

LEGISLATURE OF NEBRASKA
ONE HUNDRED FIFTH LEGISLATURE
SECOND SESSION

LEGISLATIVE BILL 988

Introduced by Pansing Brooks, 28; Howard, 9; Walz, 15; Wishart, 27.

Read first time January 11, 2018

Committee: Judiciary

- 1 A BILL FOR AN ACT relating to sexual assault; to amend section 28-318,
- 2 Reissue Revised Statutes of Nebraska; to define a term; to adopt an
- 3 affirmative consent standard; to eliminate obsolete terms; to
- 4 harmonize provisions; and to repeal the original section.
- 5 Be it enacted by the people of the State of Nebraska,

1 Section 1. Section 28-318, Reissue Revised Statutes of Nebraska, is
2 amended to read:

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

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

6 (2) Consent means words or overt actions indicating a knowing and
7 voluntary agreement, freely given, to engage in sexual contact or sexual
8 penetration, except that (a) an expression of lack of consent through
9 words or conduct means either there is no consent or consent has been
10 withdrawn; (b) a current or previous dating or social or sexual
11 relationship by itself, the manner of dress of the person involved with
12 the accused, or the victim's use of drugs or alcohol in the conduct at
13 issue does not constitute consent; (c) lack of consent may be inferred
14 based on all of the surrounding circumstances and must be considered in
15 determining whether a person gave consent; (d) consent cannot be given
16 under instances of force, fraud, or coercion; and (e) the absence of
17 force, fraud, or coercion, by itself, shall not constitute consent;

18 (3) ~~(2)~~ Intimate parts means the genital area, groin, inner thighs,
19 buttocks, or breasts;

20 (4) ~~(3)~~ Past sexual behavior means sexual behavior other than the
21 sexual behavior upon which the sexual assault is alleged;

22 (5) ~~(4)~~ Serious personal injury means great bodily injury or
23 disfigurement, extreme mental anguish or mental trauma, pregnancy,
24 disease, or loss or impairment of a sexual or reproductive organ;

25 (6) ~~(5)~~ Sexual contact means the intentional touching of the
26 victim's sexual or intimate parts or the intentional touching of the
27 victim's clothing covering the immediate area of the victim's sexual or
28 intimate parts. Sexual contact shall also mean the touching by the victim
29 of the actor's sexual or intimate parts or the clothing covering the
30 immediate area of the actor's sexual or intimate parts when such touching
31 is intentionally caused by the actor. Sexual contact shall include only

1 such conduct which can be reasonably construed as being for the purpose
2 of sexual arousal or gratification of either party. Sexual contact shall
3 also include the touching of a child with the actor's sexual or intimate
4 parts on any part of the child's body for purposes of sexual assault of a
5 child under sections 28-319.01 and 28-320.01;

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

13 ~~(8)~~ (7) Victim means the person alleging to have been sexually
14 assaulted. ;

15 ~~(8) Without consent means:~~

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

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

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

27 ~~(9) Force or threat of force means (a) the use of physical force~~
28 ~~which overcomes the victim's resistance or (b) the threat of physical~~
29 ~~force, express or implied, against the victim or a third person that~~
30 ~~places the victim in fear of death or in fear of serious personal injury~~
31 ~~to the victim or a third person where the victim reasonably believes that~~

1 ~~the actor has the present or future ability to execute the threat.~~

2 Sec. 2. Original section 28-318, Reissue Revised Statutes of
3 Nebraska, is repealed.