

ONE HUNDRED SIXTH LEGISLATURE - FIRST SESSION - 2019
COMMITTEE STATEMENT
LB630

Hearing Date: Wednesday March 13, 2019
Committee On: Judiciary
Introducer: Morfeld
One Liner: Create the offense of sexual extortion and change elements and penalties for sexual offenses

Roll Call Vote - Final Committee Action:
Advanced to General File with amendment(s)

Vote Results:
Aye: 7 Senators Brandt, Chambers, DeBoer, Lathrop, Morfeld, Slama, Wayne
Nay:
Absent: 1 Senator Pansing Brooks
Present Not Voting:

Oral Testimony:

Proponents:

Senator Adam Morfeld
Molly Keane
Kathleen Owen
Bobby Truhe

Representing:

Introducer
Nebraska County Attorneys Association
Orrick, Herrington & Sutcliffe LLP; Legal Momentum
self

Opponents:

Spike Eickholt

Representing:

Nebraska Criminal Defense Attorneys Association

Neutral:

Representing:

Summary of purpose and/or changes:

LB630 would make several changes to existing sex offenses and create the new offense of sexual extortion.

Section 2 would amend the offense of unlawful intrusion in Sec. 28-311.08 to create two new offenses. Intruding upon a person in a place of solitude or seclusion without their knowledge or consent remains a Class I misdemeanor. Photographing or filming the intimate area of another person without their consent is elevated to a Class IV felony. Distributing the photograph or video would be added as a new Class IIA felony. Second or subsequent offenses would be punishable by the next highest penalty classification.

Section 3 would create the offense of sexual extortion.

This section would define the new offense to prohibit a person from knowingly, intentionally, or recklessly coercing or enticing a person to engage in certain sexual activity, create electronic media of nudity or certain sexual activity, or provide money or consideration to prevent disclosure of the sexual activity or dissemination of the electronic media.

Subsections (1)(c) and (1)(d) would prohibit coercing or enticing a person into providing money or consideration to prevent the disclosure of sexual activity or dissemination of electronic media related to nudity or sexual activity.

Sexual extortion would be a Class IV felony if the victim is under nineteen and the actor is over nineteen, a Class I

misdemeanor if the victim is over nineteen, and a Class II misdemeanor if both the actor and the victim are under nineteen. These age cutoffs are not consistent with other sex offenses in existing law and may produce somewhat arbitrary and harsh results for actors and victims close to their nineteenth birthday.

Subsection (5) would require a person convicted of sexual extortion to register as a sex offender if the actor is over nineteen and the victim is under eighteen years old.

Section 4 would amend Sec. 28-367.01 to include a violation of the offense created in Section 3 within the definition of sexual exploitation. This would bring a violation of Section 3 within the definition of abuse of vulnerable adults that would trigger certain reporting and investigation requirements.

Section 5 would amend Sec. 28-813.01 to make several changes to the law prohibiting possession of child pornography. A violation by a person under the age of nineteen would be reclassified from a Class IV felony to a Class I misdemeanor. A second offense by a person under age nineteen would be a Class IV felony. A third or subsequent offense for any person would be a Class IC felony. The affirmative defense related to possession of images of the defendant and images provided to a defendant under the age of nineteen by a child fifteen years of age or older is converted to an exclusion from the offense.

Section 6 would amend 28-1463.03 to change the age limit from less than eighteen years of age to less than nineteen years of age. This section criminalizes possession of child pornography with the intent to distribute. This change would harmonize the age reference to the definition of a minor in existing state law.

Section 7 would make several changes to Sec. 29-4003. A person under age nineteen convicted of possession of child pornography would not be required to register as a sex offender unless the child was fourteen years of age or younger. A person convicted of sexual extortion under Section 3 of LB630 would be required to register as a sex offender if they were over nineteen and the victim was under eighteen years old.

Section 8 would provide an effective date for the bill of January 1, 2020.

Explanation of amendments:

AM1635 replaces the original bill.

Section 1 amends Sec. 28-311.08 to create two new offenses. The first new offense is distributing a private image of another person's intimate area or engaged in sexually explicit conduct. The second is threatening to distribute such an image with the intent to intimidate, threaten, or harass a person.

Section 2 amends Sec. 28-513 to include threatening to distribute an image of another person's intimate area or engaged in sexually explicit conduct to extort a thing of value from another.

Section 3 amends Sec. 28-813.01 to add an additional affirmative defense for juveniles that possess a visual depiction that was knowingly and voluntarily provided by another child within four years of age of the defendant.

Section 4 amends Sec. 28-1310 to harmonize language with the new language in the amended theft by extortion statute.

Section 5 amends Sec. 28-1463.03 to delete the affirmative defenses and makes it an element of the offense that the depiction is of a child other than the defendant.

Section 6 amends Sec. 28-1463.05 to make it an element of the offense that the depiction is of a child other than the defendant.

Section 7 would amend Sec. 29-4003 to clarify that a juvenile adjudicated in another state would be treated the same as a juvenile adjudicated in Nebraska for purposes of the Nebraska Sex Offender Registry.

Steve Lathrop, Chairperson