

LEGISLATIVE BILL 1086

Approved by the Governor April 11, 2006

Introduced by Synowiecki, 7; Howard, 9

AN ACT relating to crimes and offenses; to amend sections 28-801 and 28-804.01, Reissue Revised Statutes of Nebraska, and section 28-101, Revised Statutes Cumulative Supplement, 2004; to adopt the Nebraska Prostitution Intervention and Treatment Act; to change and provide penalties relating to prostitution; to provide for the crime of solicitation of prostitution; to change provisions relating to testimony as prescribed; to prohibit forced labor or services as prescribed and certain acts relating to sexual activity; to provide penalties; to require reports; to harmonize provisions; and to repeal the original sections.

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

Section 1. Sections 1 to 5 of this act shall be known and may be cited as the Nebraska Prostitution Intervention and Treatment Act.

Sec. 2. The Legislature finds that:

(1) Increasing prostitution in Nebraska has become harmful to communities and neighborhoods, often contributing to both incidents of crime and fear of crime. Prostitution depletes local law enforcement resources and leads to a reduction in the quality of life for the residents and businesses that are within close geographic proximity to concentrated areas of prostitution. Prostitution-related activities create noise, litter, and harassment of residents and businesses and promote declining property values. Residents and businesses in areas within close geographic proximity to prostitution-related activity often feel threatened when solicitors proposition on their streets or when prostitution-related activities are performed in parked cars, empty parking lots, or alleyways;

(2) Many prostitutes use prostitution to support drug and alcohol addictions. In addition, many prostitutes suffer from significant mental health disorders that lead to increased dependency on drugs and alcohol. When panderers are involved, the prostitutes are often subject to physical and psychological abuse;

(3) Solicitors of prostitution are equally contributing sexual offenders;

(4) Resources are needed to coordinate and deliver an array of community-based services to address issues related to prostitution, including, but not limited to, lifestyle choices, substance abuse, mental health disorders, workforce assessment and preparation, education, and other community-based services;

(5) A coordinated array of community-based services delivered to individuals engaged in prostitution-related activity can mitigate individual lifestyle choices and break the cycle of prostitution; and

(6) The quality of life for residents and businesses can be drastically improved when the prevalence of prostitution-related activity is significantly reduced or removed within residential and business areas.

Sec. 3. It is the intent of the Legislature to provide funds for education and treatment of individuals involved in prostitution-related activities.

Sec. 4. (1) The Legislature shall appropriate funds to create a coordinated program of education and treatment for individuals that participate in prostitution-related activities as described in section 28-801.

(2) The Department of Health and Human Services Finance and Support, in consultation with the regional behavioral health authorities, shall distribute funds to regional behavioral health authorities that can demonstrate to the department a high incidence of prostitution within the behavioral health region. The department may consider the following criteria for regional behavioral health funding under this section:

(a) The number of criminal convictions for prostitution-related activities within the counties that comprise the regional behavioral health authority;

(b) Evidence that prostitution-related activities are impacting residential areas and businesses and the quality of life of residents in such areas and businesses is negatively impacted;

(c) The amount of local law enforcement resources devoted specifically to curtailing prostitution-related activity;

(d) Evidence that the regional behavioral health authorities consulted with recognized neighborhood and business associations within

geographic proximity to concentrated areas of prostitution; and

(e) The amount of local subdivision treatment funding.

Each regional behavioral health authority may contract with qualifying public, private, or nonprofit entities for the provision of such education and treatment. Such qualifying entities may obtain additional funding from cities and counties to provide a coordinated program of treatment and education for individuals that participate in prostitution-related activities.

Sec. 5. The Department of Health and Human Services Finance and Support shall adopt and promulgate rules and regulations to carry out the Nebraska Prostitution Intervention and Treatment Act.

Sec. 6. Section 28-101, Revised Statutes Cumulative Supplement, 2004, is amended to read:

28-101 Sections 28-101 to 28-1350 and sections 8, 10, 11, and 12 of this act shall be known and may be cited as the Nebraska Criminal Code.

Sec. 7. Section 28-801, Reissue Revised Statutes of Nebraska, is amended to read:

28-801 (1) Any person who performs, offers, or agrees to perform any act of sexual contact or sexual penetration, as those terms are defined in subdivision (6) of section 28-318, with any person not his or her spouse, in exchange for money or other thing of value, commits prostitution.

(2) Prostitution is a Class I misdemeanor. Any person convicted of violating subsection (1) of this section shall be punished as follows:

(a) If such person has had no prior convictions or has had one prior conviction, such person shall be guilty of a Class II misdemeanor. If the court places such person on probation, such order of probation shall include, as one of its conditions, that such person shall satisfactorily attend and complete an appropriate mental health and substance abuse assessment conducted by a licensed mental health professional or substance abuse professional authorized to complete such assessment; and

(b) If such person has had two or more prior convictions, such person shall be guilty of a Class I misdemeanor. If the court places such person on probation, such order of probation shall include, as one of its conditions, that such person shall satisfactorily attend and complete an appropriate mental health and substance abuse assessment conducted by a licensed mental health professional or substance abuse professional authorized to complete such assessment.

For purposes of this subsection, prior conviction means any conviction on or after the effective date of this act for violation of subsection (1) of this section or any conviction on or after the effective date of this act for violation of a city or village ordinance relating to prostitution.

Sec. 8. (1) Any person who solicits another person not his or her spouse to perform any act of sexual contact or sexual penetration, as those terms are defined in section 28-318, in exchange for money or other thing of value, commits solicitation of prostitution.

