

AMENDMENTS TO LB630

Introduced by Judiciary.

1 1. Strike the original sections and insert the following new
2 sections:

3 Section 1. Section 28-311.08, Reissue Revised Statutes of Nebraska,
4 is amended to read:

5 28-311.08 (1) It shall be unlawful for any person to knowingly
6 intrude upon any other person without his or her consent ~~or knowledge~~ in
7 a place of solitude or seclusion. Violation of this subsection is a Class
8 I misdemeanor. A second or subsequent violation of this subsection is a
9 Class IV felony.

10 (2) It shall be unlawful for any person to knowingly and
11 intentionally photograph, film, or otherwise record, ~~or live broadcast~~ an
12 image or video of the intimate area of any other person without his or
13 her knowledge and consent when his or her intimate area would not be
14 generally visible to the public regardless of whether such other person
15 is located in a public or private place. Violation of this section is a
16 Class IV felony.

17 (3) It shall be unlawful for any person to knowingly and
18 intentionally distribute or otherwise make public an image or video of
19 another person recorded in violation of subsection (2) of this section
20 without that person's consent. Violation of this subsection is a Class
21 IIA felony.

22 (4) It shall be unlawful for any person to knowingly and
23 intentionally distribute or otherwise make public an image or video of
24 another person's intimate area or of another person engaged in sexually
25 explicit conduct when (a) the other person had a reasonable expectation
26 that the image would remain private, (b) knowing the other person did not
27 consent to distributing or making public the image or video, and (c)

1 distributing or making public the image or video serves no legitimate
2 purpose. Violation of this subsection is a Class I misdemeanor. A second
3 or subsequent violation of this subsection is a Class IV felony.

4 (5) It shall be unlawful for any person to threaten to distribute or
5 otherwise make public an image or video of another person's intimate area
6 or of another person engaged in sexually explicit conduct with the intent
7 to intimidate, threaten, or harass any person. Violation of this
8 subsection is a Class I misdemeanor.

9 ~~(3) For purposes of this section:~~

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

12 ~~(b) Intrude means either the:~~

13 ~~(i) Viewing of another person in a state of undress as it is~~
14 ~~occurring; or~~

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

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

22 ~~(4)(a) Violation of this section involving an intrusion as defined~~
23 ~~in subdivision (3)(b)(i) of this section or violation under subsection~~
24 ~~(2) of this section is a Class I misdemeanor.~~

25 ~~(b) Subsequent violation of this section involving an intrusion as~~
26 ~~defined in subdivision (3)(b)(i) of this section, subsequent violation~~
27 ~~under subsection (2) of this section, or violation of this section~~
28 ~~involving an intrusion as defined in subdivision (3)(b)(ii) of this~~
29 ~~section is a Class IV felony.~~

30 ~~(c) Violation of this section is a Class IIA felony if video or an~~
31 ~~image recorded in violation of this section is distributed to another~~

1 ~~person or otherwise made public in any manner which would enable it to be~~
2 ~~viewed by another person.~~

3 (6) (5) As part of sentencing following a conviction for a violation
4 of subsection (1), (2), or (3) of this section, the court shall make a
5 finding as to the ages of the defendant and the victim at the time the
6 offense occurred. If the defendant is found to have been nineteen years
7 of age or older and the victim is found to have been less than sixteen
8 ~~eighteen~~ years of age at such time, then the defendant shall be required
9 to register under the Sex Offender Registration Act.

10 (7) (6) No person shall be prosecuted under pursuant to ~~subdivision~~
11 ~~(4)(b) or (c)~~ of this section unless the indictment for such offense is
12 found by a grand jury or a complaint filed before a magistrate within
13 three years after the later of:

14 (a) The commission of the crime;

15 (b) Law enforcement's or a victim's receipt of actual or
16 constructive notice of either the existence of a video or other
17 electronic recording made in violation of this section or the
18 distribution of images, video, or other electronic recording made in
19 violation of this section; or

20 (c) The youngest victim of a violation of this section reaching the
21 age of twenty-one years.

22 (8) For purposes of this section:

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

25 (b) Intrude means either the:

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

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

30 (c) Place of solitude or seclusion means a place where a person
31 would intend to be in a state of undress and have a reasonable

1 expectation of privacy, including, but not limited to, any facility,
2 public or private, used as a restroom, tanning booth, locker room, shower
3 room, fitting room, or dressing room.

