

LEGISLATURE OF NEBRASKA  
ONE HUNDRED SIXTH LEGISLATURE  
FIRST SESSION

**LEGISLATIVE BILL 479**

Introduced by Wishart, 27; Blood, 3; Cavanaugh, 6; Crawford, 45; DeBoer, 10; Geist, 25; Hansen, M., 26; Howard, 9; Hunt, 8; Kolterman, 24; Lathrop, 12; McCollister, 20; McDonnell, 5; Pansing Brooks, 28; Slama, 1; Vargas, 7; Wayne, 13.

Read first time January 22, 2019

Committee: Judiciary

1 A BILL FOR AN ACT relating to crimes and offenses; to amend sections  
2 27-404, 27-413, 28-115, 28-318, 28-322.01, and 29-4003, Reissue  
3 Revised Statutes of Nebraska, and sections 28-101 and 83-4,143,  
4 Revised Statutes Cumulative Supplement, 2018; to prohibit sexual  
5 assault of detainees by employees of law enforcement agencies; to  
6 define and redefine terms; to provide a penalty; to change  
7 provisions relating to evidence of sexual assault under the Nebraska  
8 Evidence Rules, enhanced penalties for certain crimes against  
9 pregnant women, sexual abuse of an inmate or parolee, registrable  
10 offenses under the Sex Offender Registration Act, and eligibility  
11 for participation in incarceration work camp; to harmonize  
12 provisions; and to repeal the original sections.  
13 Be it enacted by the people of the State of Nebraska,

1 Section 1. Section 27-404, Reissue Revised Statutes of Nebraska, is  
2 amended to read:

3 27-404 (1) Evidence of a person's character or a trait of his or her  
4 character is not admissible for the purpose of proving that he or she  
5 acted in conformity therewith on a particular occasion, except:

6 (a) Evidence of a pertinent trait of his or her character offered by  
7 an accused, or by the prosecution to rebut the same;

8 (b) Evidence of a pertinent trait of character of the victim of the  
9 crime offered by an accused or by the prosecution to rebut the same, or  
10 evidence of a character trait of peacefulness of the victim offered by  
11 the prosecution in a homicide case to rebut evidence that the victim was  
12 the first aggressor. In a sexual assault case, reputation, opinion, or  
13 other evidence of past sexual behavior of the victim is governed by  
14 section 27-412; or

15 (c) Evidence of the character of a witness as provided in sections  
16 27-607 to 27-609.

17 (2) Evidence of other crimes, wrongs, or acts is not admissible to  
18 prove the character of a person in order to show that he or she acted in  
19 conformity therewith. It may, however, be admissible for other purposes,  
20 such as proof of motive, opportunity, intent, preparation, plan,  
21 knowledge, identity, or absence of mistake or accident.

22 (3) When such evidence is admissible pursuant to this section, in  
23 criminal cases evidence of other crimes, wrongs, or acts of the accused  
24 may be offered in evidence by the prosecution if the prosecution proves  
25 to the court by clear and convincing evidence that the accused committed  
26 the crime, wrong, or act. Such proof shall first be made outside the  
27 presence of any jury.

28 (4) Regarding the admissibility in a civil or criminal action of  
29 evidence of a person's commission of another offense or offenses of  
30 sexual assault under sections 28-319 to 28-322.04 and section 7 of this  
31 act, see sections 27-413 to 27-415.

1           Sec. 2. Section 27-413, Reissue Revised Statutes of Nebraska, is  
2 amended to read:

3           27-413 For purposes of sections 27-414 and 27-415, offense of sexual  
4 assault means sexual assault under section 28-319 or 28-320, sexual  
5 assault of a child under section 28-319.01 or 28-320.01, sexual assault  
6 by use of an electronic communication device under section 28-320.02,  
7 sexual abuse of an inmate or parolee under sections 28-322.01 to  
8 28-322.03, sexual abuse of a protected individual under section  
9 28-322.04, sexual abuse of a detainee under section 7 of this act, an  
10 attempt or conspiracy to commit any of the crimes listed in this section,  
11 or the commission of or conviction for a crime in another jurisdiction  
12 that is substantially similar to any crime listed in this section.

13           Sec. 3. Section 28-101, Revised Statutes Cumulative Supplement,  
14 2018, is amended to read:

15           28-101 Sections 28-101 to 28-1357 and 28-1601 to 28-1603 and section  
16 7 of this act shall be known and may be cited as the Nebraska Criminal  
17 Code.

