

LEGISLATURE OF NEBRASKA
ONE HUNDREDTH LEGISLATURE
SECOND SESSION
LEGISLATIVE BILL 1054

Introduced by Karpisek, 32.

Read first time January 18, 2008

Committee: Judiciary

A BILL

1 FOR AN ACT relating to crimes and offenses; to amend sections
2 28-111, 28-115, 28-311, 28-318, 28-319, 28-319.01,
3 28-320.01, 28-320.02, 28-707, 29-110, 29-119, 29-1926,
4 29-2028, 29-2221, 29-2290, 29-2923, 29-4003, 29-4103,
5 42-1203, 71-6908, 79-267, 81-1850, and 83-174.02,
6 Revised Statutes Cumulative Supplement, 2006, and
7 sections 28-101, 43-2933, and 83-4,143, Revised Statutes
8 Supplement, 2007; to create the offense of unlawful
9 sexual intercourse; to provide penalties; to provide an
10 affirmative defense; to harmonize provisions; and to
11 repeal the original sections.
12 Be it enacted by the people of the State of Nebraska,

1 Section 1. Section 28-101, Revised Statutes Supplement,
2 2007, is amended to read:

3 28-101 Sections 28-101 to 28-1350 and section 10 of this
4 act shall be known and may be cited as the Nebraska Criminal Code.

5 Sec. 2. Section 28-111, Revised Statutes Cumulative
6 Supplement, 2006, is amended to read:

7 28-111 Any person who commits one or more of the
8 following criminal offenses against a person or a person's
9 property because of the person's race, color, religion, ancestry,
10 national origin, gender, sexual orientation, age, or disability
11 or because of the person's association with a person of a
12 certain race, color, religion, ancestry, national origin, gender,
13 sexual orientation, age, or disability shall be punished by the
14 imposition of the next higher penalty classification than the
15 penalty classification prescribed for the criminal offense, unless
16 such criminal offense is already punishable as a Class IB felony
17 or higher classification: Manslaughter, section 28-305; assault
18 in the first degree, section 28-308; assault in the second
19 degree, section 28-309; assault in the third degree, section
20 28-310; terroristic threats, section 28-311.01; stalking, section
21 28-311.03; kidnapping, section 28-313; false imprisonment in the
22 first degree, section 28-314; false imprisonment in the second
23 degree, section 28-315; sexual assault in the first degree, section
24 28-319; unlawful sexual intercourse, section 10 of this act; sexual
25 assault in the second or third degree, section 28-320; sexual

1 assault of a child, sections 28-319.01 and 28-320.01; arson in
2 the first degree, section 28-502; arson in the second degree,
3 section 28-503; arson in the third degree, section 28-504; criminal
4 mischief, section 28-519; criminal trespass in the first degree,
5 section 28-520; or criminal trespass in the second degree, section
6 28-521.

7 Sec. 3. Section 28-115, Revised Statutes Cumulative
8 Supplement, 2006, is amended to read:

9 28-115 (1) Any person who commits any of the following
10 criminal offenses against a pregnant woman shall be punished by
11 the imposition of the next higher penalty classification than the
12 penalty classification prescribed for the criminal offense, unless
13 such criminal offense is already punishable as a Class IB felony or
14 higher classification: Assault in the first degree, section 28-308;
15 assault in the second degree, section 28-309; assault in the
16 third degree, section 28-310; sexual assault in the first degree,
17 section 28-319; unlawful sexual intercourse, section 10 of this
18 act; sexual assault in the second or third degree, section 28-320;
19 sexual assault of a child in the second or third degree, section
20 28-320.01; sexual abuse of an inmate or parolee in the first
21 degree, section 28-322.01; sexual abuse of an inmate or parolee in
22 the second degree, section 28-322.03; sexual abuse of a protected
23 individual in the first or second degree, section 28-322.04;
24 domestic assault in the first, second, or third degree, section
25 28-323; assault on an officer in the first degree, section 28-929;

1 assault on an officer in the second degree, section 28-930; assault
2 on an officer in the third degree, section 28-931; assault on an
3 officer using a motor vehicle, section 28-931.01; assault by a
4 confined person, section 28-933; proximately causing serious bodily
5 injury while operating a motor vehicle, section 60-6,198; and
6 sexual assault of a child in the first degree, section 28-319.01.

7 (2) The prosecution shall allege and prove beyond a
8 reasonable doubt that the victim was pregnant at the time of the
9 offense.

10 Sec. 4. Section 28-311, Revised Statutes Cumulative
11 Supplement, 2006, is amended to read:

12 28-311 (1) No person, by any means and without privilege
13 to do so, shall knowingly solicit, coax, entice, or lure any child
14 under the age of fourteen years to enter into any vehicle, whether
15 or not the person knows the age of the child, if:

16 (a) The person does not have the express or implied
17 permission of the parent, guardian, or other legal custodian of the
18 child in undertaking the activity; and

19 (b)(i) The person is not a law enforcement officer,
20 emergency services provider as defined in section 71-507,
21 firefighter, or other person who regularly provides emergency
22 services, is not the operator of a bookmobile or other such vehicle
23 operated by the state or a political subdivision and used for
24 informing, educating, organizing, or transporting children, is not
25 a paid employee of, or a volunteer for, a nonprofit or religious

1 organization which provides activities for children, and is not an
2 employee or agent of or a volunteer acting under the direction of
3 any board of education or (ii) the person is a person listed in
4 subdivision (1)(b)(i) of this section but, at the time the person
5 undertakes the activity, he or she is not acting within the scope
6 of his or her lawful duties in that capacity.

7 (2) It is an affirmative defense to a charge under this
8 section that the person undertook the activity in response to a
9 bona fide emergency situation or that the person undertook the
10 activity in response to a reasonable belief that it was necessary
11 to preserve the health, safety, or welfare of the child.

12 (3) Any person who violates this section commits criminal
13 child enticement and is guilty of a Class I misdemeanor. If
14 such person has previously been convicted of (a) criminal child
15 enticement under this section, (b) sexual assault of a child in
16 the first degree under section 28-319.01, (c) sexual assault of a
17 child in the second or third degree under section 28-320.01, ~~or~~
18 (d) assault under section 28-308, 28-309, or 28-310, kidnapping
19 under section 28-313, or false imprisonment under section 28-314 or
20 28-315 when the victim was under eighteen years of age when such
21 person violates this section, or (e) unlawful sexual intercourse
22 under section 10 of this act, such person is guilty of a Class IV
23 felony.

24 Sec. 5. Section 28-318, Revised Statutes Cumulative
25 Supplement, 2006, is amended to read:

1 28-318 As used in sections 28-317 to 28-321 and section
2 10 of this act, unless the context otherwise requires:

3 (1) Actor means a person accused of sexual assault;

4 (2) Intimate parts means the genital area, groin, inner
5 thighs, buttocks, or breasts;

6 (3) Past sexual behavior means sexual behavior other than
7 the sexual behavior upon which the sexual assault is alleged;

8 (4) Serious personal injury means great bodily injury or
9 disfigurement, extreme mental anguish or mental trauma, pregnancy,
10 disease, or loss or impairment of a sexual or reproductive organ;

11 (5) Sexual contact means the intentional touching of the
12 victim's sexual or intimate parts or the intentional touching of
13 the victim's clothing covering the immediate area of the victim's
14 sexual or intimate parts. Sexual contact shall also mean the
15 touching by the victim of the actor's sexual or intimate parts or
16 the clothing covering the immediate area of the actor's sexual or
17 intimate parts when such touching is intentionally caused by the
18 actor. Sexual contact shall include only such conduct which can be
19 reasonably construed as being for the purpose of sexual arousal or
20 gratification of either party. Sexual contact shall also include
21 the touching of a child with the actor's sexual or intimate parts
22 on any part of the child's body for purposes of sexual assault of a
23 child under sections 28-319.01 and 28-320.01;

