

## LEGISLATIVE BILL 430

Approved by the Governor June 4, 1993

Introduced by Abboud, 12; Hohenstein, 17; Robak, 22

AN ACT relating to crimes and punishments; to amend sections 28-319, 28-516, and 28-707, Reissue Revised Statutes of Nebraska, 1943; to change provisions relating to sexual assault, unauthorized use of a propelled vehicle, and child abuse; to change and provide penalties; to require notice of alibi evidence as prescribed; and to repeal the original sections.

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

Section 1. That section 28-319, Reissue Revised Statutes of Nebraska, 1943, be amended to read as follows:

28-319. (1) Any person who subjects another person to sexual penetration and (a) overcomes the victim by force, threat of force, express or implied, coercion, or deception, (b) knew or should have known that the victim was mentally or physically incapable of resisting or appraising the nature of his or her conduct, or (c) the actor is nineteen years of age or older and the victim is less than sixteen years of age is guilty of sexual assault in the first degree.

(2) Sexual assault in the first degree is a Class II felony. The sentencing judge shall consider whether the actor ~~shall have~~ caused serious personal injury to the victim in reaching ~~his~~ a decision on the sentence.

(3) Any person who ~~shall be~~ is found guilty of sexual assault in the first degree for a second time when the first conviction was pursuant to this section or any other state or federal law with essentially the same elements as this section shall be sentenced to not less than twenty-five years and shall not be eligible for parole.

Sec. 2. That section 28-516, Reissue Revised Statutes of Nebraska, 1943, be amended to read as follows:

28-516. (1) A person commits the offense of unauthorized operation of a propelled vehicle if he intentionally exerts unauthorized control over another's propelled vehicle by operating the same without the owner's consent.

(2) Propelled vehicle shall mean an automobile, airplane, motorcycle, motorboat, or other motor-propelled vehicle.

(3) It shall be an affirmative defense to a prosecution under this section that the defendant reasonably believed that the owner would have authorized the use had he known of it.

(4) Unauthorized use of a propelled vehicle is a Class III misdemeanor for the first offense, a Class I misdemeanor for the second offense, and a Class IV felony for the third and any subsequent offenses.

Sec. 3. That section 28-707, Reissue Revised Statutes of

Nebraska, 1943, be amended to read as follows:

28-707. (1) A person commits child abuse if he or she knowingly, intentionally, or negligently causes or permits a minor child to be:

(a) Placed in a situation that endangers his or her life or health; or

(b) Cruelly confined or cruelly punished; or

(c) Deprived of necessary food, clothing, shelter, or care.

(2) The statutory privilege between patient and physician and between husband and wife shall not be available for excluding or refusing testimony in any prosecution for a violation of this section.

(3) Child abuse is a Class I misdemeanor if the offense is committed negligently.

(4) Child abuse is a Class IV felony if the offense is committed knowingly and intentionally and does not result in serious bodily injury as defined in section 28-109.

(5) Child abuse is a Class III felony if the offense is committed knowingly and intentionally and results in serious bodily injury as defined in such section.

Sec. 4. No evidence offered by a defendant for the purpose of establishing an alibi to an offense shall be admitted in the trial of the case unless notice of intention to rely upon an alibi is given to the county attorney and filed with the court at least thirty days before trial, except that such notice shall be waived by the presiding judge if necessary in the interests of justice.

Sec. 5. That original sections 28-319, 28-516, and 28-707, Reissue Revised Statutes of Nebraska, 1943, are repealed.