

LEGISLATIVE BILL 713

Approved by the Governor June 2, 2005

Introduced by Thompson, 14; Flood, 19

AN ACT relating to sexual offenses; to amend sections 29-110, 29-2264, 29-4003, 29-4004, 29-4009, and 29-4013, Revised Statutes Supplement, 2004; to provide duties regarding collecting evidence of sexual assault; to change provisions relating to time limitations for actions on certain offenses, probation, and sex offender registration; to harmonize provisions; and to repeal the original sections.

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

Section 1. Every health care professional as defined in section 44-5418 or any person in charge of any emergency room in this state:

(1) Shall utilize a standardized sexual assault evidence collection kit approved by the Attorney General; and

(2) Shall collect forensic evidence with the consent of the sexual assault victim without separate authorization by a law enforcement agency.

Sec. 2. Section 29-110, Revised Statutes Supplement, 2004, is amended to read:

29-110. (1) Except as otherwise provided by law, no person shall be prosecuted for any felony unless the indictment is found by a grand jury within three years next after the offense has been done or committed or unless a complaint for the same is filed before the magistrate within three years next after the offense has been done or committed and a warrant for the arrest of the defendant has been issued.

(2) Except as otherwise provided by law, no person shall be prosecuted, tried, or punished for any misdemeanor or other indictable offense below the grade of felony or for any fine or forfeiture under any penal statute unless the suit, information, or indictment for the same such offense is instituted or found within one year and six months from the time of committing the offense or incurring the fine or forfeiture or within one year for any offense the punishment of which is restricted by a fine not exceeding one hundred dollars and to imprisonment not exceeding three months.

(3) Except as otherwise provided by law, no person shall be prosecuted for sexual assault in the first degree, second degree, or third degree under section 28-319 or 28-320, kidnapping under section 28-313, false imprisonment under section 28-314 or 28-315, child abuse under section 28-707, pandering under section 28-802, debauching a minor under section 28-805, or an offense under section 28-813, 28-813.01, or 28-1463.03 when the victim is under sixteen years of age at the time of the offense (a) unless the indictment for the same such offense is found by a grand jury within seven years next after the offense has been committed or within seven years next after the victim's sixteenth birthday, whichever is later, or (b) unless a complaint for the same such offense is filed before the magistrate within seven years next after the offense has been committed or within seven years next after the victim's sixteenth birthday, whichever is later, and a warrant for the arrest of the defendant has been issued.

(4) No person shall be prosecuted for a violation of the Securities Act of Nebraska under section 8-1117 unless the indictment for the same such offense is found by a grand jury within five years next after the offense has been done or committed or unless a complaint for the same such offense is filed before the magistrate within five years next after the offense has been done or committed and a warrant for the arrest of the defendant has been issued.

(5) There shall not be any time limitations for prosecution or punishment for treason, murder, arson, forgery, sexual assault in the first or second degree under section 28-319 or 28-320, or sexual assault of a child under section 28-320.01; nor shall there be any time limitations for prosecution or punishment for sexual assault in the third degree under section 28-320 ~~or any of the following offenses~~ when the victim is under sixteen years of age at the time of the offense. ~~Sexual assault in the first degree, second degree, or third degree under section 28-319 or 28-320.~~

(6) The time limitations prescribed in this section shall include all inchoate offenses pursuant to the Nebraska Criminal Code and compounding a felony pursuant to section 28-301.

(7) The time limitations prescribed in this section shall not extend to any person fleeing from justice.

(8) When any suit, information, or indictment for any crime or misdemeanor is limited by any statute to be brought or exhibited within any other time than is limited by this section, then the suit, information, or indictment shall be brought or exhibited within the time limited by such statute.

(9) If any suit, information, or indictment is quashed or the proceedings set aside or reversed on writ of error, the time during the pendency of such suit, information, or indictment so quashed, set aside, or reversed shall not be reckoned within this statute so as to bar any new suit, information, or indictment for the same offense.

(10) The changes made to this section by Laws 2004, LB 943, shall apply to offenses committed prior to April 16, 2004, for which the statute of limitations has not expired as of such date and to offenses committed on or after such date.

(11) The changes made to this section by this legislative bill shall apply to offenses committed prior to the effective date of this act for which the statute of limitations has not expired as of such date and to offenses committed on or after such date.