24 (6) Sexual penetration means sexual intercourse in its
25 ordinary meaning, cunnilingus, fellatio, anal intercourse, or any

1 intrusion, however slight, of any part of the actor's or victim's
2 body or any object manipulated by the actor into the genital
3 or anal openings of the victim's body which can be reasonably
4 construed as being for nonmedical or nonhealth purposes. Sexual
5 penetration shall not require emission of semen;

6 (7) Victim means the person alleging to have been
7 sexually assaulted;

8 (8) Without consent means:

9 (a) (i) The victim was compelled to submit due to the
10 use of force or threat of force or coercion, or (ii) the victim
11 expressed a lack of consent through words, or (iii) the victim
12 expressed a lack of consent through conduct, or (iv) the consent,
13 if any was actually given, was the result of the actor's deception
14 as to the identity of the actor or the nature or purpose of the act
15 on the part of the actor;

16 (b) The victim need only resist, either verbally or
17 physically, so as to make the victim's refusal to consent genuine
18 and real and so as to reasonably make known to the actor the
19 victim's refusal to consent; and

20 (c) A victim need not resist verbally or physically where
21 it would be useless or futile to do so; and

22 (9) Force or threat of force means (a) the use of
23 physical force which overcomes the victim's resistance or (b) the
24 threat of physical force, express or implied, against the victim or
25 a third person that places the victim in fear of death or in fear

1 of serious personal injury to the victim or a third person where
2 the victim reasonably believes that the actor has the present or
3 future ability to execute the threat.

4 Sec. 6. Section 28-319, Revised Statutes Cumulative
5 Supplement, 2006, is amended to read:

6 28-319 (1) Any person who subjects another person to
7 sexual penetration (a) without the consent of the victim, or (b)
8 ~~who~~ when the actor knew or should have known that the victim was
9 mentally or physically incapable of resisting or appraising the
10 nature of his or her conduct, ~~or (c) when the actor is nineteen~~
11 ~~years of age or older and the victim is at least twelve but less~~
12 ~~than sixteen years of age~~ is guilty of sexual assault in the first
13 degree.

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

18 (3) Any person who is found guilty of sexual assault in
19 the first degree for a second or subsequent time when the first
20 conviction was pursuant to this section or any other state or
21 federal law with essentially the same elements as this section
22 shall be sentenced to a mandatory minimum term of twenty-five years
23 in prison.

24 Sec. 7. Section 28-319.01, Revised Statutes Cumulative
25 Supplement, 2006, is amended to read:

1 28-319.01 (1) A person commits sexual assault of a child
2 in the first degree if he or she subjects another person under
3 twelve years of age to sexual penetration and the actor is at least
4 nineteen years of age or older.

5 (2) Sexual assault of a child in the first degree is a
6 Class IB felony with a mandatory minimum sentence of fifteen years
7 in prison for the first offense.

8 (3) Any person who is found guilty of sexual assault of a
9 child in the first degree under this section and who has previously
10 been convicted (a) under this section, (b) under section 28-319 of
11 first degree or attempted first degree sexual assault, (c) under
12 section 28-320.01 before July 14, 2006, of sexual assault of a
13 child or attempted sexual assault of a child, (d) under section
14 28-320.01 on or after July 14, 2006, of sexual assault of a child
15 in the second or third degree or attempted sexual assault of a
16 child in the second or third degree, (e) under section 10 of this
17 act of unlawful sexual intercourse, or ~~(e)~~ (f) in any other state
18 or federal court under laws with essentially the same elements as
19 this section, section 28-319, or section 28-320.01 as it existed
20 before, on, or after July 14, 2006, shall be guilty of a Class IB
21 felony with a mandatory minimum sentence of twenty-five years in
22 prison.

23 Sec. 8. Section 28-320.01, Revised Statutes Cumulative
24 Supplement, 2006, is amended to read:

25 28-320.01 (1) A person commits sexual assault of a child

1 in the second or third degree if he or she subjects another person
2 fourteen years of age or younger to sexual contact and the actor is
3 at least nineteen years of age or older.

4 (2) Sexual assault of a child is in the second degree
5 if the actor causes serious personal injury to the victim. Sexual
6 assault of a child in the second degree is a Class II felony for
7 the first offense.

8 (3) Sexual assault of a child is in the third degree if
9 the actor does not cause serious personal injury to the victim.
10 Sexual assault of a child in the third degree is a Class IIIA
11 felony for the first offense.

12 (4) Any person who is found guilty of second degree
13 sexual assault of a child under this section and who has previously
14 been convicted (a) under this section, (b) under section 28-319 of
15 first degree or attempted first degree sexual assault, (c) under
16 section 28-319.01 for first degree or attempted first degree sexual
17 assault of a child, (d) under section 10 of this act of unlawful
18 sexual intercourse, or ~~(d)~~ (e) in any other state or federal court
19 under laws with essentially the same elements as this section,
20 section 28-319, or section 28-319.01 shall be guilty of a Class
21 IC felony and shall be sentenced to a mandatory minimum term of
22 twenty-five years in prison.

23 (5) Any person who is found guilty of third degree sexual
24 assault of a child under this section and who has previously been
25 convicted (a) under this section, (b) under section 28-319 of first

1 degree or attempted first degree sexual assault, (c) under section
2 28-319.01 for first degree or attempted first degree sexual assault
3 of a child, (d) under section 10 of this act of unlawful sexual
4 intercourse, or ~~(d)~~ (e) in any other state or federal court under
5 laws with essentially the same elements as this section, section
6 28-319, or 28-319.01 shall be guilty of a Class IC felony.

7 Sec. 9. Section 28-320.02, Revised Statutes Cumulative
8 Supplement, 2006, is amended to read:

9 28-320.02 (1) No person shall knowingly solicit, coax,
10 entice, or lure (a) a child sixteen years of age or younger or
11 (b) a peace officer who is believed by such person to be a child
12 sixteen years of age or younger, by means of a computer as that
13 term is defined in section 28-1343, to engage in an act which
14 would be in violation of section 28-319, 28-319.01, or 28-320.01
15 or subsection (1) or (2) of section 28-320 or section 10 of
16 this act. A person shall not be convicted of both a violation of
17 this subsection and a violation of section 28-319, 28-319.01, or
18 28-320.01 or subsection (1) or (2) of section 28-320 or section 10
19 of this act if the violations arise out of the same set of facts or
20 pattern of conduct and the individual solicited, coaxed, enticed,
21 or lured under this subsection is also the victim of the sexual
22 assault under section 28-319, 28-319.01, or 28-320.01 or subsection
23 (1) or (2) of section 28-320 or section 10 of this act.

24 (2) A person who violates this section is guilty of
25 a Class IIIA felony. If a person who violates this section has

1 previously been convicted of a violation of this section or section
2 28-308, 28-309, 28-310, 28-311, 28-313, 28-314, 28-315, 28-319,
3 28-319.01, or 28-320.01 or subsection (1) or (2) of section 28-320,
4 or section 10 of this act, the person is guilty of a Class III
5 felony.

6 Sec. 10. (1) Any person who subjects another person to
7 sexual penetration when the actor is nineteen years of age or older
8 and the victim is at least twelve but less than sixteen years of
9 age is guilty of unlawful sexual intercourse.

10 (2)(a) Unlawful sexual intercourse is a Class I
11 misdemeanor if the actor is less than four years older than the
12 victim.

13 (b) Unlawful sexual intercourse is a Class III felony if
14 the actor is four or more but less than six years older than the
15 victim.

16 (c) Unlawful sexual intercourse is a Class II felony if
17 the actor is six or more years older than the victim.