18           Sec. 4. Section 28-115, Reissue Revised Statutes of Nebraska, is  
19 amended to read:

20           28-115 (1) Except as provided in subsection (2) of this section, any  
21 person who commits any of the following criminal offenses against a  
22 pregnant woman shall be punished by the imposition of the next higher  
23 penalty classification than the penalty classification prescribed for the  
24 criminal offense:

- 25           (a) Assault in the first degree, section 28-308;
- 26           (b) Assault in the second degree, section 28-309;
- 27           (c) Assault in the third degree, section 28-310;
- 28           (d) Sexual assault in the first degree, section 28-319;
- 29           (e) Sexual assault in the second or third degree, section 28-320;
- 30           (f) Sexual assault of a child in the first degree, section  
31 28-319.01;

1 (g) Sexual assault of a child in the second or third degree, section  
2 28-320.01;

3 (h) Sexual abuse of an inmate or parolee in the first degree,  
4 section 28-322.02;

5 (i) Sexual abuse of an inmate or parolee in the second degree,  
6 section 28-322.03;

7 (j) Sexual abuse of a protected individual in the first or second  
8 degree, section 28-322.04;

9 (k) Sexual abuse of a detainee under section 7 of this act;

10 (l) ~~(k)~~ Domestic assault in the first, second, or third degree,  
11 section 28-323;

12 (m) ~~(l)~~ Assault on an officer, an emergency responder, a state  
13 correctional employee, a Department of Health and Human Services  
14 employee, or a health care professional in the first degree, section  
15 28-929;

16 (n) ~~(m)~~ Assault on an officer, an emergency responder, a state  
17 correctional employee, a Department of Health and Human Services  
18 employee, or a health care professional in the second degree, section  
19 28-930;

20 (o) ~~(n)~~ Assault on an officer, an emergency responder, a state  
21 correctional employee, a Department of Health and Human Services  
22 employee, or a health care professional in the third degree, section  
23 28-931;

24 (p) ~~(o)~~ Assault on an officer, an emergency responder, a state  
25 correctional employee, a Department of Health and Human Services  
26 employee, or a health care professional using a motor vehicle, section  
27 28-931.01;

28 (q) ~~(p)~~ Assault by a confined person, section 28-932;

29 (r) ~~(q)~~ Confined person committing offenses against another person,  
30 section 28-933; and

31 (s) ~~(r)~~ Proximately causing serious bodily injury while operating a

1 motor vehicle, section 60-6,198.

2 (2) The enhancement in subsection (1) of this section does not apply  
3 to any criminal offense listed in subsection (1) of this section that is  
4 already punishable as a Class I, IA, or IB felony. If any criminal  
5 offense listed in subsection (1) of this section is punishable as a Class  
6 I misdemeanor, the penalty under this section is a Class IIIA felony.

7 (3) The prosecution shall allege and prove beyond a reasonable doubt  
8 that the victim was pregnant at the time of the offense.

9 Sec. 5. Section 28-318, Reissue Revised Statutes of Nebraska, is  
10 amended to read:

11 28-318 As used in sections 28-317 to 28-322.04 and section 7 of this  
12 act, unless the context otherwise requires:

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

14 (2) Intimate parts means the genital area, groin, inner thighs,  
15 buttocks, or breasts;

16 (3) Past sexual behavior means sexual behavior other than the sexual  
17 behavior upon which the sexual assault is alleged;

18 (4) Serious personal injury means great bodily injury or  
19 disfigurement, extreme mental anguish or mental trauma, pregnancy,  
20 disease, or loss or impairment of a sexual or reproductive organ;

21 (5) Sexual contact means the intentional touching of the victim's  
22 sexual or intimate parts or the intentional touching of the victim's  
23 clothing covering the immediate area of the victim's sexual or intimate  
24 parts. Sexual contact ~~shall~~ also means ~~mean~~ the touching by the victim of  
25 the actor's sexual or intimate parts or the clothing covering the  
26 immediate area of the actor's sexual or intimate parts when such touching  
27 is intentionally caused by the actor. Sexual contact includes ~~shall~~  
28 ~~include~~ only such conduct which can be reasonably construed as being for  
29 the purpose of sexual arousal or gratification of either party. Sexual  
30 contact ~~shall~~ also includes ~~include~~ the touching of a child with the  
31 actor's sexual or intimate parts on any part of the child's body for

1 purposes of sexual assault of a child under sections 28-319.01 and  
2 28-320.01;

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

10 (7) Victim means the person alleging to have been sexually  
11 assaulted;

12 (8) Without consent means:

