

LEGISLATURE OF NEBRASKA
ONE HUNDRED THIRD LEGISLATURE
SECOND SESSION

LEGISLATIVE BILL 1034

Introduced by McGill, 26.

Read first time January 22, 2014

Committee: Judiciary

A BILL

1 FOR AN ACT relating to crimes and offenses; to amend sections
2 28-311.08, 28-367.01, and 29-4003, Revised Statutes
3 Cumulative Supplement, 2012; to change provisions and
4 penalties relating to unlawful intrusion; to harmonize
5 provisions; and to repeal the original sections.
6 Be it enacted by the people of the State of Nebraska,

1 Section 1. Section 28-311.08, Revised Statutes Cumulative
2 Supplement, 2012, is amended to read:

3 28-311.08 (1) It shall be unlawful for any person to
4 knowingly intrude upon any other person without his or her consent or
5 knowledge in a place of solitude or seclusion.

6 (2) It shall be unlawful for any person to knowingly
7 photograph, film, record, or broadcast an image of the intimate area
8 of any other person without his or her knowledge and consent when his
9 or her intimate area would not be generally visible to the public
10 regardless of whether such other person is located in a public or
11 private place.

12 ~~(2)~~-(3) For purposes of this section:

13 (a) Intimate area means the naked or undergarment-clad
14 genitalia, pubic area, buttocks, or female breast of an individual;

15 ~~(a)~~-(b) Intrude means either the:

16 (i) Viewing of another person in a state of undress as it
17 is occurring; or

18 (ii) Recording by video, photographic, digital, or other
19 electronic means of another person in a state of undress; and

20 ~~(b)~~-(c) Place of solitude or seclusion means a place
21 where a person would intend to be in a state of undress and have a
22 reasonable expectation of privacy, including, but not limited to, any
23 facility, public or private, used as a restroom, tanning booth,
24 locker room, shower room, fitting room, or dressing room.

25 ~~(3)~~-(a)-(4)(a) Violation of this section involving an

1 intrusion as defined in subdivision ~~(2)(a)(i)~~(3)(b)(i) of this
2 section or violation under subsection (2) of this section is a Class
3 I misdemeanor.

4 (b) ~~Violation~~Subsequent violation of this section
5 involving an intrusion as defined in subdivision (3)(b)(i) of this
6 section, subsequent violation under subsection (2) of this section,
7 or violation of this section involving an intrusion as defined in
8 subdivision ~~(2)(a)(ii)~~(3)(b)(ii) of this section is a Class IV
9 felony.

10 (c) Violation of this section is a Class III felony if
11 video or an image ~~from the intrusion~~recorded in violation of this
12 section is distributed to another person or otherwise made public in
13 any manner which would enable it to be viewed by another person.

14 ~~(4)~~(5) As part of sentencing following a conviction for
15 a violation of this section, the court shall make a finding as to the
16 ages of the defendant and the victim at the time the offense
17 occurred. If the defendant is found to have been nineteen years of
18 age or older and the victim is found to have been less than eighteen
19 years of age at such time, then the defendant shall be required to
20 register under the Sex Offender Registration Act.

21 ~~(5)~~(6) No person shall be prosecuted ~~for unlawful~~
22 ~~intrusion~~pursuant to subdivision (3)(b)~~(4)(b)~~ or (c) of this
23 section unless the indictment for such offense is found by a grand
24 jury or a complaint filed before a magistrate within three years
25 after the later of:

1 (a) The commission of the crime;

2 (b) Law enforcement's or a victim's receipt of actual or
3 constructive notice of either the existence of a video or other
4 electronic recording ~~of the unlawful intrusion made in violation of~~
5 this section or the distribution of images, video, or other
6 electronic recording ~~of the unlawful intrusion made in violation of~~
7 this section; or

8 (c) The youngest victim of ~~the intrusion~~ a violation of
9 this section reaching the age of twenty-one years.

10 Sec. 2. Section 28-367.01, Revised Statutes Cumulative
11 Supplement, 2012, is amended to read:

12 28-367.01 Sexual exploitation includes, but is not
13 limited to, ~~unlawful intrusion as described in a violation of section~~
14 28-311.08 and causing, allowing, permitting, inflicting, or
15 encouraging a vulnerable adult to engage in voyeurism, in
16 exhibitionism, in prostitution, or in the lewd, obscene, or
17 pornographic photographing, filming, or depiction of the vulnerable
18 adult.