18 (3) In any prosecution for unlawful sexual intercourse,
19 it shall be an affirmative defense if the actor proves by a
20 preponderance of the evidence that he or she reasonably believed
21 the victim to be at least sixteen years of age at the time of the
22 offense, unless:

23 (a) The offense is committed by force or threat of force
24 or while armed with a deadly weapon;

25 (b) The offense results in serious bodily injury; or

1 (c) The commission of the offense is facilitated by
2 furnishing the victim, without the victim's knowledge, with a
3 drug or a controlled substance or knowing that the victim was
4 furnished with the drug or controlled substance without the
5 victim's knowledge.

6 Sec. 11. Section 28-707, Revised Statutes Cumulative
7 Supplement, 2006, is amended to read:

8 28-707 (1) A person commits child abuse if he or she
9 knowingly, intentionally, or negligently causes or permits a minor
10 child to be:

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

13 (b) Cruelly confined or cruelly punished;

14 (c) Deprived of necessary food, clothing, shelter, or
15 care;

16 (d) Placed in a situation to be sexually exploited by
17 allowing, encouraging, or forcing such minor child to solicit for
18 or engage in prostitution, debauchery, public indecency, or obscene
19 or pornographic photography, films, or depictions; or

20 (e) Placed in a situation to be sexually abused as
21 defined in section 28-319, 28-319.01, or 28-320.01 or section 10 of
22 this act.

23 (2) The statutory privilege between patient and
24 physician, between client and professional counselor, and between
25 husband and wife shall not be available for excluding or refusing

1 testimony in any prosecution for a violation of this section.

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

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

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

10 (6) Child abuse is a Class IB felony if the offense is
11 committed knowingly and intentionally and results in the death of
12 such child.

13 Sec. 12. Section 29-110, Revised Statutes Cumulative
14 Supplement, 2006, is amended to read:

15 29-110 (1) Except as otherwise provided by law, no person
16 shall be prosecuted for any felony unless the indictment is found
17 by a grand jury within three years next after the offense has
18 been done or committed or unless a complaint for the same is filed
19 before the magistrate within three years next after the offense
20 has been done or committed and a warrant for the arrest of the
21 defendant has been issued.

22 (2) Except as otherwise provided by law, no person shall
23 be prosecuted, tried, or punished for any misdemeanor or other
24 indictable offense below the grade of felony or for any fine or
25 forfeiture under any penal statute unless the suit, information,

1 or indictment for such offense is instituted or found within one
2 year and six months from the time of committing the offense or
3 incurring the fine or forfeiture or within one year for any offense
4 the punishment of which is restricted by a fine not exceeding one
5 hundred dollars and to imprisonment not exceeding three months.

6 (3) Except as otherwise provided by law, no person
7 shall be prosecuted for kidnapping under section 28-313, false
8 imprisonment under section 28-314 or 28-315, child abuse under
9 section 28-707, pandering under section 28-802, debauching a
10 minor under section 28-805, or an offense under section 28-813,
11 28-813.01, or 28-1463.03 when the victim is under sixteen years of
12 age at the time of the offense (a) unless the indictment for such
13 offense is found by a grand jury within seven years next after the
14 offense has been committed or within seven years next after the
15 victim's sixteenth birthday, whichever is later, or (b) unless a
16 complaint for such offense is filed before the magistrate within
17 seven years next after the offense has been committed or within
18 seven years next after the victim's sixteenth birthday, whichever
19 is later, and a warrant for the arrest of the defendant has been
20 issued.

21 (4) No person shall be prosecuted for a violation of
22 the Securities Act of Nebraska under section 8-1117 unless the
23 indictment for such offense is found by a grand jury within five
24 years next after the offense has been done or committed or unless
25 a complaint for such offense is filed before the magistrate within

1 five years next after the offense has been done or committed and a
2 warrant for the arrest of the defendant has been issued.

3 (5) There shall not be any time limitations for
4 prosecution or punishment for treason, murder, arson, forgery,
5 sexual assault in the first or second degree under section 28-319
6 or 28-320, sexual assault of a child in the second or third
7 degree under section 28-320.01, ~~or~~ sexual assault of a child
8 in the first degree under section 28-319.01, or unlawful sexual
9 intercourse under section 10 of this act; nor shall there be any
10 time limitations for prosecution or punishment for sexual assault
11 in the third degree under section 28-320 when the victim is under
12 sixteen years of age at the time of the offense.

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

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

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

23 (9) If any suit, information, or indictment is quashed or
24 the proceedings set aside or reversed on writ of error, the time
25 during the pendency of such suit, information, or indictment so

1 quashed, set aside, or reversed shall not be reckoned within this
2 statute so as to bar any new suit, information, or indictment for
3 the same offense.

4 (10) The changes made to this section by Laws 2004, LB
5 943, shall apply to offenses committed prior to April 16, 2004, for
6 which the statute of limitations has not expired as of such date
7 and to offenses committed on or after such date.

8 (11) The changes made to this section by Laws 2005, LB
9 713, shall apply to offenses committed prior to September 4, 2005,
10 for which the statute of limitations has not expired as of such
11 date and to offenses committed on or after such date.

12 Sec. 13. Section 29-119, Revised Statutes Cumulative
13 Supplement, 2006, is amended to read:

14 29-119 For purposes of this section and sections 23-1201,
15 29-120, and 29-2261, unless the context otherwise requires:

16 (1) A plea agreement means that as a result of a
17 discussion between the defense counsel and the prosecuting
18 attorney:

19 (a) A charge is to be dismissed or reduced; or

20 (b) A defendant, if he or she pleads guilty to a charge,
21 may receive less than the maximum penalty permitted by law; and

22 (2) Victim means a person who, as a result of a homicide
23 as defined in sections 28-302 to 28-306, a first degree sexual
24 assault as defined in section 28-319, a first degree assault as
25 defined in section 28-308, a sexual assault of a child in the

1 second or third degree as defined in section 28-320.01, a sexual
2 assault of a child in the first degree as defined in section
3 28-319.01, unlawful sexual intercourse as defined in section 10 of
4 this act, a second degree assault as defined in section 28-309,
5 a first degree false imprisonment as defined in section 28-314,
6 a second degree sexual assault as defined in section 28-320,
7 or a robbery as defined in section 28-324, has had a personal
8 confrontation with the offender and also includes a person who has
9 suffered serious bodily injury as defined in section 28-109 as a
10 result of a motor vehicle accident when the driver was charged with
11 a violation of section 60-6,196 or 60-6,197 or with a violation
12 of a city or village ordinance enacted in conformance with either
13 section. In the case of a homicide, victim means the nearest
14 surviving relative under the law as provided by section 30-2303 but
15 does not include the alleged perpetrator of the homicide. In the
16 case of a sexual assault of a child or unlawful sexual intercourse,
17 victim means the child victim and the parents, guardians, or duly
18 appointed legal representative of the child victim but does not
19 include the alleged perpetrator of the sexual assault.

20 Sec. 14. Section 29-1926, Revised Statutes Cumulative
21 Supplement, 2006, is amended to read:

22 29-1926 (1) (a) Upon request of the prosecuting or defense
23 attorney and upon a showing of compelling need, the court shall
24 order the taking of a videotape deposition of a child victim of or
25 child witness to any offense punishable as a felony. The deposition

1 ordinarily shall be in lieu of courtroom or in camera testimony by
2 the child. If the court orders a videotape deposition, the court
3 shall:

4 (i) Designate the time and place for taking the
5 deposition. The deposition may be conducted in the courtroom, the
6 judge's chambers, or any other location suitable for videotaping;

7 (ii) Assure adequate time for the defense attorney to
8 complete discovery before taking the deposition; and

9 (iii) Preside over the taking of the videotape deposition
10 in the same manner as if the child were called as a witness for the
11 prosecution during the course of the trial.