Sec. 3. Section 29-2264, Revised Statutes Supplement, 2004, is amended to read:

29-2264. (1) Whenever any person is placed on probation by a court and satisfactorily completes the conditions of his or her probation for the entire period or is discharged from probation prior to the termination of the period of probation, the sentencing court shall issue an order releasing the offender from probation. Such order in all felony cases shall provide notice that the person's voting rights are not restored upon completion of probation. The order shall include information on restoring such civil rights through the pardon process, including application to and hearing by the Board of Pardons.

(2) Whenever any person is convicted of a misdemeanor or felony and is placed on probation by the court or is sentenced to a fine only, he or she may, after satisfactory fulfillment of the conditions of probation for the entire period or after discharge from probation prior to the termination of the period of probation and after payment of any fine, petition the sentencing court to set aside the conviction.

(3) In determining whether to set aside the conviction, the court shall consider:

(a) The behavior of the offender after sentencing;

(b) The likelihood that the offender will not engage in further criminal activity; and

(c) Any other information the court considers relevant.

(4) The court may grant the offender's petition and issue an order setting aside the conviction when in the opinion of the court the order will be in the best interest of the offender and consistent with the public welfare. The order shall:

(a) Nullify the conviction; and

(b) Remove all civil disabilities and disqualifications imposed as a result of the conviction.

(5) The setting aside of a conviction in accordance with the Nebraska Probation Administration Act shall not:

(a) Require the reinstatement of any office, employment, or position which was previously held and lost or forfeited as a result of the conviction;

(b) Preclude proof of a plea of guilty whenever such plea is relevant to the determination of an issue involving the rights or liabilities of someone other than the offender;

(c) Preclude proof of the conviction as evidence of the commission of the misdemeanor or felony whenever the fact of its commission is relevant for the purpose of impeaching the offender as a witness, except that the order setting aside the conviction may be introduced in evidence;

(d) Preclude use of the conviction for the purpose of determining sentence on any subsequent conviction of a criminal offense;

(e) Preclude the proof of the conviction as evidence of the commission of the misdemeanor or felony in the event an offender is charged with a subsequent offense and the penalty provided by law is increased if the prior conviction is proved;

(f) Preclude the proof of the conviction to determine whether an offender is eligible to have a subsequent conviction set aside in accordance with the Nebraska Probation Administration Act; ~~or~~

(g) Preclude use of the conviction as evidence of commission of the misdemeanor or felony for purposes of determining whether an application filed or a license issued under sections 71-1901 to ~~71-1905~~ 71-1906.01 or the Child Care Licensing Act or a certificate issued under sections 79-806 to 79-815 should be denied, suspended, or revoked;

(h) Preclude proof of the conviction as evidence whenever the fact of the conviction is relevant to a determination of risk of recidivism under section 29-4013; or

(i) Relieve a person who is convicted of an offense for which registration is required under the Sex Offender Registration Act of the duty to register and to comply with the terms of the act.

(6) Except as otherwise provided for the notice in subsection (1) of this section, ~~this section~~ changes made to this section by this legislative bill shall be retroactive in application and shall apply to all persons, otherwise eligible in accordance with the provisions of this section, whether convicted prior to, on, or subsequent to ~~June 11, 1993~~ the effective date of this act.

Sec. 4. Section 29-4003, Revised Statutes Supplement, 2004, is amended to read:

29-4003. (1) Except as provided in subsection (2) of this section, the Sex Offender Registration Act shall apply to any person who on or after January 1, 1997:

(a) Pleads guilty to or is found guilty of:

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

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

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

(iv) Sexual assault of a child pursuant to section 28-320.01;

(1)(c) of section 28-386;

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

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

(viii) Visual depiction of sexually explicit conduct of a child pursuant to section 28-1463.03 or 28-1463.05;

(ix) Knowingly possessing any visual depiction of sexually explicit conduct which has a child as one of its participants or portrayed observers pursuant to section 28-813.01;

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

(xi) Child enticement by means of a computer pursuant to section 28-320.02; or

(xii) Attempt, solicitation, or conspiracy to commit an offense listed in subdivisions (1)(a)(i) through (1)(a)(xi) of this section;

(b) Enters the state and has pleaded guilty to or has been found guilty of any offense that is substantially equivalent to a registrable offense under subdivision (1)(a) of this section by any state, territory, commonwealth, or other jurisdiction of the United States, by the United States Government, or by ~~court martial~~ court-martial or other military tribunal, notwithstanding a procedure comparable in effect to that described under section 29-2264 or any other procedure to nullify a conviction other than by pardon; or

(c) Is incarcerated in a jail, a penal or correctional facility, or any other public or private institution or is under probation or parole as a result of pleading guilty to or being found guilty of a registrable offense under subdivision (1)(a) or (b) of this section prior to January 1, 1997.

