

LEGISLATIVE BILL 79

Approved by the Governor February 7, 1984

Introduced by Pirsch, 10

AN ACT relating to sexual assault; to amend sections 27-404, 28-318, and 28-321, Reissue Revised Statutes of Nebraska, 1943; to define the crime of sexual assault of a child; to provide a penalty; to restrict the use of certain evidence; to define and redefine terms; to eliminate certain provisions relating to evidence of past sexual conduct; and to repeal the original sections, and also sections 28-322 and 28-323, Reissue Revised Statutes of Nebraska, 1943.

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

Section 1. (1) A person commits sexual assault of a child if he or she subjects another person fourteen years of age or younger to sexual contact and the actor is at least nineteen years of age or older.

(2) Sexual assault of a child is a Class IV felony.

Sec. 2. That section 27-404, Reissue Revised Statutes of Nebraska, 1943, be amended to read as follows:

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

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

(b) Evidence of a pertinent trait of character of the victim of the crime offered by an accused or by the prosecution to rebut the same, or evidence of a character trait of peacefulness of the victim offered by the prosecution in a homicide case to rebut evidence that the victim was the first aggressor. In the case of sexual assault, reputation or opinion evidence of the past sexual behavior of the victim of the sexual assault will not be admissible; or

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

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

Sec. 3. That section 28-318, Reissue Revised Statutes of Nebraska, 1943, be amended to read as follows:

28-318. As used in sections 28-317 to 28-323, unless the context otherwise requires:

(1) Actor shall mean a person accused of sexual assault;

(2) Intimate parts shall mean the genital area, groin, inner thighs, buttocks, or breasts;

(3) Past sexual behavior shall mean sexual behavior other than the sexual behavior upon which the sexual assault is alleged;

(4) ~~(3)~~ Serious personal injury shall mean great bodily injury or disfigurement, extreme mental anguish or mental trauma, pregnancy, disease, or loss or impairment of a sexual or reproductive organ;

(5) ~~(4)~~ Sexual contact shall mean the intentional touching of the victim's sexual or intimate parts or the intentional touching of the victim's clothing covering the immediate area of the victim's sexual or intimate parts. Sexual contact shall also mean the touching by the victim of the actor's sexual or intimate parts or the clothing covering the immediate area of the actor's sexual or intimate parts when such touching is intentionally caused by the actor. Sexual contact shall include only such conduct which can be reasonably construed as being for the purpose of sexual arousal or gratification of either party;

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

(7) ~~(6)~~ Victim shall mean the person alleging to have been sexually assaulted.

Sec. 4. That section 28-321, Reissue Revised Statutes of Nebraska, 1943, be amended to read as follows:

28-321. (1) If the defendant intends to offer evidence of specific instances of the victim's past sexual behavior, notice of such intention shall be given to the prosecuting attorney and filed with the court not later than fifteen days before trial.

(2) Upon motion to the court by either party in a prosecution in a case of sexual assault, an in camera hearing shall be conducted in the presence of the judge, under guidelines established by the judge, to determine the relevance of evidence of the victim's or the defendant's past sexual ~~conduct~~ behavior. Evidence of a victim's past sexual behavior shall not be admissible unless such evidence is: (a) Evidence of past sexual

behavior with persons other than the defendant, offered by the defendant upon the issue whether the defendant was or was not, with respect to the victim, the source of any physical evidence, including but not limited to, semen, injury, blood, saliva, and hair; or (b) evidence of past sexual behavior with the defendant when such evidence is offered by the defendant on the issue of whether the victim consented to the sexual behavior upon which the sexual assault is alleged if it is first established to the court that such activity shows such a relation to the conduct involved in the case and tends to establish a pattern of conduct or behavior on the part of the victim as to be relevant to the issue of consent.

Sec. 5. That original sections 27-404, 28-318, and 28-321, Reissue Revised Statutes of Nebraska, 1943, and also sections 28-322 and 28-323, Reissue Revised Statutes of Nebraska, 1943, are repealed.