12 (b) Unless otherwise required by the court, the
13 deposition shall be conducted in the presence of the prosecuting
14 attorney, the defense attorney, the defendant, and any other person
15 deemed necessary by the court, including the parent or guardian of
16 the child victim or child witness or a counselor or other person
17 with whom the child is familiar. Such parent, guardian, counselor,
18 or other person shall be allowed to sit with or near the child
19 unless the court determines that such person would be disruptive
20 to the child's testimony.

21 (c) At any time subsequent to the taking of the original
22 videotape deposition and upon sufficient cause shown, the court
23 shall order the taking of additional videotape depositions to be
24 admitted at the time of the trial.

25 (d) If the child testifies at trial in person rather than

1 by videotape deposition, the taking of the child's testimony may,
2 upon request of the prosecuting attorney and upon a showing of
3 compelling need, be conducted in camera.

4 (e) Unless otherwise required by the court, the child
5 shall testify in the presence of the prosecuting attorney, the
6 defense attorney, the defendant, and any other person deemed
7 necessary by the court, including the parent or guardian of the
8 child victim or child witness or a counselor or other person with
9 whom the child is familiar. Such parent, guardian, counselor, or
10 other person shall be allowed to sit with or near the child unless
11 the court determines that such person would be disruptive to the
12 child's testimony. Unless waived by the defendant, all persons in
13 the room shall be visible on camera except the camera operator.

14 (f) If deemed necessary to preserve the constitutionality
15 of the child's testimony, the court may direct that during the
16 testimony the child shall at all times be in a position to see the
17 defendant live or on camera.

18 (g) For purposes of this section, child shall mean a
19 person eleven years of age or younger at the time the motion to
20 take the deposition is made or at the time of the taking of in
21 camera testimony at trial.

22 (h) Nothing in this section shall restrict the court
23 from conducting the pretrial deposition or in camera proceedings
24 in any manner deemed likely to facilitate and preserve a child's
25 testimony to the fullest extent possible, consistent with the

1 right to confrontation guaranteed in the Sixth Amendment of the
2 Constitution of the United States and Article I, section 11,
3 of the Nebraska Constitution. In deciding whether there is a
4 compelling need that child testimony accommodation is required by
5 pretrial videotape deposition, in camera live testimony, in camera
6 videotape testimony, or any other accommodation, the court shall
7 make particularized findings on the record of:

8 (i) The nature of the offense;

9 (ii) The significance of the child's testimony to the
10 case;

11 (iii) The likelihood of obtaining the child's testimony
12 without modification of trial procedure or with a different
13 modification involving less substantial digression from trial
14 procedure than the modification under consideration;

15 (iv) The child's age;

16 (v) The child's psychological maturity and understanding;

17 and

18 (vi) The nature, degree, and duration of potential injury
19 to the child from testifying.

20 (i) The court may order an independent examination by a
21 psychologist or psychiatrist if the defense attorney requests the
22 opportunity to rebut the showing of compelling need produced by the
23 prosecuting attorney. Such examination shall be conducted in the
24 child's county of residence.

25 (j) After a finding of compelling need by the court,

1 neither party may call the child witness to testify as a live
2 witness at the trial before the jury unless that party demonstrates
3 that the compelling need no longer exists.

4 (k) Nothing in this section shall limit the right of
5 access of the media or the public to open court.

6 (l) Nothing in this section shall preclude discovery by
7 the defendant as set forth in section 29-1912.

8 (m) The Supreme Court may adopt and promulgate rules of
9 procedure to administer this section, which rules shall not be in
10 conflict with laws governing such matters.

11 (2)(a) No custodian of a videotape of a child victim
12 or child witness alleging, explaining, denying, or describing an
13 act of sexual assault pursuant to section 28-319, 28-319.01, or
14 28-320.01 or section 10 of this act or child abuse pursuant to
15 section 28-707 as part of an investigation or evaluation of the
16 abuse or assault shall release or use a videotape or copies of a
17 videotape or consent, by commission or omission, to the release
18 or use of a videotape or copies of a videotape to or by any
19 other party without a court order, notwithstanding the fact that
20 the child victim or child witness has consented to the release
21 or use of the videotape or that the release or use is authorized
22 under law, except as provided in section 28-730. Any custodian may
23 release or consent to the release or use of a videotape or copies
24 of a videotape to law enforcement agencies or agencies authorized
25 to prosecute such abuse or assault cases on behalf of the state.

1 (b) The court order may govern the purposes for which
2 the videotape may be used, the reproduction of the videotape, the
3 release of the videotape to other persons, the retention and return
4 of copies of the videotape, and any other requirements reasonably
5 necessary for the protection of the privacy and best interests of
6 the child victim or child witness.

7 (c) Pursuant to section 29-1912, the defendant described
8 in the videotape may petition the district court in the county
9 where the alleged offense took place or where the custodian of the
10 videotape resides for an order releasing to the defendant a copy of
11 the videotape.

12 (d) Any person who releases or uses a videotape except as
13 provided in this section shall be guilty of a Class I misdemeanor.

14 Sec. 15. Section 29-2028, Revised Statutes Cumulative
15 Supplement, 2006, is amended to read:

16 29-2028 The testimony of a person who is a victim of
17 a sexual assault as defined in sections 28-319 to 28-320.01 and
18 section 10 of this act shall not require corroboration.

19 Sec. 16. Section 29-2221, Revised Statutes Cumulative
20 Supplement, 2006, is amended to read:

21 29-2221 (1) Whoever has been twice convicted of a crime,
22 sentenced, and committed to prison, in this or any other state or
23 by the United States or once in this state and once at least in
24 any other state or by the United States, for terms of not less
25 than one year each shall, upon conviction of a felony committed

1 in this state, be deemed to be a habitual criminal and shall be
2 punished by imprisonment in a Department of Correctional Services
3 adult correctional facility for a mandatory minimum term of ten
4 years and a maximum term of not more than sixty years, except that:

5 (a) If the felony committed is in violation of section
6 28-303, 28-304, 28-308, 28-313, 28-319, 28-319.01, 28-502, 28-929,
7 or 28-1222, or section 10 of this act, and at least one of the
8 habitual criminal's prior felony convictions was for a violation
9 of one of the sections listed in this subdivision or of a similar
10 statute in another state or of the United States, the mandatory
11 minimum term shall be twenty-five years and the maximum term not
12 more than sixty years;

13 (b) If the felony committed is in violation of subsection
14 (3) of section 28-306 and at least one of the prior convictions is
15 in violation of subsection (3) of section 28-306 and the other is
16 in violation of one of the sections set forth in subdivision (a) of
17 this subsection or if the felony committed is in violation of one
18 of the sections set forth in subdivision (a) of this subsection and
19 both of the prior convictions are in violation of subsection (3)
20 of section 28-306, the mandatory minimum term shall be twenty-five
21 years and the maximum term not more than sixty years; and

22 (c) If a greater punishment is otherwise provided by
23 statute, the law creating the greater punishment shall govern.

24 (2) When punishment of an accused as a habitual criminal
25 is sought, the facts with reference thereto shall be charged in the

1 indictment or information which contains the charge of the felony
2 upon which the accused is prosecuted, but the fact that the accused
3 is charged with being a habitual criminal shall not be an issue
4 upon the trial of the felony charge and shall not in any manner
5 be disclosed to the jury. If the accused is convicted of a felony,
6 before sentence is imposed a hearing shall be had before the court
7 alone as to whether such person has been previously convicted of
8 prior felonies. The court shall fix a time for the hearing and
9 notice thereof shall be given to the accused at least three days
10 prior thereto. At the hearing, if the court finds from the evidence
11 submitted that the accused has been convicted two or more times of
12 felonies and sentences imposed therefor by the courts of this or
13 any other state or by the United States, the court shall sentence
14 such person so convicted as a habitual criminal.

