

LEGISLATURE OF NEBRASKA

ONE HUNDRED FIRST LEGISLATURE

SECOND SESSION

LEGISLATIVE BILL 728

FINAL READING

Introduced by Lautenbaugh, 18.

Read first time January 06, 2010

Committee: Judiciary

A BILL

1 FOR AN ACT relating to offenses against children; to amend section
2 29-119, Reissue Revised Statutes of Nebraska; to adopt
3 the Exploited Children's Civil Remedy Act; to redefine a
4 term with respect to plea agreements; and to repeal the
5 original section.

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

1 Section 1. Sections 1 to 7 of this act shall be known and
2 may be cited as the Exploited Children's Civil Remedy Act.

3 Sec. 2. For purposes of the Exploited Children's Civil
4 Remedy Act:

5 (1) Access software provider means a provider of
6 software, including client or server software, or enabling tools
7 that do any one or more of the following: (a) Filter, screen,
8 allow, or disallow content; (b) pick, choose, analyze, or digest
9 content; or (c) transmit, receive, display, forward, cache, search,
10 subset, organize, reorganize, or translate content;

11 (2) Aid or assist another with the creation,
12 distribution, or active acquisition of child pornography means
13 help a principal in some appreciable manner with the creation,
14 distribution, or active acquisition of a visual depiction of
15 sexually explicit conduct which has a child as one of its
16 participants or portrayed observers. The term also includes
17 knowingly employing, forcing, authorizing, inducing, or otherwise
18 causing a child to engage in any visual depiction of sexually
19 explicit conduct which has a child as one of its participants
20 or portrayed observers. No parent, stepparent, legal guardian, or
21 person with custody and control of a child, knowing the content
22 thereof, may consent to such child engaging in any visual depiction
23 of sexually explicit conduct which has a child as one of its
24 participants or portrayed observers;

25 (3) Cable operator means any person or group of persons

1 (a) who provides cable service over a cable system and directly or
2 through one or more affiliates owns a significant interest in such
3 cable system or (b) who otherwise controls or is responsible for,
4 through any arrangement, the management and operation of such a
5 cable system;

6 (4) Child has the same meaning as in section 28-1463.02;

7 (5) Create means to knowingly create, make, manufacture,
8 direct, publish, finance, or in any manner generate;

9 (6) Distribute means the actual, constructive, or
10 attempted transfer from one person, source, or location to another
11 person, source, or location. The term includes, but is not limited
12 to, renting, selling, delivering, displaying, advertising, trading,
13 mailing, procuring, circulating, lending, exhibiting, transmitting,
14 transmuting, transferring, disseminating, presenting, or providing
15 any visual depiction of sexually explicit conduct which has a child
16 as one of its participants or portrayed observers;

17 (7) Interactive computer service means any information
18 service system or access software provider that provides or enables
19 computer access by multiple users to a computer server, including
20 specifically a service or system that provides access to the
21 Internet and such systems operated or services offered by libraries
22 or educational institutions;

23 (8) Participant means a child who appears in any visual
24 depiction of sexually explicit conduct and is portrayed or actively
25 engaged in acts of sexually explicit conduct appearing therein;

1 (9) Portrayed observer means a child who appears in
2 any visual depiction where sexually explicit conduct is likewise
3 portrayed or occurring within the child's presence or in the
4 child's proximity;

5 (10) Sexually explicit conduct has the same meaning as in
6 section 28-1463.02;

7 (11) Telecommunications service means the offering of
8 telecommunications for a fee directly to the public, or to such
9 classes of users as to be effectively available directly to the
10 public, regardless of the facilities used; and

11 (12) Visual depiction has the same meaning as in section
12 28-1463.02.

13 Sec. 3. (1) Any participant or portrayed observer in a
14 visual depiction of sexually explicit conduct or his or her parent
15 or legal guardian who suffered or continues to suffer personal
16 or psychological injury as a result of such participation or
17 portrayed observation may bring a civil action against any person
18 who knowingly and willfully (a) created, distributed, or actively
19 acquired such visual depiction while in this state or (b) aided
20 or assisted with the creation, distribution, or active acquisition
21 of such visual depiction while such person or the person aided or
22 assisted was in this state.

23 (2) A plaintiff who prevails in a civil action brought
24 pursuant to the Exploited Children's Civil Remedy Act may recover
25 his or her actual damages, which are deemed to be a minimum of one

1 hundred fifty thousand dollars, plus any and all attorney's fees
2 and costs reasonably associated with the civil action. In addition
3 to all other remedies available under the act, the court may also
4 award temporary, preliminary, and permanent injunctive relief as
5 the court deems necessary and appropriate.

