

LEGISLATIVE BILL 507

Approved by the Governor April 13, 2010

Introduced by Pirsch, 4; Howard, 9; McCoy, 39; Mello, 5; Carlson, 38; Christensen, 44; Hadley, 37; Krist, 10; Nelson, 6.

FOR AN ACT relating to domestic violence; to amend sections 28-323 and 28-707, Reissue Revised Statutes of Nebraska; to provide for payment for prenatal services in certain situations; to provide a termination date; to change provisions relating to the offense of domestic assault; to change penalties for domestic assault and child abuse as prescribed; to provide operative dates; to repeal the original sections; and to declare an emergency.

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

Section 1. A pregnant United States citizen and Nebraska resident with an income at or below one hundred eighty-five percent of the federal poverty level who is subject to a child support enforcement sanction may ask for her case to be reviewed by the chief executive officer of the Department of Health and Human Services to obtain prenatal services from state-only funds. If the chief executive officer, upon review of the circumstances of the case, determines, in his or her discretion, that circumstances relating to domestic violence warrant an exception to the existing rules and regulations governing medicaid coverage and sanctions, he or she may authorize prenatal services to be paid from state general funds. Prenatal services provided under this section shall not include abortion counseling, referral for abortion, or funding for abortion.

This section terminates on June 30, 2011.

Sec. 2. Section 28-323, Reissue Revised Statutes of Nebraska, is amended to read:

28-323 (1) A person commits the offense of domestic assault in the third degree if he or she:

(a) Intentionally and knowingly causes bodily injury to his or her intimate partner; ~~or~~

(b) ~~Places, by physical menace, his or her~~ Threatens an intimate partner in fear of with imminent bodily injury; or-

(c) Threatens an intimate partner in a menacing manner.

(2) A person commits the offense of domestic assault in the second degree if he or she intentionally and knowingly causes bodily injury to his or her intimate partner with a dangerous instrument.

(3) A person commits the offense of domestic assault in the first degree if he or she intentionally and knowingly causes serious bodily injury to his or her intimate partner.

(4) Violation of ~~subsection (1)~~ subdivision (1)(a) or (b) of this section is a Class I misdemeanor, except that for any ~~second or subsequent violation of such subsection within twelve years after the date of the current conviction,~~ subsequent violation of subdivision (1)(a) or (b) of this section, any person so offending ~~against the same intimate partner~~ is guilty of a Class IV felony.

(5) Violation of subdivision (1)(c) of this section is a Class I misdemeanor.

~~(5) (6)~~ (6) Violation of subsection (2) of this section is a Class IIIA felony, except that for any second or subsequent violation of such subsection, ~~within twelve years after the date of the current conviction,~~ any person so offending ~~against the same intimate partner~~ is guilty of a Class III felony.

~~(6) (7)~~ (7) Violation of subsection (3) of this section is a Class III felony, except that for any second or subsequent violation under such subsection, ~~within twelve years after the date of the current conviction,~~ any person so offending ~~against the same intimate partner~~ is guilty of a Class II felony.

~~(7) (8)~~ (8) For purposes of this section, intimate partner means a spouse; a former spouse; persons who have a child in common whether or not they have been married or lived together at any time; and persons who are or were involved in a dating relationship. For purposes of this subsection, dating relationship means frequent, intimate associations primarily characterized by the expectation of affectional or sexual involvement, but does not include a casual relationship or an ordinary association between persons in a business or social context.

Sec. 3. Section 28-707, Reissue Revised Statutes of Nebraska, is amended to read:

28-707 (1) A person commits child abuse if he or she knowingly,

intentionally, or negligently causes or permits a minor child to be:

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

(b) Cruelly confined or cruelly punished;

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

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

(e) Placed in a situation to be sexually abused as defined in section 28-319, 28-319.01, or 28-320.01.

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

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

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

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

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

Sec. 4. Sections 2, 3, and 5 of this act become operative three calendar months after the adjournment of this legislative session. The other sections of this act become operative on their effective date.

Sec. 5. Original sections 28-323 and 28-707, Reissue Revised Statutes of Nebraska, are repealed.

Sec. 6. Since an emergency exists, this act takes effect when passed and approved according to law.