(2) In the case of a person convicted of a violation of section 28-311, 28-313, 28-314, or 28-315, the convicted person shall be subject to the Sex Offender Registration Act, unless the sentencing court determines at the time of sentencing, in light of all the facts, that the convicted person is not subject to the act. The sentencing court shall make such determination part of the sentencing order.

(3) A person appealing a conviction of a registrable offense under this section shall be required to comply with the act during the appeals process.

Sec. 5. Section 29-4004, Revised Statutes Supplement, 2004, is amended to read:

29-4004. (1) Any person subject to the Sex Offender Registration Act shall register with the sheriff of the county in which the person resides or is temporarily domiciled within five working days of becoming subject to the act.

(2) Any person required to register under the act shall inform the sheriff of the county in which he or she resides, in writing, if he or she has a new address within such county within five working days after the address change. The sheriff shall forward such information to the sex offender registration and community notification division of the Nebraska State Patrol within five working days after receipt of the new address.

(3) Any person required to register under the act shall inform the sheriff of the county in which he or she resides, in writing, if he or she has a new address in a different county in this state within five working days after the address change. The sheriff shall forward the new address to the sex offender registration and community notification division of the Nebraska State Patrol within five working days after receipt of the new address. The division shall notify the sheriff of the county to which the person is relocating of the new address. The person shall report to the county sheriff of his or her new county of residence and register with such county sheriff.

(4) Any person required to register under the act shall inform the sheriff of the county in which he or she resides, in writing, if he or she moves to a new out-of-state address. The sheriff shall forward the new out-of-state address to the sex offender registration and notification division of the Nebraska State Patrol within five working days after receipt of the new out-of-state address. The division shall forward the new out-of-state address to the other state's central repository for sex offender registration.

(5) Any person required to register under the act who is residing in another state or is temporarily domiciled in another state, and is employed, carries on a vocation, or attends school in this state shall report and register with the sheriff of the county in which he or she is employed, carries on a vocation, or attends school in this state within five working days after becoming employed, carrying on a vocation, or attending school. The sheriff shall forward this information to the sex offender registration and community notification division of the Nebraska State Patrol within five working days after receipt of such information. For purposes of this subsection:

(a) Attends school means enrollment in any educational institution in this state on a full-time or part-time basis;

(b) Is employed or carries on a vocation means any full-time or part-time employment, with or without compensation, which lasts for a duration of more than fourteen days or for an aggregate period exceeding thirty days in a calendar year; and

(c) Temporarily domiciled means a place at which the person actually lives or stays on a temporary basis even though he or she may plan to return to his or her permanent address or to another temporary address. For purposes of this section, a temporary domicile means any place at which the person actually lives or stays for a period of at least five working days.

(6) Any person incarcerated for a registrable offense under section 29-4003 in a jail, penal or correctional facility, or other public or private institution who is not already registered shall be registered by the jail, penal or correctional facility, or public or private institution prior to his or her release. The person shall be informed and information shall be obtained as required in section 29-4006.

(7) Any person required to register under the act shall inform the sheriff of the county in which he or she resides, in writing, of each postsecondary educational institution at which he or she is employed, carries on a vocation, or attends school, within five working days after such employment or attendance. The person shall also notify the sheriff of any change in such employment or attendance status at the postsecondary educational institution. The sheriff shall forward the information regarding such employment or attendance to the sex offender registration and community notification division of the Nebraska State Patrol within five working days after receipt of the information.

(8) Any person required to register or who is registered under the act, but is incarcerated for more than five days, whether or not in his or her own county of residence or temporary domicile, shall ~~notify~~ inform the sheriff of the county in which such person would reside or would be temporarily domiciled if he or she was not incarcerated, within five working days after incarceration, of his or her incarceration and his or her expected release date, if any such date is available. The sheriff shall forward the information regarding incarceration to the sex offender registration and community notification division of the Nebraska State Patrol within five working days after receipt of the information.

(9) Each sheriff shall forward all written information, photographs, and fingerprints obtained pursuant to the act to the sex offender registration and community notification division of the Nebraska State Patrol within five working days. The information shall be forwarded on forms furnished by the division. The division shall maintain a central registry of sex offenders required to register under the act.