15 (3) If the person so convicted shows to the satisfaction
16 of the court before which the conviction was had that he or she
17 was released from imprisonment upon either of such sentences upon
18 a pardon granted for the reason that he or she was innocent, such
19 conviction and sentence shall not be considered as such under this
20 section and section 29-2222.

21 Sec. 17. Section 29-2290, Revised Statutes Cumulative
22 Supplement, 2006, is amended to read:

23 29-2290 (1) Notwithstanding any other provision of law,
24 when a person has been convicted of sexual assault pursuant to
25 sections 28-317 to 28-320, sexual assault of a child in the second

1 or third degree pursuant to section 28-320.01, sexual assault of a
2 child in the first degree pursuant to section 28-319.01, unlawful
3 sexual intercourse pursuant to section 10 of this act, or any
4 other offense under Nebraska law when sexual contact or sexual
5 penetration is an element of the offense, the presiding judge
6 shall, at the request of the victim as part of the sentence of
7 the convicted person when the circumstances of the case demonstrate
8 a possibility of transmission of the human immunodeficiency virus,
9 order the convicted person to submit to a human immunodeficiency
10 virus antibody or antigen test. Such test shall be conducted under
11 the jurisdiction of the Department of Correctional Services. The
12 Department of Correctional Services shall make the results of the
13 test available only to the victim, to the parents or guardian of
14 the victim if the victim is a minor or is mentally incompetent, to
15 the convicted person, to the parents or guardian of the convicted
16 person if the convicted person is a minor or mentally incompetent,
17 to the court issuing the order for testing, and to the Department
18 of Health and Human Services.

19 (2) If the human immunodeficiency virus test indicates
20 the presence of human immunodeficiency virus infection, the
21 Department of Correctional Services shall provide counseling to the
22 convicted person regarding human immunodeficiency virus disease and
23 referral to appropriate health care and support services.

24 (3) The Department of Correctional Services shall provide
25 to the Department of Health and Human Services the result of

1 any human immunodeficiency virus test conducted pursuant to this
2 section and information regarding the request of the victim. The
3 Department of Health and Human Services shall notify the victim
4 or the parents or guardian of the victim if the victim is a
5 minor or mentally incompetent and shall make available to the
6 victim counseling and testing regarding human immunodeficiency
7 virus disease and referral to appropriate health care and support
8 services.

9 (4) The cost of testing under this section shall be paid
10 by the convicted person tested unless the court has determined the
11 convicted person to be indigent.

12 (5) Filing of a notice of appeal shall not automatically
13 stay an order that the convicted person submit to a human
14 immunodeficiency virus test.

15 (6) For purposes of this section:

16 (a) Convicted shall include adjudicated under juvenile
17 proceedings;

18 (b) Convicted person shall include a child adjudicated of
19 an offense described in subsection (1) of this section; and

20 (c) Sentence shall include a disposition under juvenile
21 proceedings.

22 (7) The Department of Correctional Services, in
23 consultation with the Department of Health and Human Services,
24 shall adopt and promulgate rules and regulations to carry out this
25 section.

1 Sec. 18. Section 29-2923, Revised Statutes Cumulative
2 Supplement, 2006, is amended to read:

3 29-2923 For purposes of the Convicted Sex Offender Act:

4 (1) Aftercare treatment program shall mean any public or
5 private facility or service which offers treatment on an outpatient
6 basis or in a minimally restricted setting, which treatment is
7 appropriate for a convicted sex offender after he or she has
8 successfully completed an inpatient treatment program operated by
9 the Department of Health and Human Services; and

10 (2) Convicted sex offender shall mean a person who is
11 convicted of sexual assault in the first degree as provided in
12 section 28-319, sexual assault in the second degree as provided in
13 section 28-320, sexual assault of a child in the second or third
14 degree as provided in section 28-320.01, sexual assault of a child
15 in the first degree as provided in section 28-319.01, unlawful
16 sexual intercourse as provided in section 10 of this act, incest
17 as provided in section 28-703, or attempt to commit sexual assault
18 in the first degree pursuant to section 28-201 and sentenced to a
19 term of imprisonment in a Department of Correctional Services adult
20 correctional facility.

21 Sec. 19. Section 29-4003, Revised Statutes Cumulative
22 Supplement, 2006, is amended to read:

23 29-4003 (1) Except as provided in subsection (2) of this
24 section, the Sex Offender Registration Act shall apply to any
25 person who on or after January 1, 1997:

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

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

6 (ii) False imprisonment pursuant to section 28-314 or
 7 28-315 of a minor; ~~pursuant to section 28-314 or 28-315;~~

8 (iii) Sexual assault pursuant to section 28-319 or
 9 28-320;

10 (iv) Sexual assault of a child in the second or third
 11 degree pursuant to section 28-320.01;

12 (v) Sexual assault of a child in the first degree
 13 pursuant to section 28-319.01;

14 (vi) Unlawful sexual intercourse pursuant to section 10
 15 of this act;

16 ~~(vii)~~ (vii) Sexual assault of a vulnerable adult pursuant
 17 to subdivision (1)(c) of section 28-386;

18 ~~(viii)~~ (viii) Incest of a minor pursuant to section
 19 28-703;

20 ~~(ix)~~ (ix) Pandering of a minor pursuant to section
 21 28-802;

22 ~~(x)~~ (x) Visual depiction of sexually explicit conduct of
 23 a child pursuant to section 28-1463.03 or 28-1463.05;

24 ~~(xi)~~ (xi) Knowingly possessing any visual depiction of
 25 sexually explicit conduct which has a child as one of its

1 participants or portrayed observers pursuant to section 28-813.01;

2 ~~(xi)~~ (xii) Criminal child enticement pursuant to section

3 28-311;

4 ~~(xii)~~ (xiii) Child enticement by means of a computer

5 pursuant to section 28-320.02;

6 ~~(xiii)~~ (xiv) Debauching a minor pursuant to section

7 28-805; or

8 ~~(xiv)~~ (xv) Attempt, solicitation, or conspiracy to commit

9 an offense listed in subdivisions (1)(a)(i) through ~~(1)(a)(xiii)~~

10 (1)(a)(xiv) of this section;

11 (b) Enters the state and has pleaded guilty to or has

12 been found guilty of any offense that is substantially equivalent

13 to a registrable offense under subdivision (1)(a) of this section

14 by any state, territory, commonwealth, or other jurisdiction of the

15 United States, by the United States Government, or by court-martial

16 or other military tribunal, notwithstanding a procedure comparable

17 in effect to that described under section 29-2264 or any other

18 procedure to nullify a conviction other than by pardon;

19 (c) Is incarcerated in a jail, a penal or correctional

20 facility, or any other public or private institution or is under

21 probation or parole as a result of pleading guilty to or being

22 found guilty of a registrable offense under subdivision (1)(a) or

23 (b) of this section prior to January 1, 1997; or

24 (d) Enters the state and is required to register as a sex

25 offender under the laws of another state, territory, commonwealth,

1 or other jurisdiction of the United States.

2 (2) In the case of a person convicted of a violation
3 of section 28-313, 28-314, 28-315, or 28-805, the convicted person
4 shall be subject to the Sex Offender Registration Act, unless the
5 sentencing court determines at the time of sentencing, in light
6 of all the facts, that the convicted person is not subject to the
7 act. The sentencing court shall make such determination part of the
8 sentencing order.