13 (a)(i) The victim was compelled to submit due to the use of force or  
14 threat of force or coercion, or (ii) the victim expressed a lack of  
15 consent through words, or (iii) the victim expressed a lack of consent  
16 through conduct, or (iv) the consent, if any was actually given, was the  
17 result of the actor's deception as to the identity of the actor or the  
18 nature or purpose of the act on the part of the actor;

19 (b) The victim need only resist, either verbally or physically, so  
20 as to make the victim's refusal to consent genuine and real and so as to  
21 reasonably make known to the actor the victim's refusal to consent; and

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

24 (9) Force or threat of force means (a) the use of physical force  
25 which overcomes the victim's resistance or (b) the threat of physical  
26 force, express or implied, against the victim or a third person that  
27 places the victim in fear of death or in fear of serious personal injury  
28 to the victim or a third person where the victim reasonably believes that  
29 the actor has the present or future ability to execute the threat.

30 Sec. 6. Section 28-322.01, Reissue Revised Statutes of Nebraska, is  
31 amended to read:

1           28-322.01 (1) A person commits the offense of sexual abuse of an  
2 inmate or parolee if such person subjects an inmate or parolee to sexual  
3 penetration or sexual contact as those terms are defined in section  
4 28-318. It is not a defense to a charge under this section that the  
5 inmate or parolee consented to such sexual penetration or sexual contact.

6           (2) An otherwise lawful body cavity search by a person is not a  
7 violation of this section.

8           Sec. 7. (1) For purposes of this section:

9           (a) Detainee means an individual who has been:

10          (i) Arrested by a person;

11          (ii) Detained by a person, regardless of whether the detainee has  
12 been arrested or charged; or

13          (iii) Placed into the custody of a person, regardless of whether the  
14 detainee has been arrested or charged;

15          (b) Law enforcement agency means an agency or department of this  
16 state or of any political subdivision of this state which is responsible  
17 for the prevention and detection of crime; the enforcement of the penal,  
18 traffic, or highway laws of this state or any political subdivision of  
19 this state; and the enforcement of arrest warrants. Law enforcement  
20 agency includes a police department, an office of the town marshal, an  
21 office of the county sheriff, the Nebraska State Patrol, and any  
22 department to which a deputy state sheriff is assigned as provided in  
23 section 84-106; and

24          (c) Person means an individual:

25          (i) Who is employed by a law enforcement agency, including an  
26 individual working under contract with the agency;

27          (ii) To whom the law enforcement agency has authorized or delegated  
28 authority to make arrests, to place a detainee in detention or custody,  
29 or to otherwise exercise control over a detainee or a detainee's  
30 activities; and

31          (iii) Who is not the spouse of a detainee.

1       (2) A person commits the offense of sexual abuse of a detainee if  
2 the person engages in sexual penetration or sexual contact with a  
3 detainee. It is not a defense to a charge under this section that the  
4 detainee consented to such sexual penetration or sexual contact.

5       (3) An otherwise lawful body cavity search by a person is not a  
6 violation of this section.

7       (4) Any person who engages in sexual penetration with a detainee is  
8 guilty of sexual abuse of a detainee in the first degree. Sexual abuse of  
9 a detainee in the first degree is a Class IIA felony.

10       (5) Any person who engages in sexual contact with a detainee is  
11 guilty of sexual abuse of a detainee in the second degree. Sexual abuse  
12 of a detainee in the second degree is a Class IIIA felony.

13       Sec. 8. Section 29-4003, Reissue Revised Statutes of Nebraska, is  
14 amended to read:

15       29-4003 (1)(a) The Sex Offender Registration Act applies to any  
16 person who on or after January 1, 1997:

17       (i) Has ever pled guilty to, pled nolo contendere to, or been found  
18 guilty of any of the following:

19       (A) Kidnapping of a minor pursuant to section 28-313, except when  
20 the person is the parent of the minor and was not convicted of any other  
21 offense in this section;

22       (B) False imprisonment of a minor pursuant to section 28-314 or  
23 28-315;

24       (C) Sexual assault pursuant to section 28-319 or 28-320;

25       (D) Sexual assault of a child in the second or third degree pursuant  
26 to section 28-320.01;

27       (E) Sexual assault of a child in the first degree pursuant to  
28 section 28-319.01;

29       (F) Sexual abuse of a vulnerable adult or senior adult pursuant to  
30 subdivision (1)(c) of section 28-386;

31       (G) Incest of a minor pursuant to section 28-703;



1 (H) Pandering of a minor pursuant to section 28-802;