(2) Any person convicted of violating subsection (1) of this section shall be punished as follows:

(a) If such person has had no prior convictions, such person shall be guilty of a Class I misdemeanor and pay a fine of not less than two hundred fifty dollars. If the court places such person on probation, such order of probation shall include, as one of its conditions, the payment of a fine of not less than two hundred fifty dollars and such person shall satisfactorily attend and complete an appropriate mental health and substance abuse assessment conducted by a licensed mental health professional or substance abuse professional authorized to complete such assessment; and

(b) If such person has had one or more prior convictions, such person shall be guilty of a Class IV felony and pay a fine of not less than five hundred dollars. If the court places such person on probation, such order of probation shall include, as one of its conditions, the payment of a fine of not less than five hundred dollars and such person shall satisfactorily attend and complete an appropriate mental health and substance abuse assessment conducted by a licensed mental health professional or substance abuse professional authorized to complete such assessment.

Sec. 9. Section 28-804.01, Reissue Revised Statutes of Nebraska, is amended to read:

28-804.01 In all cases arising under sections 28-801 to 28-804 and section 8 of this act, no person shall be excused from testifying against another person by reason of such testimony tending to incriminate the person testifying, but the testimony so given, unless voluntary, shall in no case be used against the person so testifying in any criminal prosecution or otherwise.

Sec. 10. For purposes of sections 10 to 12 of this act, the following definitions apply:

(1) Actor means a person who solicits, procures, or supervises the services or labor of another person;

(2) Commercial sexual activity means any sex act on account of which anything of value is given, promised to, or received by any person;

(3) Financial harm means theft by extortion as described by section 28-513;

(4) Forced labor or services means labor or services that are performed or provided by another person and are obtained or maintained through:

(a) Inflicting or threatening to inflict serious personal injury as defined by section 28-318;

(b) Physically restraining or threatening to physically restrain another person;

(c) Knowingly destroying, concealing, removing, confiscating, or possessing any actual or purported passport or other immigration document or any other actual or purported government identification document of another person; or

(d) Causing or threatening to cause financial harm to another person;

(5) Labor means work of economic or financial value;

(6) Maintain means, in relation to labor or services, to secure continued performance thereof, regardless of any initial agreement by the victim to perform such type of service;

(7) Minor means a person younger than eighteen years of age;

(8) Obtain means, in relation to labor or services, to secure performance thereof;

(9) Services means an ongoing relationship between a person and the actor in which the person performs activities under the supervision of or for the benefit of the actor. Commercial sexual activity and sexually-explicit performances are forms of services under this section. Nothing in this subdivision shall be construed to legalize prostitution;

(10) Sexually-explicit performance means a live or public play, dance, show, or other exhibition intended to arouse or gratify sexual desire or to appeal to prurient interests; and

(11) Trafficking victim means a person subjected to any act or acts prohibited by section 11 of this act.

Sec. 11. (1) No person shall knowingly subject or attempt to subject another person to forced labor or services. If an actor knowingly subjects another person to forced labor or services by:

(a) Inflicting or threatening to inflict serious personal injury as defined by section 28-318, the actor is guilty of a Class III felony;

(b) Physically restraining or threatening to physically restrain another person, the actor is guilty of a Class III felony;

(c) Knowingly destroying, concealing, removing, confiscating, or possessing any actual or purported passport or other immigration document, or any other actual or purported government identification document, of such other person, the actor is guilty of a Class IV felony; or

(d) Causing or threatening to cause financial harm to another person, the actor is guilty of a Class I misdemeanor.

(2) No person shall knowingly recruit, entice, harbor, transport, provide, or obtain by any means or attempt to recruit, entice, harbor, provide, or obtain by any means a minor for the purpose of having such minor engage in commercial sexual activity, sexually-explicit performance, or the production of pornography, or to cause or attempt to cause a minor to engage in commercial sexual activity, sexually-explicit performance, or the production of pornography. A person who violates this subsection shall be punished as follows:

(a) In cases in which the actor uses overt force or the threat of force, the actor is guilty of a Class II felony;

(b) In cases in which the victim has not attained the age of fifteen years and the actor does not use overt force or the threat of force, the actor is guilty of a Class II felony; or

(c) In cases involving a victim between the ages of fifteen and eighteen years, and the actor does not use overt force or threat of force, the actor is guilty of a Class III felony.

(3) Any person who knowingly (a) recruits, entices, harbors, transports, provides, or obtains by any means, or attempts to recruit, entice, harbor, transport, provide, or obtain by any means, a person eighteen years of age or older, intending or knowing that the person will be subjected to forced labor or services or (b) benefits, financially or by receiving

anything of value, from participation in a venture which has, as part of the venture, an act that is in violation of subsection (1) of this section, is guilty of a Class IV felony.

Sec. 12. (1) The Attorney General, in consultation with the Department of Health and Human Services, shall, no later than one year after the effective date of this act, issue a report outlining how existing victim and witness laws and rules and regulations respond to the needs of trafficking victims and suggesting areas of improvement and modification.

(2) The Department of Health and Human Services, in consultation with the Attorney General, shall, no later than one year after the effective date of this act, issue a report outlining how existing social service programs respond or fail to respond to the needs of trafficking victims and the interplay of such existing programs with federally funded victim service programs and suggesting areas of improvement and modification.

Sec. 13. Original sections 28-801 and 28-804.01, Reissue Revised Statutes of Nebraska, and section 28-101, Revised Statutes Cumulative Supplement, 2004, are repealed.