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

12 Sec. 20. Section 29-4103, Revised Statutes Cumulative
13 Supplement, 2006, is amended to read:

14 29-4103 For purposes of the DNA Identification
15 Information Act:

16 (1) Combined DNA Index System means the Federal Bureau
17 of Investigation's national DNA identification index system that
18 allows the storage and exchange of DNA records submitted by state
19 and local forensic DNA laboratories;

20 (2) DNA means deoxyribonucleic acid which is located in
21 the cells and provides an individual's personal genetic blueprint.
22 DNA encodes genetic information that is the basis of human heredity
23 and forensic identification;

24 (3) DNA record means the DNA identification information
25 stored in the State DNA Data Base or the Combined DNA Index System

1 which is derived from DNA typing test results;

2 (4) DNA sample means a blood, tissue, or bodily fluid
3 sample provided by any person covered by the DNA Identification
4 Information Act for analysis or storage, or both;

5 (5) DNA typing tests means the laboratory procedures
6 which evaluate the characteristics of a DNA sample which are of
7 value in establishing the identity of an individual;

8 (6) Felony sex offense means a felony offense, or an
9 attempt, conspiracy, or solicitation to commit a felony offense,
10 under any of the following:

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

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

16 (c) Sexual assault in the first or second degree pursuant
17 to section 28-319 or 28-320;

18 (d) Sexual assault of a child in the second or third
19 degree pursuant to section 28-320.01;

20 (e) Sexual assault of a child in the first degree
21 pursuant to section 28-319.01;

22 (f) Unlawful sexual intercourse pursuant to section 10 of
23 this act;

24 ~~(f)~~ (g) Sexual assault of a vulnerable adult pursuant to
25 subdivision (1)(c) of section 28-386; and

1 ~~(g)~~ (h) False imprisonment of a ~~minor~~ in the first degree
2 pursuant to section 28-314 of a minor, except when the person is
3 the parent of the minor and was not convicted of any other offense
4 in this subdivision;

5 (7) Law enforcement agency includes a police department,
6 a town marshal, a county sheriff, and the Nebraska State Patrol;

7 (8) Other specified offense means an offense, or an
8 attempt, conspiracy, or solicitation to commit an offense, under
9 any of the following:

10 (a) Murder in the first degree pursuant to section
11 28-303;

12 (b) Murder in the second degree pursuant to section
13 28-304;

14 (c) Manslaughter pursuant to section 28-305;

15 (d) Stalking pursuant to sections 28-311.02 to 28-311.05;

16 (e) Burglary pursuant to section 28-507 provided that the
17 real estate is a dwelling place intended for human occupancy; or

18 (f) Robbery pursuant to section 28-324; and

19 (9) Released means any release, parole, furlough, work
20 release, prerelease, or release in any other manner from a prison,
21 a jail, or any other detention facility or institution.

22 Sec. 21. Section 42-1203, Revised Statutes Cumulative
23 Supplement, 2006, is amended to read:

24 42-1203 For purposes of the Address Confidentiality Act:

25 (1) Abuse means causing or attempting to cause physical

1 harm, placing another person in fear of physical harm, or causing
2 another person to engage involuntarily in sexual activity by force,
3 threat of force, or duress, when committed by (a) a person against
4 his or her spouse, (b) a person against his or her former spouse,
5 (c) a person residing with the victim if such person and the victim
6 are or were in a dating relationship, (d) a person who formerly
7 resided with the victim if such person and the victim are or were
8 in a dating relationship, (e) a person against a parent of his
9 or her children, whether or not such person and the victim have
10 been married or resided together at any time, (f) a person against
11 a person with whom he or she is in a dating relationship, (g)
12 a person against a person with whom he or she formerly was in
13 a dating relationship, or (h) a person related to the victim by
14 consanguinity or affinity;

15 (2) Address means a residential street address, school
16 address, or work address of an individual as specified on the
17 individual's application to be a program participant;

18 (3) Dating relationship means an intimate or sexual
19 relationship;

20 (4) Program participant means a person certified as a
21 program participant under section 42-1204;

22 (5) Sexual assault has the same meaning as in section
23 28-319, 28-319.01, 28-320, 28-320.01, or 28-386 or section 10 of
24 this act; and

25 (6) Stalking has the same meaning as in sections

1 28-311.02 to 28-311.05.

2 Sec. 22. Section 43-2933, Revised Statutes Supplement,
3 2007, is amended to read:

4 43-2933 (1)(a) No person shall be granted custody of, or
5 unsupervised parenting time, visitation, or other access with, a
6 child if the person is required to be registered as a sex offender
7 under the Sex Offender Registration Act for an offense that would
8 make it contrary to the best interests of the child for such access
9 or for an offense in which the victim was a minor or if the
10 person has been convicted under section 28-311, 28-319.01, 28-320,
11 28-320.01, or 28-320.02, or section 10 of this act, unless the
12 court finds that there is no significant risk to the child and
13 states its reasons in writing or on the record.

14 (b) No person shall be granted custody of, or
15 unsupervised parenting time, visitation, or other access with, a
16 child if anyone residing in the person's household is required to
17 register as a sex offender under the Sex Offender Registration Act
18 as a result of a felony conviction in which the victim was a minor
19 or for an offense that would make it contrary to the best interests
20 of the child for such access unless the court finds that there is
21 no significant risk to the child and states its reasons in writing
22 or on the record.

23 (c) The fact that a child is permitted unsupervised
24 contact with a person who is required, as a result of a felony
25 conviction in which the victim was a minor, to be registered as

1 a sex offender under the Sex Offender Registration Act shall be
2 prima facie evidence that the child is at significant risk. When
3 making a determination regarding significant risk to the child,
4 the prima facie evidence shall constitute a presumption affecting
5 the burden of producing evidence. However, this presumption shall
6 not apply if there are factors mitigating against its application,
7 including whether the other party seeking custody, parenting time,
8 visitation, or other access is also required, as the result of a
9 felony conviction in which the victim was a minor, to register as a
10 sex offender under the Sex Offender Registration Act.

11 (2) No person shall be granted custody, parenting time,
12 visitation, or other access with a child if the person has been
13 convicted under section 28-319 or section 10 of this act and the
14 child was conceived as a result of that violation.

15 (3) A change in circumstances relating to subsection (1)
16 or (2) of this section is sufficient grounds for modification of a
17 previous order.

18 Sec. 23. Section 71-6908, Revised Statutes Cumulative
19 Supplement, 2006, is amended to read:

20 71-6908 The Legislature recognizes and hereby declares
21 that some teenage pregnancies are a direct or indirect result
22 of family or foster family abuse, neglect, or sexual assault.
23 The Legislature further recognizes that the actions of abuse,
24 neglect, or sexual assault are crimes regardless of whether they
25 are committed by strangers, acquaintances, or family members. The

1 Legislature further recognizes the need for a parent or guardian
2 notification bypass system as set out in section 71-6903 due
3 to the number of unhealthy family environments in which some
4 pregnant women reside. The Legislature encourages county attorneys
5 to prosecute persons accused of committing acts of abuse, incest,
6 neglect, or sexual assault pursuant to sections 28-319, 28-319.01,
7 28-320, 28-320.01, 28-703, and 28-707 and section 10 of this act
8 even if the alleged crime is committed by a biological or adoptive
9 parent, foster parent, or other biological, adoptive, or foster
10 family member.