4 Sec. 2. Section 28-513, Reissue Revised Statutes of Nebraska, is
5 amended to read:

6 28-513 (1) A person commits theft if he or she obtains property,
7 money, or other thing of value of another by threatening to:

8 (a) Inflict bodily injury on anyone or commit any other criminal
9 offense; or

10 (b) Accuse anyone of a criminal offense; or

11 (c) Expose any secret tending to subject any person to hatred,
12 contempt or ridicule, or to impair his or her credit or business repute;
13 or

14 (d) Take or withhold action as an official, or cause an official to
15 take or withhold action; or

16 (e) Bring about or continue a strike, boycott, or other collective
17 unofficial action, if the property is not demanded or received for the
18 benefit of the group in whose interest the actor purports to act;~~or~~

19 (f) Testify or provide information or withhold testimony or
20 information with respect to another's legal claim or defense;or -

21 (g) Distribute or otherwise make public an image or video of a
22 person's intimate area or of a person engaged in sexually explicit
23 conduct without that person's consent.

24 (2) It is an affirmative defense to prosecution based on subdivision
25 (1)(b), (1)(c), or (1)(d) of this section that the property obtained by
26 threat of accusation, exposure, lawsuit or other invocation of official
27 action was honestly claimed as restitution or indemnification for harm
28 done in the circumstances to which such accusation, exposure, lawsuit or
29 other official action relates, or as compensation for property or lawful
30 services.

31 Sec. 3. Section 28-813.01, Reissue Revised Statutes of Nebraska, is

1 amended to read:

2 28-813.01 (1) It shall be unlawful for a person nineteen years of
3 age or older to knowingly possess any visual depiction of sexually
4 explicit conduct, ~~as defined in section 28-1463.02,~~ which has a child, ~~as~~
5 ~~defined in such section,~~ as one of its participants or portrayed
6 observers. Violation of this subsection is a Class IIA felony.

7 (2) It shall be unlawful for a person under nineteen years of age to
8 knowingly and intentionally possess any visual depiction of sexually
9 explicit conduct which has a child other than the defendant as one of its
10 participants or portrayed observers. Violation of this subsection is (2)
11 ~~(a) Any person who is under nineteen years of age at the time he or she~~
12 ~~violates this section shall be guilty of a Class I misdemeanor IV felony~~
13 ~~for each offense.~~

14 (3) It shall be an affirmative defense to a charge made pursuant to
15 subsection (2) of this section that:

16 (a)(i) The defendant was less than nineteen years of age; (ii) the
17 visual depiction of sexually explicit conduct portrays a child who is
18 fifteen years of age or older; (iii) the visual depiction was knowingly
19 and voluntarily generated by the child depicted therein; (iv) the visual
20 depiction was knowingly and voluntarily provided by the child depicted in
21 the visual depiction; (v) the visual depiction contains only one child;
22 (vi) the defendant has not provided or made available the visual
23 depiction to another person except the child depicted who originally sent
24 the visual depiction to the defendant; and (vii) the defendant did not
25 coerce the child in the visual depiction to either create or send the
26 visual depiction; or

27 (b)(i) The defendant was less than eighteen years of age; (ii) the
28 difference in age between the defendant and the child portrayed is less
29 than four years; (iii) the visual depiction was knowingly and voluntarily
30 generated by the child depicted therein; (iv) the visual depiction was
31 knowingly and voluntarily provided by the child depicted in the visual

1 depiction; (v) the visual depiction contains only one child; (vi) the
2 defendant has not provided or made available the visual depiction to
3 another person except the child depicted who originally sent the visual
4 depiction to the defendant; and (vii) the defendant did not coerce the
5 child in the visual depiction to either create or send the visual
6 depiction.

7 ~~(b) Any person who is nineteen years of age or older at the time he~~
8 ~~or she violates this section shall be guilty of a Class IIA felony for~~
9 ~~each offense.~~

10 (4) ~~(c)~~ Any person who violates subsection (1) or (2) of this
11 section and has previously been convicted of a violation of this section
12 or section 28-308, 28-309, 28-310, 28-311, 28-313, 28-314, 28-315,
13 28-319, 28-319.01, 28-320.01, 28-833, 28-1463.03, or 28-1463.05 or
14 subsection (1) or (2) of section 28-320 shall be guilty of a Class IC
15 felony for each offense.

