

LEGISLATURE OF NEBRASKA
NINETY-EIGHTH LEGISLATURE
FIRST SESSION

LEGISLATIVE BILL 474

Introduced by Kruse, 13; Burling, 33; Combs, 32; Johnson, 37;
Kremer, 34; Louden, 49; Dw. Pedersen, 39;
Redfield, 12

Read first time January 16, 2003

Committee: Judiciary

A BILL

1 FOR AN ACT relating to child abuse; to amend sections 28-201 and
2 28-707, Revised Statutes Supplement, 2002; to provide a
3 penalty for driving under the influence with a minor
4 child passenger; to harmonize provisions; and to repeal
5 the original sections.
6 Be it enacted by the people of the State of Nebraska,

1 Section 1. Section 28-201, Revised Statutes Supplement,
2 2002, is amended to read:

3 28-201. (1) A person shall be guilty of an attempt to
4 commit a crime if he or she:

5 (a) Intentionally engages in conduct which would
6 constitute the crime if the attendant circumstances were as he or
7 she believes them to be; or

8 (b) Intentionally engages in conduct which, under the
9 circumstances as he or she believes them to be, constitutes a
10 substantial step in a course of conduct intended to culminate in
11 his or her commission of the crime.

12 (2) When causing a particular result is an element of the
13 crime, a person shall be guilty of an attempt to commit the crime
14 if, acting with the state of mind required to establish liability
15 with respect to the attendant circumstances specified in the
16 definition of the crime, he or she intentionally engages in conduct
17 which is a substantial step in a course of conduct intended or
18 known to cause such a result.

19 (3) Conduct shall not be considered a substantial step
20 under this section unless it is strongly corroborative of the
21 defendant's criminal intent.

22 (4) Criminal attempt is:

23 (a) A Class II felony when the crime attempted is a Class
24 I, Class IA, or Class IB felony;

25 (b) A Class III felony when the crime attempted is a
26 Class II felony;

27 (c) A Class IIIA felony when the crime attempted is
28 assault in the first degree under section 28-308, sexual assault in

1 the second degree under section 28-320, manufacturing,
2 distributing, delivering, dispensing, or possessing with intent to
3 manufacture, distribute, deliver, or dispense controlled substances
4 listed in Schedule I, II, or III of section 28-405 under section
5 28-416 except for an exceptionally hazardous drug, incest under
6 section 28-703, child abuse under subsection ~~(5)~~ (6) of section
7 28-707, assault on an officer in the second degree under section
8 28-930, or assault by a confined person with a deadly or dangerous
9 weapon under section 28-932;

10 (d) A Class IV felony when the crime attempted is a Class
11 III felony not listed in subdivision (4)(c) of this section;

12 (e) A Class I misdemeanor when the crime attempted is a
13 Class IIIA or Class IV felony;

14 (f) A Class II misdemeanor when the crime attempted is a
15 Class I misdemeanor; and

16 (g) A Class III misdemeanor when the crime attempted is a
17 Class II misdemeanor.

18 Sec. 2. Section 28-707, Revised Statutes Supplement,
19 2002, is amended to read:

20 28-707. (1) A person commits child abuse if he or she
21 knowingly, intentionally, or negligently causes or permits a minor
22 child to be:

23 (a) Placed in a situation that endangers his or her life
24 or physical or mental health;

25 (b) Cruelly confined or cruelly punished;

26 (c) Deprived of necessary food, clothing, shelter, or
27 care;

28 (d) Placed in a situation to be sexually exploited by

1 allowing, encouraging, or forcing such minor child to solicit for
 2 or engage in prostitution, debauchery, public indecency, or obscene
 3 or pornographic photography, films, or depictions; ~~or~~

4 (e) Placed in a situation to be sexually abused as
 5 defined in section 28-319 or 28-320.01; or

6 (f) A passenger in a motor vehicle when such person is
 7 operating or in actual physical control of the motor vehicle in
 8 violation of section 60-6,196, 60-6,197, or 60-6,198.

9 (2) The statutory privilege between patient and
 10 physician, between client and professional counselor, and between
 11 husband and wife shall not be available for excluding or refusing
 12 testimony in any prosecution for a violation of this section.

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

15 (4) Child abuse is a Class IV felony if there has been a
 16 prior conviction under subdivision (1)(f) of this section.

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

20 ~~(5)~~ (6) Child abuse is a Class III felony if the offense
 21 is committed knowingly and intentionally and results in serious
 22 bodily injury as defined in such section.

23 ~~(6)~~ (7) Child abuse is a Class IB felony if the offense
 24 is committed knowingly and intentionally and results in the death
 25 of such child.

26 Sec. 3. Original sections 28-201 and 28-707, Revised
 27 Statutes Supplement, 2002, are repealed.