19 Sec. 3. Section 29-4003, Revised Statutes Cumulative
20 Supplement, 2012, is amended to read:

21 29-4003 (1)(a) The Sex Offender Registration Act applies
22 to any person who on or after January 1, 1997:

23 (i) Has ever pled guilty to, pled nolo contendere to, or
24 been found guilty of any of the following:

25 (A) Kidnapping of a minor pursuant to section 28-313,

1 except when the person is the parent of the minor and was not
2 convicted of any other offense in this section;

3 (B) False imprisonment of a minor pursuant to section
4 28-314 or 28-315;

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

6 (D) Sexual assault of a child in the second or third
7 degree pursuant to section 28-320.01;

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

10 (F) Sexual abuse of a vulnerable adult pursuant to
11 subdivision (1)(c) of section 28-386;

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

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

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

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

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

20 (L) Child enticement by means of an electronic
21 communication device pursuant to section 28-320.02;

22 (M) Debauching a minor pursuant to section 28-805; or

23 (N) Attempt, solicitation, aiding or abetting, being an
24 accessory, or conspiracy to commit an offense listed in subdivisions
25 (1)(a)(i)(A) through (1)(a)(i)(M) of this section;

1 (ii) Has ever pled guilty to, pled nolo contendere to, or
2 been found guilty of any offense that is substantially equivalent to
3 a registrable offense under subdivision (1)(a)(i) of this section by
4 any village, town, city, state, territory, commonwealth, or other
5 jurisdiction of the United States, by the United States Government,
6 by court-martial or other military tribunal, or by a foreign
7 jurisdiction, notwithstanding a procedure comparable in effect to
8 that described under section 29-2264 or any other procedure to
9 nullify a conviction other than by pardon;

10 (iii) Is incarcerated in a jail, a penal or correctional
11 facility, or any other public or private institution or is under
12 probation or parole as a result of pleading guilty to or being found
13 guilty of a registrable offense under subdivision (1)(a)(i) or (ii)
14 of this section prior to January 1, 1997; or

15 (iv) Enters the state and is required to register as a
16 sex offender under the laws of another village, town, city, state,
17 territory, commonwealth, or other jurisdiction of the United States.

18 (b) In addition to the registrable offenses under
19 subdivision (1)(a) of this section, the Sex Offender Registration Act
20 applies to any person who on or after January 1, 2010:

21 (i)(A) Except as provided in subdivision (1)(b)(i)(B) of
22 this section, has ever pled guilty to, pled nolo contendere to, or
23 been found guilty of any of the following:

24 (I) Murder in the first degree pursuant to section
25 28-303;

- 1 (II) Murder in the second degree pursuant to section
2 28-304;
- 3 (III) Manslaughter pursuant to section 28-305;
- 4 (IV) Assault in the first degree pursuant to section
5 28-308;
- 6 (V) Assault in the second degree pursuant to section
7 28-309;
- 8 (VI) Assault in the third degree pursuant to section
9 28-310;
- 10 (VII) Stalking pursuant to section 28-311.03;
- 11 (VIII) ~~Unlawful intrusion~~ Violation of section 28-311.08
12 requiring registration under the act pursuant to subsection (4)-(5)
13 of section 28-311.08;
- 14 (IX) Kidnapping pursuant to section 28-313;
- 15 (X) False imprisonment pursuant to section 28-314 or
16 28-315;
- 17 (XI) Sexual abuse of an inmate or parolee in the first
18 degree pursuant to section 28-322.02;
- 19 (XII) Sexual abuse of an inmate or parolee in the second
20 degree pursuant to section 28-322.03;
- 21 (XIII) Sexual abuse of a protected individual pursuant to
22 section 28-322.04;
- 23 (XIV) Incest pursuant to section 28-703;
- 24 (XV) Child abuse pursuant to subdivision (1)(d) or (e) of
25 section 28-707;

1 (XVI) Enticement by electronic communication device
2 pursuant to section 28-833; or

3 (XVII) Attempt, solicitation, aiding or abetting, being
4 an accessory, or conspiracy to commit an offense listed in
5 subdivisions (1)(b)(i)(A)(I) through (1)(b)(i)(A)(XVI) of this
6 section.

7 (B) In order for the Sex Offender Registration Act to
8 apply to the offenses listed in subdivisions (1)(b)(i)(A)(I), (II),
9 (III), (IV), (V), (VI), (VII), (IX), and (X) of this section, a court
10 shall have found that evidence of sexual penetration or sexual
11 contact, as those terms are defined in section 28-318, was present in
12 the record, which shall include consideration of the factual basis
13 for a plea-based conviction and information contained in the
14 presentence report;

15 (ii) Has ever pled guilty to, pled nolo contendere to, or
16 been found guilty of any offense that is substantially equivalent to
17 a registrable offense under subdivision (1)(b)(i) of this section by
18 any village, town, city, state, territory, commonwealth, or other
19 jurisdiction of the United States, by the United States Government,
20 by court-martial or other military tribunal, or by a foreign
21 jurisdiction, notwithstanding a procedure comparable in effect to
22 that described under section 29-2264 or any other procedure to
23 nullify a conviction other than by pardon; or

24 (iii) Enters the state and is required to register as a
25 sex offender under the laws of another village, town, city, state,

1 territory, commonwealth, or other jurisdiction of the United States.

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

5 Sec. 4. Original sections 28-311.08, 28-367.01, and
6 29-4003, Revised Statutes Cumulative Supplement, 2012, are repealed.