2 (I) Visual depiction of sexually explicit conduct of a child  
3 pursuant to section 28-1463.03 or 28-1463.05;

4 (J) Knowingly possessing any visual depiction of sexually explicit  
5 conduct which has a child as one of its participants or portrayed  
6 observers pursuant to section 28-813.01;

7 (K) Criminal child enticement pursuant to section 28-311;

8 (L) Child enticement by means of an electronic communication device  
9 pursuant to section 28-320.02;

10 (M) Debauching a minor pursuant to section 28-805; or

11 (N) Attempt, solicitation, aiding or abetting, being an accessory,  
12 or conspiracy to commit an offense listed in subdivisions (1)(a)(i)(A)  
13 through (1)(a)(i)(M) of this section;

14 (ii) Has ever pled guilty to, pled nolo contendere to, or been found  
15 guilty of any offense that is substantially equivalent to a registrable  
16 offense under subdivision (1)(a)(i) of this section by any village, town,  
17 city, state, territory, commonwealth, or other jurisdiction of the United  
18 States, by the United States Government, by court-martial or other  
19 military tribunal, or by a foreign jurisdiction, notwithstanding a  
20 procedure comparable in effect to that described under section 29-2264 or  
21 any other procedure to nullify a conviction other than by pardon;

22 (iii) Is incarcerated in a jail, a penal or correctional facility,  
23 or any other public or private institution or is under probation or  
24 parole as a result of pleading guilty to or being found guilty of a  
25 registrable offense under subdivision (1)(a)(i) or (ii) of this section  
26 prior to January 1, 1997; or

27 (iv) Enters the state and is required to register as a sex offender  
28 under the laws of another village, town, city, state, territory,  
29 commonwealth, or other jurisdiction of the United States.

30 (b) In addition to the registrable offenses under subdivision (1)(a)  
31 of this section, the Sex Offender Registration Act applies to any person

1 who on or after January 1, 2010:

2 (i)(A) Except as provided in subdivision (1)(b)(i)(B) of this  
3 section, has ever pled guilty to, pled nolo contendere to, or been found  
4 guilty of any of the following:

5 (I) Murder in the first degree pursuant to section 28-303;

6 (II) Murder in the second degree pursuant to section 28-304;

7 (III) Manslaughter pursuant to section 28-305;

8 (IV) Assault in the first degree pursuant to section 28-308;

9 (V) Assault in the second degree pursuant to section 28-309;

10 (VI) Assault in the third degree pursuant to section 28-310;

11 (VII) Stalking pursuant to section 28-311.03;

12 (VIII) Violation of section 28-311.08 requiring registration under  
13 the act pursuant to subsection (5) of section 28-311.08;

14 (IX) Kidnapping pursuant to section 28-313;

15 (X) False imprisonment pursuant to section 28-314 or 28-315;

16 (XI) Sexual abuse of an inmate or parolee in the first degree  
17 pursuant to section 28-322.02;

18 (XII) Sexual abuse of an inmate or parolee in the second degree  
19 pursuant to section 28-322.03;

20 (XIII) Sexual abuse of a protected individual pursuant to section  
21 28-322.04;

22 (XIV) Incest pursuant to section 28-703;

23 (XV) Child abuse pursuant to subdivision (1)(d) or (e) of section  
24 28-707;

25 (XVI) Enticement by electronic communication device pursuant to  
26 section 28-833; or

27 (XVII) Attempt, solicitation, aiding or abetting, being an  
28 accessory, or conspiracy to commit an offense listed in subdivisions (1)  
29 (b)(i)(A)(I) through (1)(b)(i)(A)(XVI) of this section.

30 (B) In order for the Sex Offender Registration Act to apply to the  
31 offenses listed in subdivisions (1)(b)(i)(A)(I), (II), (III), (IV), (V),

1 (VI), (VII), (IX), and (X) of this section, a court shall have found that  
2 evidence of sexual penetration or sexual contact, as those terms are  
3 defined in section 28-318, was present in the record, which shall include  
4 consideration of the factual basis for a plea-based conviction and  
5 information contained in the presentence report;

6 (ii) Has ever pled guilty to, pled nolo contendere to, or been found  
7 guilty of any offense that is substantially equivalent to a registrable  
8 offense under subdivision (1)(b)(i) of this section by any village, town,  
9 city, state, territory, commonwealth, or other jurisdiction of the United  
10 States, by the United States Government, by court-martial or other  
11 military tribunal, or by a foreign jurisdiction, notwithstanding a  
12 procedure comparable in effect to that described under section 29-2264 or  
13 any other procedure to nullify a conviction other than by pardon; or

14 (iii) Enters the state and is required to register as a sex offender  
15 under the laws of another village, town, city, state, territory,  
16 commonwealth, or other jurisdiction of the United States.

