

LEGISLATURE OF NEBRASKA  
ONE HUNDRED SECOND LEGISLATURE  
SECOND SESSION  
**LEGISLATIVE BILL 797**

Introduced by Avery, 28.

Read first time January 05, 2012

Committee: Judiciary

A BILL

1 FOR AN ACT relating to crimes and offenses; to amend section 28-318,  
2 Revised Statutes Cumulative Supplement, 2010; to change  
3 the definition of sexual contact to include kissing  
4 without consent; and to repeal the original section.  
5 Be it enacted by the people of the State of Nebraska,

1                   Section 1. Section 28-318, Revised Statutes Cumulative  
2 Supplement, 2010, is amended to read:

3                   28-318 As used in sections 28-317 to 28-322.04, unless  
4 the context otherwise requires:

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

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

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

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

13                  (5) Sexual contact means the intentional touching of the  
14 victim's sexual or intimate parts or the intentional touching of the  
15 victim's clothing covering the immediate area of the victim's sexual  
16 or intimate parts. Sexual contact shall also mean the touching by the  
17 victim of the actor's sexual or intimate parts or the clothing  
18 covering the immediate area of the actor's sexual or intimate parts  
19 when such touching is intentionally caused by the actor. Sexual  
20 contact also includes kissing by the actor with his or her mouth on  
21 the victim's mouth without the victim's consent. Sexual contact shall  
22 include only such conduct which can be reasonably construed as being  
23 for the purpose of sexual arousal or gratification of either party.  
24 Sexual contact shall also include the touching of a child with the  
25 actor's sexual or intimate parts on any part of the child's body for

1 purposes of sexual assault of a child under sections 28-319.01 and  
2 28-320.01;

3 (6) Sexual penetration means sexual intercourse in its  
4 ordinary meaning, cunnilingus, fellatio, anal intercourse, or any  
5 intrusion, however slight, of any part of the actor's or victim's  
6 body or any object manipulated by the actor into the genital or anal  
7 openings of the victim's body which can be reasonably construed as  
8 being for nonmedical or nonhealth purposes. Sexual penetration shall  
9 not require emission of semen;

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

12 (8) Without consent means:

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

20 (b) The victim need only resist, either verbally or  
21 physically, so as to make the victim's refusal to consent genuine and  
22 real and so as to reasonably make known to the actor the victim's  
23 refusal to consent; and

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

1                   (9) Force or threat of force means (a) the use of  
2 physical force which overcomes the victim's resistance or (b) the  
3 threat of physical force, express or implied, against the victim or a  
4 third person that places the victim in fear of death or in fear of  
5 serious personal injury to the victim or a third person where the  
6 victim reasonably believes that the actor has the present or future  
7 ability to execute the threat.

8                   Sec. 2. Original section 28-318, Revised Statutes  
9 Cumulative Supplement, 2010, is repealed.