11 Sec. 24. Section 79-267, Revised Statutes Cumulative
12 Supplement, 2006, is amended to read:

13 79-267 The following student conduct shall constitute
14 grounds for long-term suspension, expulsion, or mandatory
15 reassignment, subject to the procedural provisions of the Student
16 Discipline Act, when such activity occurs on school grounds, in
17 a vehicle owned, leased, or contracted by a school being used
18 for a school purpose or in a vehicle being driven for a school
19 purpose by a school employee or by his or her designee, or at a
20 school-sponsored activity or athletic event:

21 (1) Use of violence, force, coercion, threat,
22 intimidation, or similar conduct in a manner that constitutes a
23 substantial interference with school purposes;

24 (2) Willfully causing or attempting to cause substantial
25 damage to property, stealing or attempting to steal property of

1 substantial value, or repeated damage or theft involving property;

2 (3) Causing or attempting to cause personal injury to a
3 school employee, to a school volunteer, or to any student. Personal
4 injury caused by accident, self-defense, or other action undertaken
5 on the reasonable belief that it was necessary to protect some
6 other person shall not constitute a violation of this subdivision;

7 (4) Threatening or intimidating any student for the
8 purpose of or with the intent of obtaining money or anything of
9 value from such student;

10 (5) Knowingly possessing, handling, or transmitting any
11 object or material that is ordinarily or generally considered a
12 weapon;

13 (6) Engaging in the unlawful possession, selling,
14 dispensing, or use of a controlled substance or an imitation
15 controlled substance, as defined in section 28-401, a substance
16 represented to be a controlled substance, or alcoholic liquor
17 as defined in section 53-103 or being under the influence of a
18 controlled substance or alcoholic liquor;

19 (7) Public indecency as defined in section 28-806, except
20 that this subdivision shall apply only to students at least twelve
21 years of age but less than nineteen years of age;

22 (8) Sexually assaulting or attempting to sexually assault
23 any person if a complaint has been filed by a prosecutor in a court
24 of competent jurisdiction alleging that the student has sexually
25 assaulted or attempted to sexually assault any person, including

1 sexual assaults or attempted sexual assaults which occur off school
2 grounds not at a school function, activity, or event. For purposes
3 of this subdivision, sexual assault means sexual assault in the
4 first degree as defined in section 28-319, sexual assault in the
5 second degree as defined in section 28-320, sexual assault of
6 a child in the second or third degree as defined in section
7 28-320.01, ~~or~~ sexual assault of a child in the first degree as
8 defined in section 28-319.01, or unlawful sexual intercourse as
9 defined in section 10 of this act, as such sections now provide or
10 may hereafter from time to time be amended;

11 (9) Engaging in any other activity forbidden by the laws
12 of the State of Nebraska which activity constitutes a danger to
13 other students or interferes with school purposes; or

14 (10) A repeated violation of any rules and standards
15 validly established pursuant to section 79-262 if such violations
16 constitute a substantial interference with school purposes.

17 It is the intent of the Legislature that alternatives to
18 suspension or expulsion be imposed against a student who is truant,
19 tardy, or otherwise absent from required school activities.

20 Sec. 25. Section 81-1850, Revised Statutes Cumulative
21 Supplement, 2006, is amended to read:

22 81-1850 (1) Upon request of the victim and at the time of
23 conviction of the offender, the county attorney of the jurisdiction
24 in which a person is convicted of a felony shall forward to
25 the Board of Parole, the Department of Correctional Services,

1 the county corrections agency, or the Department of Health and
2 Human Services the name and address of any victim, as defined in
3 section 29-119, of the convicted person. The board, the Department
4 of Correctional Services, the county corrections agency, or the
5 Department of Health and Human Services shall include the name
6 in the file of the convicted person, but the name shall not be
7 part of the public record of any parole hearings of the convicted
8 person. Any victim, including a victim who has waived his or her
9 right to notification at the time of conviction, may request the
10 notification prescribed in this section, as applicable, by sending
11 a written request to the board, the Department of Correctional
12 Services, the county corrections agency, or the Department of
13 Health and Human Services any time after the convicted person is
14 incarcerated and until the convicted person is no longer under the
15 jurisdiction of the board, the county corrections agency, or the
16 Department of Correctional Services or, if the person is under the
17 jurisdiction of the Department of Health and Human Services, within
18 the three-year period after the convicted person is no longer under
19 the jurisdiction of the board, the county corrections agency, or
20 the Department of Correctional Services.

21 (2) A victim whose name appears in the file of the
22 convicted person shall be notified by the Board of Parole:

23 (a) Within ninety days after conviction of an offender,
24 of the tentative date of release and the earliest parole
25 eligibility date of such offender;

- 1 (b) Of any parole hearings or proceedings;
- 2 (c) Of any decision of the Board of Parole;
- 3 (d) When a convicted person who is on parole is returned
- 4 to custody because of parole violations; and
- 5 (e) If the convicted person has been adjudged a mentally
- 6 disordered sex offender or is a convicted sex offender, when such
- 7 person is released from custody or treatment.

8 Such notification shall be given in person, by

9 telecommunication, or by mail.

10 (3) A victim whose name appears in the file of

11 the convicted person shall be notified by the Department of

12 Correctional Services or a county corrections agency:

13 (a) When a convicted person is granted a furlough or

14 release from incarceration for twenty-four hours or longer or any

15 transfer of the convicted person to community status;

16 (b) When a convicted person is released into

17 community-based programs, including educational release and work

18 release programs. Such notification shall occur at the beginning

19 and termination of any such program;

20 (c) When a convicted person escapes or does not return

21 from a granted furlough or release and again when the convicted

22 person is returned into custody;

23 (d) When a convicted person is discharged from custody

24 upon completion of his or her sentence. Such notice shall be given

25 at least thirty days before discharge, when practicable;

1 (e) Of the (i) department's calculation of the earliest
2 parole eligibility date of the prisoner with all potential good
3 time or disciplinary credits considered if the sentence exceeds
4 ninety days or (ii) county corrections agency's calculation of
5 the earliest release date of the prisoner. The victim may request
6 one notice of the calculation described in this subdivision. Such
7 information shall be mailed not later than thirty days after
8 receipt of the request;

9 (f) Of any reduction in the prisoner's minimum sentence;
10 and

11 (g) Of the victim's right to submit a statement as
12 provided in section 81-1848.

13 (4) A victim whose name appears in the file of a
14 convicted person shall be notified by the Department of Health and
15 Human Services:

16 (a) When a person convicted of an offense listed in
17 subsection (5) of this section becomes the subject of a petition
18 pursuant to the Nebraska Mental Health Commitment Act or the Sex
19 Offender Commitment Act prior to his or her discharge from custody
20 upon the completion of his or her sentence or within thirty days
21 after such discharge. The county attorney who filed the petition
22 shall notify the Department of Correctional Services of such
23 petition. The Department of Correctional Services shall forward
24 the names and addresses of victims appearing in the file of the
25 convicted person to the Department of Health and Human Services;

1 (b) When a person under a mental health board commitment
2 pursuant to subdivision (a) of this subsection escapes from an
3 inpatient facility providing board-ordered treatment and again when
4 the person is returned to an inpatient facility;

5 (c) When a person under a mental health board commitment
6 pursuant to subdivision (a) of this subsection is discharged or has
7 a change in disposition from inpatient board-ordered treatment;

8 (d) When a person under a mental health board commitment
9 pursuant to subdivision (a) of this subsection is granted a
10 furlough or release for twenty-four hours or longer; and

11 (e) When a person under a mental health board commitment
12 pursuant to subdivision (a) of this subsection is released
13 into educational release programs or work release programs. Such
14 notification shall occur at the beginning and termination of any
15 such program.