16 ~~(3) It shall be an affirmative defense to a charge made pursuant to~~
17 ~~this section that:~~

18 ~~(a) The visual depiction portrays no person other than the~~
19 ~~defendant; or~~

20 ~~(b)(i) The defendant was less than nineteen years of age; (ii) the~~
21 ~~visual depiction of sexually explicit conduct portrays a child who is~~
22 ~~fifteen years of age or older; (iii) the visual depiction was knowingly~~
23 ~~and voluntarily generated by the child depicted therein; (iv) the visual~~
24 ~~depiction was knowingly and voluntarily provided by the child depicted in~~
25 ~~the visual depiction; (v) the visual depiction contains only one child;~~
26 ~~(vi) the defendant has not provided or made available the visual~~
27 ~~depiction to another person except the child depicted who originally sent~~
28 ~~the visual depiction to the defendant; and (vii) the defendant did not~~
29 ~~coerce the child in the visual depiction to either create or send the~~
30 ~~visual depiction.~~

31 (5) ~~(4)~~ In addition to the penalties provided in this section, a

1 sentencing court may order that any money, securities, negotiable
2 instruments, firearms, conveyances, or electronic communication devices
3 as defined in section 28-833 or any equipment, components, peripherals,
4 software, hardware, or accessories related to electronic communication
5 devices be forfeited as a part of the sentence imposed if it finds by
6 clear and convincing evidence adduced at a separate hearing in the same
7 prosecution, conducted pursuant to section 28-1601, that any or all such
8 property was derived from, used, or intended to be used to facilitate a
9 violation of this section.

10 Sec. 4. Section 28-1310, Revised Statutes Cumulative Supplement,
11 2018, is amended to read:

12 28-1310 (1) A person commits the offense of intimidation by
13 telephone call or electronic communication if, with intent to intimidate,
14 threaten, or harass an individual, the person telephones such individual
15 or transmits an electronic communication directly to such individual,
16 whether or not conversation or an electronic response ensues, and the
17 person:

18 (a) Uses obscene language or suggests any obscene act;

19 (b) Threatens to inflict physical or mental injury to such
20 individual or any other person or physical injury to the property of such
21 individual or any other person; or

22 (c) Attempts to extort property, money, or other thing of value from
23 such individual or any other person.

24 (2) The offense shall be deemed to have been committed either at the
25 place where the call or electronic communication was initiated or where
26 it was received.

27 (3) Intimidation by telephone call or electronic communication is a
28 Class III misdemeanor.

29 (4) For purposes of this section, electronic communication means any
30 writing, sound, visual image, or data of any nature that is received or
31 transmitted by an electronic communication device as defined in section

1 28-833.

2 Sec. 5. Section 28-1463.03, Reissue Revised Statutes of Nebraska, is
3 amended to read:

4 28-1463.03 (1) It shall be unlawful for a person to knowingly make,
5 publish, direct, create, provide, or in any manner generate any visual
6 depiction of sexually explicit conduct which has a child other than the
7 defendant as one of its participants or portrayed observers.

8 (2) It shall be unlawful for a person knowingly to purchase, rent,
9 sell, deliver, distribute, display for sale, advertise, trade, or provide
10 to any person any visual depiction of sexually explicit conduct which has
11 a child other than the defendant as one of its participants or portrayed
12 observers.

13 (3) It shall be unlawful for a person to knowingly employ, force,
14 authorize, induce, or otherwise cause a child to engage in any visual
15 depiction of sexually explicit conduct which has a child as one of its
16 participants or portrayed observers.

17 (4) It shall be unlawful for a parent, stepparent, legal guardian,
18 or any person with custody and control of a child, knowing the content
19 thereof, to consent to such child engaging in any visual depiction of
20 sexually explicit conduct which has a child as one of its participants or
21 portrayed observers.

22 ~~(5) It shall be an affirmative defense to a charge brought pursuant~~
23 ~~to subsection (1) of this section if the defendant was less than eighteen~~
24 ~~years of age at the time the visual depiction was created and the visual~~
25 ~~depiction of sexually explicit conduct includes no person other than the~~
26 ~~defendant.~~

27 ~~(6) It shall be an affirmative defense to a charge brought pursuant~~
28 ~~to subsection (2) of this section if (a) the defendant was less than~~
29 ~~eighteen years of age, (b) the visual depiction of sexually explicit~~
30 ~~conduct includes no person other than the defendant, (c) the defendant~~
31 ~~had a reasonable belief at the time the visual depiction was sent to~~

1 ~~another that it was being sent to a willing recipient, and (d) the~~
2 ~~recipient was at least fifteen years of age at the time the visual~~
3 ~~depiction was sent.~~

4 Sec. 6. Section 28-1463.05, Reissue Revised Statutes of Nebraska, is
5 amended to read:

6 28-1463.05 (1) It shall be unlawful for a person to knowingly
7 possess with intent to rent, sell, deliver, distribute, trade, or provide
8 to any person any visual depiction of sexually explicit conduct which has
9 a child other than the defendant as one of its participants or portrayed
10 observers.

