

LEGISLATURE OF NEBRASKA
ONE HUNDRED SIXTH LEGISLATURE
FIRST SESSION

LEGISLATIVE BILL 630

Introduced by Morfeld, 46.

Read first time January 23, 2019

Committee: Judiciary

1 A BILL FOR AN ACT relating to crimes and offenses; to amend sections
2 28-311.08, 28-367.01, 28-813.01, 28-1463.03, and 29-4003, Reissue
3 Revised Statutes of Nebraska, and section 28-101, Revised Statutes
4 Cumulative Supplement, 2018; to change elements of, penalty
5 provisions for, and defenses to offenses involving unlawful
6 intrusion and sexually explicit conduct; to create the offense of
7 sexual extortion; to define and redefine terms; to change
8 applicability of certain provisions of and provide for a registrable
9 offense under the Sex Offender Registration Act; to provide and
10 change penalties; to harmonize provisions; to provide an operative
11 date; and to repeal the original sections.
12 Be it enacted by the people of the State of Nebraska,

1 Section 1. Section 28-101, Revised Statutes Cumulative Supplement,
2 2018, is amended to read:

3 28-101 Sections 28-101 to 28-1357 and 28-1601 to 28-1603 and section
4 3 of this act shall be known and may be cited as the Nebraska Criminal
5 Code.

6 Sec. 2. Section 28-311.08, Reissue Revised Statutes of Nebraska, is
7 amended to read:

8 28-311.08 (1) It shall be unlawful for any person to knowingly
9 intrude upon any other person without his or her consent or knowledge in
10 a place of solitude or seclusion.

11 (2)(a) (2) It shall be unlawful for any person to knowingly
12 photograph, film, or otherwise record, ~~or live broadcast an image~~ of the
13 intimate area of any other person without his or her ~~knowledge and~~
14 consent when his or her intimate area would not be generally visible to
15 the public regardless of whether such other person is located in a public
16 or private place.

17 (b) It shall be unlawful for any person to knowingly release,
18 publish, disseminate, distribute, or otherwise make public, in any manner
19 which would enable it to be viewed by another person, any photograph,
20 image, film, or other recording which is unlawful pursuant to subdivision
21 (2)(a) of this section.

22 (3) For purposes of this section:

23 (a) Intimate area means the naked or undergarment-clad genitalia,
24 pubic area, buttocks, or female breast of an individual;

25 (b) Intrude means the viewing either the: ~~(i) Viewing~~ of another
26 person in a state of undress as it is occurring; and ~~or~~

27 ~~(ii) Recording by video, photographic, digital, or other electronic~~
28 ~~means of another person in a state of undress; and~~

29 (c) Place of solitude or seclusion means a place where a person
30 would intend to be in a state of undress and have a reasonable
31 expectation of privacy, including, but not limited to, any facility,

1 public or private, used as a restroom, tanning booth, locker room, shower
2 room, fitting room, or dressing room.

3 ~~(4)(a) Violation of subsection (1) of this section involving an~~
4 ~~intrusion as defined in subdivision (3)(b)(i) of this section or~~
5 ~~violation under subsection (2) of this section is a Class I misdemeanor.~~

6 (b) Violation of subdivision (2)(a) of this section is a Class IV
7 felony.

8 (c) Violation of subdivision (2)(b) of this section is a Class IIA
9 felony.

10 (d) Subsequent violation of subdivision (1), (2)(a), or (2)(b) of
11 this section shall be punishable by the next higher penalty
12 classification.

13 ~~(b) Subsequent violation of this section involving an intrusion as~~
14 ~~defined in subdivision (3)(b)(i) of this section, subsequent violation~~
15 ~~under subsection (2) of this section, or violation of this section~~
16 ~~involving an intrusion as defined in subdivision (3)(b)(ii) of this~~
17 ~~section is a Class IV felony.~~

18 ~~(c) Violation of this section is a Class IIA felony if video or an~~
19 ~~image recorded in violation of this section is distributed to another~~
20 ~~person or otherwise made public in any manner which would enable it to be~~
21 ~~viewed by another person.~~

22 (5) As part of sentencing following a conviction for a violation of
23 this section, the court shall make a finding as to the ages of the
24 defendant and the victim at the time the offense occurred. If the
25 defendant is found to have been nineteen years of age or older and the
26 victim is found to have been less than eighteen years of age at such
27 time, then the defendant shall be required to register under the Sex
28 Offender Registration Act.

29 (6) No person shall be prosecuted pursuant to subdivision (4)(b),
30 (c), or (d) ~~(e)~~ of this section unless the indictment for such offense is
31 found by a grand jury or a complaint filed before a magistrate within

1 three years after the later of:

2 (a) The commission of the crime;

3 (b) Law enforcement's or a victim's receipt of actual or
4 constructive notice of either the existence of an image or a video or
5 other electronic recording made in violation of this section or the
6 distribution of images, video, or other electronic recording made in
7 violation of this section; or

8 (c) The youngest victim of a violation of this section reaching the
9 age of twenty-one years.

