

17 (7) Forfeiture proceedings conducted pursuant to this
18 section shall be considered as part of the criminal case, and shall
19 not be considered to be a violation of double jeopardy protections.

20 Sec. 4. (1) Regardless of whether a forfeiture order is
21 obtained pursuant to section 3 of this act, no computer hard drive or
22 other data storage device which contains any visual depiction of
23 sexually explicit conduct, as defined in section 28-1463.02, which
24 has a child, as defined in such section, as one of its participants
25 or portrayed observers shall be returned by the investigating or

1 prosecuting agency. Such data storage device shall be disposed of in
2 accordance with the agency's policies.

3 (2) A person with an ownership interest in the data
4 storage device may request the holding agency to copy and provide
5 specifically identified data files which do not contain any visual
6 depiction of sexually explicit conduct, as defined in section
7 28-1463.02, which has a child, as defined in such section, as one of
8 its participants or portrayed observers. The requesting party shall
9 (a) provide a specific description of the files requested and the
10 specific location of those files on the data storage device, (b)
11 provide sufficient storage media for the requested data files to be
12 copied to, and (c) pay the holding agency, in advance, a reasonable
13 fee for any expenses associated with the request.

14 Sec. 5. Section 28-320.02, Revised Statutes Cumulative
15 Supplement, 2012, is amended to read:

16 28-320.02 (1) No person shall knowingly solicit, coax,
17 entice, or lure (a) a child sixteen years of age or younger or (b) a
18 peace officer who is believed by such person to be a child sixteen
19 years of age or younger, by means of an electronic communication
20 device as that term is defined in section 28-833, to engage in an act
21 which would be in violation of section 28-319, 28-319.01, or
22 28-320.01 or subsection (1) or (2) of section 28-320. A person shall
23 not be convicted of both a violation of this subsection and a
24 violation of section 28-319, 28-319.01, or 28-320.01 or subsection
25 (1) or (2) of section 28-320 if the violations arise out of the same

1 set of facts or pattern of conduct and the individual solicited,
2 coaxed, enticed, or lured under this subsection is also the victim of
3 the sexual assault under section 28-319, 28-319.01, or 28-320.01 or
4 subsection (1) or (2) of section 28-320.

5 (2) A person who violates this section is guilty of a
6 Class ID felony. If a person who violates this section has previously
7 been convicted of a violation or an attempted violation of this
8 section or section 28-308, 28-309, 28-310, 28-311, 28-313, 28-314,
9 28-315, 28-319, 28-319.01, 28-320.01, 28-813.01, 28-833, 28-1463.03,
10 ~~or~~ 28-1463.05, ~~or~~ subsection (1) or (2) of section 28-320, or any
11 other state or federal law with essentially the same elements as any
12 of these sections the person is guilty of a Class IC felony.

13 Sec. 6. Section 28-707, Revised Statutes Supplement,
14 2013, is amended to read:

15 28-707 (1) A person commits child abuse if he or she
16 knowingly, intentionally, or negligently causes or permits a minor
17 child to be:

18 (a) Placed in a situation that endangers his or her life
19 or physical or mental health;

20 (b) Cruelly confined or cruelly punished;

21 (c) Deprived of necessary food, clothing, shelter, or
22 care;

23 (d) Placed in a situation to be sexually exploited by
24 allowing, encouraging, or forcing such minor child to solicit for or
25 engage in prostitution, debauchery, public indecency, or obscene or

1 pornographic photography, films, or depictions;

2 (e) Placed in a situation to be sexually abused as
3 defined in section 28-319, 28-319.01, or 28-320.01; or

4 (f) Placed in a situation to be a trafficking victim as
5 defined in section 28-830.

6 (2) A person commits child abuse if he or she knowingly
7 or intentionally causes a minor child to be placed in a situation to
8 view a live act of human sexual intercourse, cunnilingus, fellatio,
9 anal intercourse, masturbation, or any intrusion, however slight, of
10 any object into the genital or anal opening which cannot reasonably
11 be construed as being for a medical or health related purpose.

12 ~~(2)~~-(3) The statutory privilege between patient and
13 physician, between client and professional counselor, and between
14 husband and wife shall not be available for excluding or refusing
15 testimony in any prosecution for a violation of this section.

16 ~~(3)~~-(4) Child abuse is a Class I misdemeanor if the
17 offense is committed negligently and does not result in serious
18 bodily injury as defined in section 28-109 or death.

19 ~~(4)~~-(5) Child abuse is a Class IIIA felony if the offense
20 is committed knowingly and intentionally and does not result in
21 serious bodily injury as defined in section 28-109 or death.