11 (2)(a) Any person who is under nineteen years of age at the time he
12 or she violates this section shall be guilty of a Class IIIA felony for
13 each offense.

14 (b) Any person who is nineteen years of age or older at the time he
15 or she violates this section shall be guilty of a Class IIA felony for
16 each offense.

17 (c) Any person who violates this section and has previously been
18 convicted of a violation of this section or section 28-308, 28-309,
19 28-310, 28-311, 28-313, 28-314, 28-315, 28-319, 28-319.01, 28-320.01,
20 28-813, 28-833, or 28-1463.03 or subsection (1) or (2) of section 28-320
21 shall be guilty of a Class IC felony for each offense.

22 Sec. 7. Section 29-4003, Reissue Revised Statutes of Nebraska, is
23 amended to read:

24 29-4003 (1)(a) The Sex Offender Registration Act applies to any
25 person who on or after January 1, 1997:

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

28 (A) Kidnapping of a minor pursuant to section 28-313, except when
29 the person is the parent of the minor and was not convicted of any other
30 offense in this section;

31 (B) False imprisonment of a minor pursuant to section 28-314 or

1 28-315;

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

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

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

7 (F) Sexual abuse of a vulnerable adult or senior adult pursuant to
8 subdivision (1)(c) of section 28-386;

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

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

11 (I) Visual depiction of sexually explicit conduct of a child
12 pursuant to section 28-1463.03 or subdivision (2)(b) or (c) of section
13 28-1463.05;

14 (J) Knowingly possessing any visual depiction of sexually explicit
15 conduct which has a child as one of its participants or portrayed
16 observers pursuant to subsection (1) or (4) of section 28-813.01;

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

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

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

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

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

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

6 (iv) Enters the state and is required to register as a sex offender
7 under the laws of another village, town, city, state, territory,
8 commonwealth, or other jurisdiction of the United States, except that
9 this subdivision does not apply to a person required to register under
10 such laws because of an adjudication as a juvenile if, had such
11 adjudication occurred under the laws of this state, there would be no
12 duty to register.

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

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

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

20 (II) Murder in the second degree pursuant to section 28-304;

21 (III) Manslaughter pursuant to section 28-305;

22 (IV) Assault in the first degree pursuant to section 28-308;

23 (V) Assault in the second degree pursuant to section 28-309;

24 (VI) Assault in the third degree pursuant to section 28-310;

25 (VII) Stalking pursuant to section 28-311.03;

26 (VIII) Violation of section 28-311.08 requiring registration under
27 the act pursuant to subsection (6) ~~(5)~~ of section 28-311.08;

28 (IX) Kidnapping pursuant to section 28-313;

29 (X) False imprisonment pursuant to section 28-314 or 28-315;

30 (XI) Sexual abuse of an inmate or parolee in the first degree
31 pursuant to section 28-322.02;

1 (XII) Sexual abuse of an inmate or parolee in the second degree
2 pursuant to section 28-322.03;

3 (XIII) Sexual abuse of a protected individual pursuant to section
4 28-322.04;

5 (XIV) Incest pursuant to section 28-703;

6 (XV) Child abuse pursuant to subdivision (1)(d) or (e) of section
7 28-707;

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

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

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

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

28 (iii) Enters the state and is required to register as a sex offender
29 under the laws of another village, town, city, state, territory,
30 commonwealth, or other jurisdiction of the United States, except that
31 this subdivision does not apply to a person required to register under

1 such laws because of an adjudication as a juvenile if, had such
2 adjudication occurred under the laws of this state, there would be no
3 duty to register.

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

7 Sec. 8. Original sections 28-311.08, 28-513, 28-813.01, 28-1463.03,
8 28-1463.05, and 29-4003, Reissue Revised Statutes of Nebraska, and
9 section 28-1310, Revised Statutes Cumulative Supplement, 2018, are
10 repealed.