

LEGISLATURE OF NEBRASKA  
ONE HUNDRED SEVENTH LEGISLATURE  
FIRST SESSION

**LEGISLATIVE BILL 187**

Introduced by Cavanaugh, M., 6; Blood, 3.

Read first time January 08, 2021

Committee: Judiciary

- 1 A BILL FOR AN ACT relating to crimes and offenses; to amend section
- 2 28-318, Revised Statutes Cumulative Supplement, 2020; to change the
- 3 definition of sexual penetration; and to repeal the original
- 4 section.
- 5 Be it enacted by the people of the State of Nebraska,

1 Section 1. Section 28-318, Revised Statutes Cumulative Supplement,  
2 2020, is amended to read:

3 28-318 As used in sections 28-317 to 28-322.05, unless the context  
4 otherwise requires:

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

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

8 (3) Past sexual behavior means sexual behavior other than the sexual  
9 behavior upon which the sexual assault is alleged;

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

13 (5) Sexual contact means the intentional touching of the victim's  
14 sexual or intimate parts or the intentional touching of the victim's  
15 clothing covering the immediate area of the victim's sexual or intimate  
16 parts. Sexual contact also means the touching by the victim of the  
17 actor's sexual or intimate parts or the clothing covering the immediate  
18 area of the actor's sexual or intimate parts when such touching is  
19 intentionally caused by the actor. Sexual contact includes only such  
20 conduct which can be reasonably construed as being for the purpose of  
21 sexual arousal or gratification of either party. Sexual contact also  
22 includes the touching of a child with the actor's sexual or intimate  
23 parts on any part of the child's body for purposes of sexual abuse by a  
24 school employee under section 28-316.01 or sexual assault of a child  
25 under sections 28-319.01 and 28-320.01;

26 (6) Sexual penetration means sexual intercourse in its ordinary  
27 meaning, cunnilingus, fellatio, anal intercourse, or any intrusion,  
28 however slight, of any part of the actor's or victim's body or any object  
29 manipulated by the actor into the genital or anal openings of the  
30 victim's body which can be reasonably construed as being for nonmedical,  
31 nonhealth, or non-law enforcement purposes. Sexual penetration also

1 includes the manipulation of any object by the victim into the genital or  
2 anal openings of the victim's or actor's body when such intrusion,  
3 however slight, is at the request or direction of the actor and which can  
4 be reasonably construed as being for nonmedical, nonhealth, or non-law  
5 enforcement purposes. Sexual penetration shall not require emission of  
6 semen;

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

9 (8) Without consent means:

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

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

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

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

27 Sec. 2. Original section 28-318, Revised Statutes Cumulative  
28 Supplement, 2020, is repealed.