17 (c) In addition to the registrable offenses under subdivisions (1)  
18 (a) and (b) of this section, the Sex Offender Registration Act applies to  
19 any person who on or after January 1, 2020:

20 (i) Has ever pled guilty to, pled nolo contendere to, or been found  
21 guilty of sexual abuse of a detainee under section 7 of this act; or

22 (ii) Has ever pled guilty to, pled nolo contendere to, or been found  
23 guilty of any offense that is substantially equivalent to a registrable  
24 offense under subdivision (1)(c)(i) of this section by any village, town,  
25 city, state, territory, commonwealth, or other jurisdiction of the United  
26 States, by the United States Government, by court-martial or other  
27 military tribunal, or by a foreign jurisdiction, notwithstanding a  
28 procedure comparable in effect to that described under section 29-2264 or  
29 any other procedure to nullify a conviction other than by pardon.

30 (2) A person appealing a conviction of a registrable offense under  
31 this section shall be required to comply with the act during the appeals

1 process.

2 Sec. 9. Section 83-4,143, Revised Statutes Cumulative Supplement,  
3 2018, is amended to read:

4 83-4,143 (1) It is the intent of the Legislature that the court  
5 target the felony offender (a) who is eligible and by virtue of his or  
6 her criminogenic needs is suitable to be sentenced to intensive  
7 supervision probation with placement at the incarceration work camp, (b)  
8 for whom the court finds that other conditions of a sentence of intensive  
9 supervision probation, in and of themselves, are not suitable, and (c)  
10 who, without the existence of an incarceration work camp, would, in all  
11 likelihood, be sentenced to prison.

12 (2) When the court is of the opinion that imprisonment is  
13 appropriate, but that a brief and intensive period of regimented,  
14 structured, and disciplined programming within a secure facility may  
15 better serve the interests of society, the court may place an offender in  
16 an incarceration work camp for a period not to exceed one hundred eighty  
17 days as a condition of a sentence of intensive supervision probation. The  
18 court may consider such placement if the offender (a) is a male or female  
19 offender convicted of a felony offense in a district court, (b) is  
20 medically and mentally fit to participate, with allowances given for  
21 reasonable accommodation as determined by medical and mental health  
22 professionals, and (c) has not previously been incarcerated for a violent  
23 felony crime. Offenders convicted of a crime under sections 28-319 to  
24 28-322.04 and section 7 of this act or of any capital crime are not  
25 eligible to be placed in an incarceration work camp.

26 (3) It is also the intent of the Legislature that the Board of  
27 Parole may recommend placement of felony offenders at the incarceration  
28 work camp. The offenders recommended by the board shall be offenders  
29 currently housed at other Department of Correctional Services adult  
30 correctional facilities and shall complete the incarceration work camp  
31 programming prior to release on parole.

1           (4) When the Board of Parole is of the opinion that a felony  
2 offender currently incarcerated in a Department of Correctional Services  
3 adult correctional facility may benefit from a brief and intensive period  
4 of regimented, structured, and disciplined programming immediately prior  
5 to release on parole, the board may direct placement of such an offender  
6 in an incarceration work camp for a period not to exceed one hundred  
7 eighty days as a condition of release on parole. The board may consider  
8 such placement if the felony offender (a) is medically and mentally fit  
9 to participate, with allowances given for reasonable accommodation as  
10 determined by medical and mental health professionals, and (b) has not  
11 previously been incarcerated for a violent felony crime. Offenders  
12 convicted of a crime under sections 28-319 to 28-322.04 and section 7 of  
13 this act or of any capital crime are not eligible to be placed in an  
14 incarceration work camp.

15           (5) The Director of Correctional Services may assign a felony  
16 offender to an incarceration work camp if he or she believes it is in the  
17 best interests of the felony offender and of society, except that  
18 offenders convicted of a crime under sections 28-319 to 28-322.04 and  
19 section 7 of this act ~~28-321~~ or of any capital crime are not eligible to  
20 be assigned to an incarceration work camp pursuant to this subsection.

21           Sec. 10.     Original sections 27-404, 27-413, 28-115, 28-318,  
22 28-322.01, and 29-4003, Reissue Revised Statutes of Nebraska, and  
23 sections 28-101 and 83-4,143, Revised Statutes Cumulative Supplement,  
24 2018, are repealed.