6 (3) This section does not create a cause of action if
7 the participant was sixteen years of age or older at the time
8 the visual depiction was created and the participant willfully and
9 voluntarily participated in the creation of the visual depiction.

10 (4) No law enforcement officer engaged in his or her law
11 enforcement duties, governmental entity, provider of interactive
12 computer service, provider of telecommunications service, or cable
13 operator is subject to a civil action under the Exploited
14 Children's Civil Remedy Act.

15 Sec. 4. Notwithstanding any other provisions of law, any
16 action to recover damages under the Exploited Children's Civil
17 Remedy Act shall be filed within three years after the later of:

18 (1) The conclusion of any related criminal prosecution
19 against the person or persons from whom recovery is sought;

20 (2) The receipt of actual or constructive notice sent or
21 given to the participant or portrayed observer or his or her parent
22 or legal guardian by a member of a law enforcement entity informing
23 the participant or portrayed observer or his or her parent or legal
24 guardian that the entity has identified the person:

25 (a) Who created, distributed, or actively acquired the

1 visual depiction of sexually explicit conduct containing the
2 participant or portrayed observer; or

3 (b) Who aided or assisted another person with the
4 creation, distribution, or active acquisition of the visual
5 depiction of sexually explicit conduct containing the participant
6 or portrayed observer; or

7 (3) The participant or portrayed observer reaching the
8 age of eighteen years.

9 Sec. 5. In any action brought pursuant to the Exploited
10 Children's Civil Remedy Act, a plaintiff may request to use a
11 pseudonym instead of his or her legal name in all court proceedings
12 and records. Upon finding that the use of a pseudonym is proper,
13 the court shall ensure that the pseudonym is used in all court
14 proceedings and records.

15 Sec. 6. It is not a defense to a cause of action brought
16 pursuant to the Exploited Children's Civil Remedy Act that the
17 defendant:

18 (1) Did not know the participant or portrayed observer
19 appearing in the visual depiction of sexually explicit conduct;

20 (2) Did not appear in the visual depiction of sexually
21 explicit conduct containing the participant or portrayed observer;
22 or

23 (3) Did not commit, assist with the commission of,
24 or personally observe the commission of acts of sexually
25 explicit conduct portrayed in the visual depiction containing the

1 participant or portrayed observer.

2 Sec. 7. To prevent ongoing and further exploitation of
3 any person who was a participant or portrayed observer or his or
4 her parent or legal guardian, the Attorney General, upon request,
5 may pursue cases on behalf of any participant or portrayed observer
6 or his or her parent or legal guardian who has a bona fide cause of
7 action under the Exploited Children's Civil Remedy Act. All damages
8 obtained shall go to the plaintiff or plaintiffs. For his or her
9 role in pursuing a civil action under the act, the Attorney General
10 may seek all of his or her reasonable attorney's fees and costs
11 associated with the civil action.

12 Sec. 8. Section 29-119, Reissue Revised Statutes of
13 Nebraska, 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)~~ (2) (a) Victim means a person who, as a result of a
23 homicide as defined in under sections 28-302 to 28-306, a first
24 degree sexual assault as defined in under section 28-319, a first
25 degree assault as defined in under section 28-308, a sexual assault

1 of a child in the second or third degree as ~~defined in~~ under
2 section 28-320.01, a sexual assault of a child in the first degree
3 as ~~defined in~~ under section 28-319.01, a second degree assault as
4 ~~defined in~~ under section 28-309, a first degree false imprisonment
5 as ~~defined in~~ under section 28-314, a second degree sexual assault
6 as ~~defined in~~ under section 28-320, or a robbery as ~~defined in~~
7 under section 28-324, has had a personal confrontation with the
8 offender and also includes a person who has suffered serious bodily
9 injury as defined in section 28-109 as a result of a motor vehicle
10 accident when the driver was charged with a violation of section
11 60-6,196 or 60-6,197 or with a violation of a city or village
12 ordinance enacted in conformance with either section.

13 (b) 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.

16 (c) In the case of a violation of section 28-813.01,
17 28-1463.03, 28-1463.04, or 28-1463.05, victim means a person who
18 was a child as defined in section 28-1463.02 and a participant
19 or portrayed observer in the visual depiction of sexually explicit
20 conduct which is the subject of the violation and who has been
21 identified and can be reasonably notified.

22 (d) In the case of a sexual assault of a child, a
23 possession offense of a visual depiction of sexually explicit
24 conduct, or a distribution offense of a visual depiction of
25 sexually explicit conduct, victim means the child victim and the

1 parents, guardians, or duly appointed legal representative of the
2 child victim but does not include the alleged perpetrator of the
3 ~~sexual assault~~ crime.

4 Sec. 9. Original section 29-119, Reissue Revised Statutes
5 of Nebraska, is repealed.