INTRODUCED BY PANSING BROOKS, 28.

READ FIRST TIME JANUARY 11, 2019

COMMITTEE: JUDICIARY

A BILL FOR AN ACT relating to sexual assault; to amend sections 28-318,
28-319, and 28-320, Reissue Revised Statutes of Nebraska; to define
and redefine the terms of coercion and without consent; to provide
for applicability; to harmonize provisions; and to repeal the
original sections.

Be it enacted by the people of the State of Nebraska,
Section 1. Section 28-318, Reissue Revised Statutes of Nebraska, is amended to read:

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

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

(2) Coercion means to compel another to submit against their will and does not require a showing of physical force;

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

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

(5) Past sexual behavior means sexual behavior other than the sexual behavior upon which the sexual assault is alleged;

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

(7) Sexual contact means the intentional touching of the victim's sexual or intimate parts or the intentional touching of the victim's clothing covering the immediate area of the victim's sexual or intimate parts. Sexual contact shall also mean the touching by the victim of the actor's sexual or intimate parts or the clothing covering the immediate area of the actor's sexual or intimate parts when such touching is intentionally caused by the actor. Sexual contact includes only such conduct which can be reasonably construed as being for the purpose of sexual arousal or gratification of either party. Sexual contact shall also include the touching of a child with the actor's sexual or intimate parts on any part of the child's body for

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

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

(9) (7) Victim means the person alleging to have been sexually assaulted; and

(10)(a) (8) Without consent means:

(i)(A) (a)(i) The victim was compelled to submit due to the use of force or threat of force or coercion, (B) or (ii) the victim expressed a lack of consent through words, (C) or (iii) the victim expressed a lack of consent through conduct, or (D) (iv) the consent, if any was actually given, was withdrawn or was the result of the actor's deception as to the identity of the actor or the nature or purpose of the act on the part of the actor;

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

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

(iv) Consent to engage in sexual contact or sexual penetration was not knowingly, voluntarily, or freely given.

(b) Lack of consent may be inferred based on all of the surrounding circumstances and all of the surrounding circumstances must be considered in determining whether a person gave consent.

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

Sec. 2. Section 28-319, Reissue Revised Statutes of Nebraska, is
amended to read:

28-319 (1) Any person who subjects another person to sexual
penetration (a) without the consent of the victim, (b) who knew or should
have known that the victim was mentally or physically incapable of
resisting or appraising the nature of his or her conduct, or (c) when the
actor is nineteen years of age or older and the victim is at least twelve
but less than sixteen years of age is guilty of sexual assault in the
first degree. Without consent of the victim may be inferred based upon
all the surrounding circumstances, and all the surrounding circumstances
must be considered in determining whether the victim gave consent.

(2) Sexual assault in the first degree is a Class II felony. The
sentencing judge shall consider whether the actor caused serious personal
injury to the victim in reaching a decision on the sentence.

(3) Any person who is found guilty of sexual assault in the first
degree for a second time when the first conviction was pursuant to this
section or any other state or federal law with essentially the same
elements as this section shall be sentenced to a mandatory minimum term
of twenty-five years in prison.

Sec. 3. Section 28-320, Reissue Revised Statutes of Nebraska, is
amended to read:

28-320 (1) Any person who subjects another person to sexual contact
(a) without consent of the victim, or (b) who knew or should have known
that the victim was physically or mentally incapable of resisting or
appraising the nature of his or her conduct is guilty of sexual assault
in either the second degree or third degree. Without consent of the
victim may be inferred based upon all the surrounding circumstances, and all the surrounding circumstances must be considered in determining whether the victim gave consent.

(2) Sexual assault shall be in the second degree and is a Class IIA felony if the actor shall have caused serious personal injury to the victim.

(3) Sexual assault shall be in the third degree and is a Class I misdemeanor if the actor shall not have caused serious personal injury to the victim.

Sec. 4. Original sections 28-318, 28-319, and 28-320, Reissue Revised Statutes of Nebraska, are repealed.