22 ~~(5)~~-(6) Child abuse is a Class IIIA felony if the offense
23 is committed negligently and results in serious bodily injury as
24 defined in section 28-109.

25 ~~(6)~~-(7) Child abuse is a Class III felony if the offense

1 is committed negligently and results in the death of such child.

2 ~~(7)~~(8) Child abuse is a Class II felony if the offense
3 is committed knowingly and intentionally and results in serious
4 bodily injury as defined in such section.

5 ~~(8)~~(9) Child abuse is a Class IB felony if the offense
6 is committed knowingly and intentionally and results in the death of
7 such child.

8 ~~(9)~~(10) For purposes of this section, negligently refers
9 to criminal negligence and means that a person knew or should have
10 known of the danger involved and acted recklessly, as defined in
11 section 28-109, with respect to the safety or health of the minor
12 child.

13 Sec. 7. Section 28-813.01, Revised Statutes Cumulative
14 Supplement, 2012, is amended to read:

15 28-813.01 (1) It shall be unlawful for a person to
16 knowingly solicit, receive, or possess any visual depiction of
17 sexually explicit conduct, as defined in section 28-1463.02, which
18 has a child, as defined in such section, as one of its participants
19 or portrayed observers.

20 (2)(a) Any person who is under nineteen years of age at
21 the time he or she violates this section shall be guilty of a Class
22 IV felony for each offense.

23 (b) Any person who is nineteen years of age or older at
24 the time he or she violates this section shall be guilty of a Class
25 III felony for each offense.

1 (c) Any person who violates this section and has
2 previously been convicted of a violation or an attempted violation of
3 this section or section 28-308, 28-309, 28-310, 28-311, 28-313,
4 28-314, 28-315, 28-319, 28-319.01, 28-320.01, 28-833, 28-1463.03, ~~or~~
5 28-1463.05, ~~or~~ subsection (1) or (2) of section 28-320, or any other
6 state or federal law with essentially the same elements as any of
7 these sections, shall be guilty of a Class IC felony for each
8 offense.

9 (3) It shall be an affirmative defense to a charge made
10 pursuant to this section that:

11 (a) The visual depiction portrays no person other than
12 the defendant; or

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

25 Sec. 8. Section 28-1463.04, Revised Statutes Cumulative

1 Supplement, 2012, is amended to read:

2 28-1463.04 (1) Any person who is under nineteen years of
3 age at the time he or she violates section 28-1463.03 shall be guilty
4 of a Class III felony for each offense.

5 (2) Any person who is nineteen years of age or older at
6 the time he or she violates section 28-1463.03 shall be guilty of a
7 Class ID felony for each offense.

8 (3) Any person who violates section 28-1463.03 and has
9 previously been convicted of a violation or an attempted violation of
10 section 28-1463.03 or section 28-308, 28-309, 28-310, 28-311, 28-313,
11 28-314, 28-315, 28-319, 28-319.01, 28-320.01, 28-813, 28-813.01,
12 28-833, ~~or~~ 28-1463.05, ~~or~~ subsection (1) or (2) of section 28-320, or
13 any other state or federal law with essentially the same elements as
14 any of these sections, shall be guilty of a Class IC felony for each
15 offense.

16 Sec. 9. Section 28-1463.05, Revised Statutes Cumulative
17 Supplement, 2012, is amended to read:

18 28-1463.05 (1) It shall be unlawful for a person to
19 knowingly possess with intent to rent, sell, deliver, distribute,
20 trade, or provide to any person any visual depiction of sexually
21 explicit conduct which has a child as one of its participants or
22 portrayed observers.

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

1 (b) Any person who is nineteen years of age or older at
2 the time he or she violates this section shall be guilty of a Class
3 III felony for each offense.

4 (c) Any person who violates this section and has
5 previously been convicted of a violation or an attempted violation of
6 this section or section 28-308, 28-309, 28-310, 28-311, 28-313,
7 28-314, 28-315, 28-319, 28-319.01, 28-320.01, 28-813, 28-813.01,
8 28-833, ~~or~~ 28-1463.03, ~~or~~ subsection (1) or (2) of section 28-320, or
9 any other state or federal law with essentially the same elements as
10 any of these sections, shall be guilty of a Class IC felony for each
11 offense.

12 Sec. 10. Original sections 28-320.02, 28-813.01,
13 28-1463.04, and 28-1463.05, Revised Statutes Cumulative Supplement,
14 2012, and sections 28-101 and 28-707, Revised Statutes Supplement,
15 2013, are repealed.