

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.