10 Sec. 3. (1) A person commits the offense of sexual extortion if he
11 or she knowingly or intentionally coerces or entices another person to:

12 (a) Engage in sexual conduct, sexual contact, or sexual penetration;

13 (b) Produce, manufacture, provide, or distribute any image,
14 photograph, film, videotape, digital recording, or other electronic media
15 of another person, whether recognizable or not, who is depicted in a
16 state of nudity or engaged in an act depicting any sexual conduct, sexual
17 contact, sexual penetration, or sexually deviant behavior;

18 (c) Provide money or any other form of consideration in order to
19 prevent the dissemination of any image, photograph, film, videotape,
20 digital recording, or other electronic media of another person, whether
21 recognizable or not, who is depicted in a state of nudity or engaged in
22 an act depicting any sexual conduct, sexual contact, sexual penetration,
23 or sexually deviant behavior; or

24 (d) Provide money or any other form of consideration in order to
25 prevent the disclosure of any prior occurrence of sexual conduct, sexual
26 contact, sexual penetration, or sexually deviant behavior.

27 (2) Sexual extortion is a Class IV felony if the victim was under
28 nineteen years of age and the perpetrator was nineteen years of age or
29 older at the time of the offense.

30 (3) Sexual extortion is a Class I misdemeanor if the victim was
31 nineteen years of age or older at the time of the offense.

1 (4) Sexual extortion is a Class II misdemeanor if both the victim
2 and the perpetrator were younger than nineteen years of age at the time
3 of the offense.

4 (5) As part of sentencing following a conviction for a violation of
5 this section, the court shall make a finding as to the ages of the
6 defendant and the victim at the time the offense occurred. If the
7 defendant is found to have been nineteen years of age or older and the
8 victim is found to have been younger than eighteen years of age at such
9 time, then the defendant shall be required to register under the Sex
10 Offender Registration Act.

11 (6) For purposes of this section:

12 (a) Nudity has the same meaning as in section 28-807;

13 (b) Sexual conduct has the same meaning as in section 28-807;

14 (c) Sexual contact has the same meaning as in section 28-318; and

15 (d) Sexual penetration has the same meaning as in section 28-318.

16 Sec. 4. Section 28-367.01, Reissue Revised Statutes of Nebraska, is
17 amended to read:

18 28-367.01 Sexual exploitation includes, but is not limited to, a
19 violation of section 28-311.08 or section 3 of this act and causing,
20 allowing, permitting, inflicting, or encouraging a vulnerable adult to
21 engage in voyeurism, in exhibitionism, in prostitution, or in the lewd,
22 obscene, or pornographic photographing, filming, or depiction of the
23 vulnerable adult.

24 Sec. 5. Section 28-813.01, Reissue Revised Statutes of Nebraska, is
25 amended to read:

26 28-813.01 (1) It shall be unlawful for a person to knowingly possess
27 any visual depiction of sexually explicit conduct, as defined in section
28 28-1463.02, which has a child, as defined in such section, as one of its
29 participants or portrayed observers.

30 (2)(a) Any person who is under nineteen years of age at the time he
31 or she violates this section shall be guilty of a Class I misdemeanor ~~IV~~

1 ~~felony~~ for each offense.

2 (b) Any person who is younger than nineteen years of age at the time
3 he or she violates this section, and who has one time previously been
4 convicted of a violation of this section, shall be guilty of a Class IV
5 felony.

6 (c) (b) Any person who is nineteen years of age or older at the time
7 he or she violates this section shall be guilty of a Class IIA felony for
8 each offense.

9 (d) (c) Any person regardless of age who violates this section and
10 has previously (i) been twice convicted and sentenced for a violation
11 of this section or (ii) been convicted and sentenced one time previously
12 for a violation of section 28-308, 28-309, 28-310, 28-311, 28-313,
13 28-314, 28-315, 28-319, 28-319.01, 28-320.01, 28-833, 28-1463.03, or
14 28-1463.05 or subsection (1) or (2) of section 28-320, shall be guilty of
15 a Class IC felony for each offense.

16 (3) It shall not be a violation of an affirmative defense to a
17 charge made pursuant to this section if that:

18 (a) The visual depiction portrays no person other than the
19 defendant; or

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

31 (4) In addition to the penalties provided in this section, a

1 sentencing court may order that any money, securities, negotiable
2 instruments, firearms, conveyances, or electronic communication devices
3 as defined in section 28-833 or any equipment, components, peripherals,
4 software, hardware, or accessories related to electronic communication
5 devices be forfeited as a part of the sentence imposed if it finds by
6 clear and convincing evidence adduced at a separate hearing in the same
7 prosecution, conducted pursuant to section 28-1601, that any or all such
8 property was derived from, used, or intended to be used to facilitate a
9 violation of this section.

10 Sec. 6. Section 28-1463.03, Reissue Revised Statutes of Nebraska, is
11 amended to read:

12 28-1463.03 (1) It shall be unlawful for a person to knowingly make,
13 publish, direct, create, provide, or in any manner generate any visual
14 depiction of sexually explicit conduct which has a child as one of its
15 participants or portrayed observers.