Sec. 6. Section 29-4009, Revised Statutes Supplement, 2004, is amended to read:

29-4009. Information obtained under the Sex Offender Registration Act shall be confidential, except that:

(1) Information shall be disclosed to law enforcement agencies for law enforcement purposes;

(2) Information may be disclosed to governmental agencies conducting confidential background checks for employment, volunteer, licensure, or certification purposes;

(3) Information may be disclosed to health care providers who serve children or vulnerable adults for the purpose of conducting confidential background checks for employment;

(4) Information concerning the address or whereabouts of the person required to register may be disclosed to the victim or victims of such person; and

~~(4)~~ (5) The Nebraska State Patrol, any law enforcement agency, and any probation or parole officer may release relevant information that is necessary to protect the public concerning a specific person required to register, except that the identity of a victim of an offense that requires registration shall not be released. ~~Release~~

The release of such information authorized by this section shall conform with the rules and regulations adopted and promulgated by the Nebraska State Patrol pursuant to section 29-4013.

Sec. 7. Section 29-4013, Revised Statutes Supplement, 2004, is amended to read:

29-4013. (1) The Nebraska State Patrol shall adopt and promulgate rules and regulations to carry out the registration provisions of the Sex Offender Registration Act.

(2)(a) The Nebraska State Patrol shall adopt and promulgate rules and regulations for the release of information ~~to the community~~ pursuant to ~~subdivision (4) of~~ section 29-4009.

(b) The rules and regulations adopted by the Nebraska State Patrol shall identify and incorporate factors relevant to the sex offender's risk of recidivism. Factors relevant to the risk of recidivism include, but are not limited to:

(i) Conditions of release that minimize the risk of recidivism, including probation, parole, counseling, therapy, or treatment;

(ii) Physical conditions that minimize the risk of recidivism, including advanced age or debilitating illness; and

(iii) Any criminal history of the sex offender indicative of a high risk of recidivism, including:

(A) Whether the conduct of the sex offender was found to be characterized by repetitive and compulsive behavior;

(B) Whether the sex offender committed the sexual offense against a child;

(C) Whether the sexual offense involved the use of a weapon, violence, or infliction of serious bodily injury;

(D) The number, date, and nature of prior offenses;

(E) Whether psychological or psychiatric profiles indicate a risk of recidivism;

(F) The sex offender's response to treatment;

(G) Any recent threats by the sex offender against a person or expressions of intent to commit additional crimes; and

(H) Behavior of the sex offender while confined.

(c) The procedures for release of information established by the Nebraska State Patrol shall provide for three levels of notification by the law enforcement agency in whose jurisdiction the sex offender is to be released depending on the risk of recidivism by the sex offender as follows:

(i) If the risk of recidivism is low, other law enforcement agencies likely to encounter the sex offender shall be notified;

(ii) If the risk of recidivism is moderate, in addition to the notice required by subdivision (i) of this subdivision, schools, day care centers, health care facilities providing services to children or vulnerable adults, and religious and youth organizations shall be notified; and

(iii) If the risk of recidivism is high, in addition to the notice required by subdivisions (i) and (ii) of this subdivision, the public shall be notified through means designed to reach members of the public likely to encounter the sex offender, which are limited to direct contact, news releases, or a method utilizing a telephone system. If any means of notification proposes a fee for usage, then nonprofit organizations holding a certificate of exemption under section 501(c) of the Internal Revenue Code shall not be charged.

(d) The Nebraska State Patrol shall establish procedures for the evaluation of the risk of recidivism and implementation of community

notification that promote the uniform application of the notification rules and regulations required by this section.

(e) The Nebraska State Patrol or a designee shall assign a notification level, based upon the risk of recidivism, to all persons required to register under the act.

(f) Personnel and mental health professionals for the sex offender registration and community notification division of the Nebraska State Patrol shall have access to all documents that are generated by any governmental agency that may have bearing on sex offender risk assessment and community notification pursuant to this section. This may include, but is not limited to, law enforcement reports, presentence reports, criminal histories, or birth certificates. The division shall not be charged for access to documents under this subdivision. Access to such documents will ensure that a fair risk assessment is completed using the totality of all information available. For purposes of this subdivision, mental health professional means (i) a practicing physician licensed to practice medicine in this state under the provisions of section 71-102, (ii) a practicing psychologist licensed to engage in the practice of psychology in this state as provided in section 71-1,206.14, or (iii) a practicing mental health professional licensed or certified in this state as provided in section 71-1,333.

(3) Nothing in subsection (2) of this section shall be construed to prevent law enforcement officers from providing community notification concerning any person who poses a danger under circumstances that are not provided for in the act.

Sec. 8. Original sections 29-110, 29-2264, 29-4003, 29-4004, 29-4009, and 29-4013, Revised Statutes Supplement, 2004, are repealed.