16 (5) Subsection (4) of this section applies to persons
17 convicted of at least one of the following offenses which is also
18 alleged to be the recent act or threat underlying the commitment
19 of such persons as mentally ill and dangerous or as dangerous sex
20 offenders as defined in section 83-174.01:

21 (a) Murder in the first degree pursuant to section
22 28-303;

23 (b) Murder in the second degree pursuant to section
24 28-304;

25 (c) Kidnapping pursuant to section 28-313;

1 (d) Assault in the first degree pursuant to section
2 28-308;

3 (e) Assault in the second degree pursuant to section
4 28-309;

5 (f) Sexual assault in the first degree pursuant to
6 section 28-319;

7 (g) Sexual assault in the second degree pursuant to
8 section 28-320;

9 (h) Sexual assault of a child in the first degree
10 pursuant to section 28-319.01;

11 (i) Sexual assault of a child in the second or third
12 degree pursuant to section 28-320.01;

13 (j) Unlawful sexual intercourse pursuant to section 10 of
14 this act;

15 ~~(j)~~ (k) Stalking pursuant to section 28-311.03; or

16 ~~(k)~~ (l) An attempt, solicitation, or conspiracy to commit
17 an offense listed in subdivisions (a) through ~~(j)~~ (l) of this
18 subsection.

19 (6) A victim whose name appears in the file of a
20 convicted person shall be notified by the Board of Pardons:

21 (a) Of any pardon or commutation proceedings; and

22 (b) If a pardon or commutation has been granted.

23 (7) The Board of Parole, the Department of Correctional
24 Services, the Department of Health and Human Services, and the
25 Board of Pardons shall adopt and promulgate rules and regulations

1 as needed to carry out this section.

2 (8) The victim's address and telephone number maintained
3 by the Department of Correctional Services, the Department of
4 Health and Human Services, the county corrections agency, or the
5 Board of Parole pursuant to subsection (1) of this section shall
6 be exempt from disclosure under public records laws and federal
7 freedom of information laws, as such laws existed on January 1,
8 2004.

9 Sec. 26. Section 83-174.02, Revised Statutes Cumulative
10 Supplement, 2006, is amended to read:

11 83-174.02 (1) The Department of Correctional Services
12 shall order an evaluation of the following individuals by a mental
13 health professional to determine whether or not the individual is a
14 dangerous sex offender:

15 (a) Individuals who have been convicted of (i) sexual
16 assault of a child in the first degree pursuant to section
17 28-319.01, ~~or~~ (ii) sexual assault in the first degree pursuant to
18 section 28-319, or unlawful sexual intercourse pursuant to section
19 10 of this act;

20 (b) Individuals who have been convicted of two or more
21 offenses requiring registration as a sex offender under section
22 29-4003 if one of the convictions was for any of the following
23 offenses: (i) Kidnapping pursuant to section 28-313 of a minor,
24 ~~pursuant to section 28-313,~~ except when the person is the parent
25 of the minor and was not convicted of any other offense; (ii)

1 sexual assault in the first degree pursuant to section 28-319 or
2 sexual assault in the second degree pursuant to section 28-320;
3 (iii) sexual assault of a child pursuant to section 28-320.01;
4 (iv) sexual assault of a child in the first degree pursuant to
5 section 28-319.01; (v) sexual assault of a child in the second or
6 third degree pursuant to section 28-320.01; (vi) unlawful sexual
7 intercourse pursuant to section 10 of this act; ~~(vi)~~ (vii) sexual
8 assault of a vulnerable adult pursuant to subdivision (1)(c)
9 of section 28-386; ~~(vii)~~ (viii) incest of a minor pursuant to
10 section 28-703; ~~(viii)~~ (ix) visual depiction of sexually explicit
11 conduct of a child pursuant to section 28-1463.03; or ~~(ix)~~ (x)
12 any offense that is substantially equivalent to an offense listed
13 in this section by any state, territory, commonwealth, or other
14 jurisdiction of the United States, by the United States Government,
15 or by court-martial or other military tribunal, notwithstanding a
16 procedure comparable in effect to that described in section 29-2264
17 or any other procedure to nullify a conviction other than by
18 pardon;

19 (c) Individuals convicted of a sex offense against a
20 minor who have refused to participate in or failed to successfully
21 complete the sex offender treatment program offered by the
22 Department of Correctional Services or the Department of Health
23 and Human Services during the term of incarceration. The failure to
24 successfully complete a treatment program due to time constraints
25 or the unavailability of treatment programming shall not constitute

1 a refusal to participate in treatment; and

2 (d) Individuals convicted of failure to comply with the
3 registration requirements of the Sex Offender Registration Act who
4 have previously been convicted for failure to comply with the
5 registration requirements of the act or a similar registration
6 requirement in another state.

7 (2) The evaluation required by this section shall be
8 ordered at least one hundred eighty days before the scheduled
9 release of the individual. Upon completion of the evaluation, and
10 not later than one hundred fifty days prior to the scheduled
11 release of the individual, the department shall send written
12 notice to the Attorney General, the county attorney of the county
13 where the offender is incarcerated, and the prosecuting county
14 attorney. The notice shall contain an affidavit of the mental
15 health professional describing his or her findings with respect to
16 whether or not the individual is a dangerous sex offender.

17 Sec. 27. Section 83-4,143, Revised Statutes Supplement,
18 2007, is amended to read:

19 83-4,143 (1) It is the intent of the Legislature that
20 the court target the felony offender (a) who is eligible and
21 by virtue of his or her criminogenic needs is suitable to be
22 sentenced to intensive supervision probation with placement at the
23 incarceration work camp, (b) for whom the court finds that other
24 conditions of a sentence of intensive supervision probation, in
25 and of themselves, are not suitable, and (c) who, without the

1 existence of an incarceration work camp, would, in all likelihood,
2 be sentenced to prison.

3 (2) When the court is of the opinion that imprisonment is
4 appropriate, but that a brief and intensive period of regimented,
5 structured, and disciplined programming within a secure facility
6 may better serve the interests of society, the court may place an
7 offender in an incarceration work camp for a period not to exceed
8 one hundred eighty days as a condition of a sentence of intensive
9 supervision probation. The court may consider such placement if the
10 offender (a) is a male or female offender convicted of a felony
11 offense in a district court, (b) is medically and mentally fit
12 to participate, with allowances given for reasonable accommodation
13 as determined by medical and mental health professionals, and (c)
14 has not previously been incarcerated for a violent felony crime.
15 Offenders convicted of a crime under sections 28-319 to 28-321 and
16 section 10 of this act or of any capital crime are not eligible to
17 be placed in an incarceration work camp.

18 (3) It is also the intent of the Legislature that the
19 Board of Parole may recommend placement of felony offenders at
20 the incarceration work camp. The offenders recommended by the
21 board shall be offenders currently housed at other Department
22 of Correctional Services adult correctional facilities and shall
23 complete the incarceration work camp programming prior to release
24 on parole.

25 (4) When the Board of Parole is of the opinion that

1 a felony offender currently incarcerated in a Department of
2 Correctional Services adult correctional facility may benefit
3 from a brief and intensive period of regimented, structured, and
4 disciplined programming immediately prior to release on parole, the
5 board may direct placement of such an offender in an incarceration
6 work camp for a period not to exceed one hundred eighty days as
7 a condition of release on parole. The board may consider such
8 placement if the felony offender (a) is medically and mentally fit
9 to participate, with allowances given for reasonable accommodation
10 as determined by medical and mental health professionals, and (b)
11 has not previously been incarcerated for a violent felony crime.
12 Offenders convicted of a crime under sections 28-319 to 28-321 and
13 section 10 of this act or of any capital crime are not eligible to
14 be placed in an incarceration work camp.

15 Sec. 28. Original sections 28-111, 28-115, 28-311,
16 28-318, 28-319, 28-319.01, 28-320.01, 28-320.02, 28-707, 29-110,
17 29-119, 29-1926, 29-2028, 29-2221, 29-2290, 29-2923, 29-4003,
18 29-4103, 42-1203, 71-6908, 79-267, 81-1850, and 83-174.02, Revised
19 Statutes Cumulative Supplement, 2006, and sections 28-101, 43-2933,
20 and 83-4,143, Revised Statutes Supplement, 2007, are repealed.