16 (2) It shall be unlawful for a person knowingly to purchase, rent,
17 sell, deliver, distribute, display for sale, advertise, trade, or provide
18 to any person any visual depiction of sexually explicit conduct which has
19 a child as one of its participants or portrayed observers.

20 (3) It shall be unlawful for a person to knowingly employ, force,
21 authorize, induce, or otherwise cause a child to engage in any visual
22 depiction of sexually explicit conduct which has a child as one of its
23 participants or portrayed observers.

24 (4) It shall be unlawful for a parent, stepparent, legal guardian,
25 or any person with custody and control of a child, knowing the content
26 thereof, to consent to such child engaging in any visual depiction of
27 sexually explicit conduct which has a child as one of its participants or
28 portrayed observers.

29 (5) It shall be an affirmative defense to a charge brought pursuant
30 to subsection (1) of this section if the defendant was less than nineteen
31 ~~eighteen~~ years of age at the time the visual depiction was created and

1 the visual depiction of sexually explicit conduct includes no person
2 other than the defendant.

3 (6) It shall be an affirmative defense to a charge brought pursuant
4 to subsection (2) of this section if (a) the defendant was less than
5 nineteen ~~eighteen~~ years of age, (b) the visual depiction of sexually
6 explicit conduct includes no person other than the defendant, (c) the
7 defendant had a reasonable belief at the time the visual depiction was
8 sent to another that it was being sent to a willing recipient, and (d)
9 the recipient was at least fifteen years of age at the time the visual
10 depiction was sent.

11 Sec. 7. Section 29-4003, Reissue Revised Statutes of Nebraska, is
12 amended to read:

13 29-4003 (1)(a) The Sex Offender Registration Act applies to any
14 person who on or after January 1, 1997:

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

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

20 (B) False imprisonment of a minor pursuant to section 28-314 or
21 28-315;

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

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

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

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

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

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

31 (I) Visual depiction of sexually explicit conduct of a child

1 pursuant to section 28-1463.03 or 28-1463.05, except that the Sex
2 Offender Registration Act shall not apply to any person who has been
3 found guilty, on or after January 1, 2020, of a crime under subsection
4 (1) of section 28-1463.05 and has been punished pursuant to subdivision
5 (2)(a) of such section, unless the court finds that the child depicted as
6 a participant or portrayed observer was fourteen years of age or younger
7 at the time the commission of the crime occurred;

8 (J) Knowingly possessing any visual depiction of sexually explicit
9 conduct which has a child as one of its participants or portrayed
10 observers pursuant to section 28-813.01, except that the Sex Offender
11 Registration Act shall not apply to any person who has been found guilty,
12 on or after January 1, 2020, of a crime under subsection (1) of section
13 28-813.01 and has been punished pursuant to subdivision (2)(a) of such
14 section, unless the court finds that the child depicted as a participant
15 or portrayed observer was fourteen years of age or younger at the time
16 the visual depiction was created;

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

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

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

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

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

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

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

9 (b) In addition to the registrable offenses under subdivision (1)(a)
10 of this section, the Sex Offender Registration Act applies to any person
11 who on or after January 1, 2010:

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

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

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

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

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

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

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

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

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

24 (IX) Violation of subsection (2) or (3) of section 3 of this act
25 requiring registration under the act pursuant to subsection (5) of
26 section 3 of this act;

27 (X) (IX) Kidnapping pursuant to section 28-313;

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

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

31 (XIII) (XII) Sexual abuse of an inmate or parolee in the second

1 degree pursuant to section 28-322.03;

2 ~~(XIV) (XIII)~~ Sexual abuse of a protected individual pursuant to
3 section 28-322.04;

4 ~~(XV) (XIV)~~ Incest pursuant to section 28-703;

5 ~~(XVI) (XV)~~ Child abuse pursuant to subdivision (1)(d) or (e) of
6 section 28-707;

7 ~~(XVII) (XVI)~~ Enticement by electronic communication device pursuant
8 to section 28-833; or

9 ~~(XVIII) (XVII)~~ Attempt, solicitation, aiding or abetting, being an
10 accessory, or conspiracy to commit an offense listed in subdivisions (1)
11 (b)(i)(A)(I) through ~~(1)(b)(i)(A)(XVII) (1)(b)(i)(A)(XVI)~~ of this
12 section.

13 (B) In order for the Sex Offender Registration Act to apply to the
14 offenses listed in subdivisions (1)(b)(i)(A)(I), (II), (III), (IV), (V),
15 (VI), (VII), ~~(X), and (XI) (IX), and (X)~~ of this section, a court shall
16 have found that evidence of sexual penetration or sexual contact, as
17 those terms are defined in section 28-318, was present in the record,
18 which shall include consideration of the factual basis for a plea-based
19 conviction and information contained in the presentence report;

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

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

31 (2) A person appealing a conviction of a registrable offense under

1 this section shall be required to comply with the act during the appeals
2 process.

3 Sec. 8. This act becomes operative on January 1, 2020.

4 Sec. 9. Original sections 28-311.08, 28-367.01, 28-813.01,
5 28-1463.03, and 29-4003, Reissue Revised Statutes of Nebraska, and
6 section 28-101, Revised Statutes Cumulative Supplement, 2018, are
7 repealed.