

LEGISLATIVE BILL 17

Approved by the Governor May 29, 2003

Introduced by Brashear, 4; Redfield, 12; Mines, 18; Preister, 5

AN ACT relating to crimes and punishments; to amend sections 28-603, 28-604, 29-2315.01, 29-2316, 29-2317, 29-2319, 29-2320, 29-2321, 29-3524, and 47-401, Reissue Revised Statutes of Nebraska, and sections 28-101 and 29-215, Revised Statutes Supplement, 2002; to define and eliminate terms; to prohibit sexual abuse of a protected individual; to state intent; to proscribe distribution of liquid mercury thermometers, selling puppies or kittens without mothers, and installing certain material in a motor vehicle; to provide penalties; to change penalties relating to forgery and criminal possession of a forged instrument; to provide powers and duties for law enforcement officers; to change provisions relating to appeals by prosecuting attorneys; to provide for fees for storing and maintaining records; to permit offenders to leave jail for outpatient treatment; to harmonize provisions; and to repeal the original sections.

Be it enacted by the people of the State of Nebraska,

Section 1. Section 28-101, Revised Statutes Supplement, 2002, is amended to read:

28-101. Sections 28-101 to 28-1348 and sections 2 to 6 of this act shall be known and may be cited as the Nebraska Criminal Code.

Sec. 2. (1) For purposes of this section:

(a) Person means an individual employed by the Department of Health and Human Services, the Department of Health and Human Services Regulation and Licensure, or the Department of Health and Human Services Finance and Support and includes, but is not limited to, any individual working in central administration or regional service areas or facilities of the departments and any individual to whom one of the departments has authorized or delegated control over a protected individual or a protected individual's activities, whether by contract or otherwise; and

(b) Protected individual means an individual in the care or custody of the Department of Health and Human Services.

(2) A person commits the offense of sexual abuse of a protected individual if the person subjects a protected individual to sexual penetration or sexual contact as those terms are defined in section 28-318. It is not a defense to a charge under this section that the protected individual consented to such sexual penetration or sexual contact.

(3) Any person who subjects a protected individual to sexual penetration is guilty of sexual abuse of a protected individual in the first degree. Sexual abuse of a protected individual in the first degree is a Class III felony.

(4) Any person who subjects a protected individual to sexual contact is guilty of sexual abuse of a protected individual in the second degree. Sexual abuse of a protected individual in the second degree is a Class IV felony.

Sec. 3. The Legislature finds that elemental mercury is a persistent and toxic pollutant that accumulates in the environment. The Legislature further finds that each year elemental mercury contained in liquid mercury thermometers can enter the environment and result in human exposure to elemental mercury through accidental spills, breakage, and releases. It is the intent of the Legislature to ban the sale and distribution of liquid mercury thermometers containing elemental mercury to prevent further accidental exposure.

Sec. 4. No liquid mercury thermometer containing elemental mercury shall be sold, given away, or otherwise distributed in this state.

Sec. 5. (1) A person, other than an animal control facility or animal shelter, who sells a puppy or kitten under six weeks of age without its mother is guilty of a Class V misdemeanor.

(2) For purposes of this section:

(a) Animal control facility means a facility operated by the state or any political subdivision of the state for the purpose of impounding or harboring seized, stray, homeless, abandoned, or unwanted animals; and

(b) Animal shelter means a facility used to house or contain dogs or cats and owned, operated, or maintained by an incorporated humane society, animal welfare society, society for the prevention of cruelty to animals, or

other nonprofit organization devoted to the welfare, protection, and humane treatment of such animals.

Sec. 6. (1) No person shall knowingly install or reinstall in a motor vehicle, as part of the motor vehicle's inflatable restraint system, any object or material other than an air bag designed for the make, model, and year of the motor vehicle.

(2) A person violating this section is guilty of a Class I misdemeanor.

Sec. 7. Section 28-603, Reissue Revised Statutes of Nebraska, is amended to read:

28-603. (1) Whoever, with intent to deceive or harm, falsely makes, completes, endorses, alters, or utters any written instrument which is or purports to be, or which is calculated to become or to represent if completed, a written instrument which does or may evidence, create, transfer, terminate, or otherwise affect a legal right, interest, obligation, or status, commits forgery in the second degree.

(2) Forgery in the second degree is a Class III felony when the face value, or purported face value, or the amount of any proceeds wrongfully procured or intended to be procured by the use of such instrument, is ~~three hundred~~ one thousand dollars or more.

(3) Forgery in the second degree is a Class IV felony when the face value or amount of proceeds exceeds ~~seventy-five~~ three hundred dollars but is less than ~~three hundred~~ one thousand dollars.

(4) Forgery in the second degree is a Class I misdemeanor when the face value or amount of proceeds is ~~seventy-five~~ three hundred dollars or less.

Sec. 8. Section 28-604, Reissue Revised Statutes of Nebraska, is amended to read:

28-604. (1) Whoever, with knowledge that it is forged and with intent to deceive or harm, possesses any forged instrument covered by section 28-602 or 28-603 commits criminal possession of a forged instrument.

(2) Criminal possession of a forged instrument prohibited by section 28-602 is a Class IV felony.

(3) Criminal possession of a forged instrument prohibited by section 28-603, the amount or value of which is ~~three hundred~~ one thousand dollars or more, is a Class IV felony.

(4) Criminal possession of a forged instrument prohibited by section 28-603, the amount or value of which is more than ~~seventy-five~~ three hundred dollars but less than ~~three hundred~~ one thousand dollars, is a Class I misdemeanor.

(5) Criminal possession of a forged instrument prohibited by section 28-603, the amount or value of which is ~~seventy-five~~ three hundred dollars or less, is a Class II misdemeanor.

Sec. 9. Section 29-215, Revised Statutes Supplement, 2002, is amended to read:

29-215. (1) ~~Every sheriff, deputy sheriff, marshal, deputy marshal, police officer, or peace officer as defined in subdivision (15) of section 49-801 shall have~~ A law enforcement officer has the power and authority to enforce the laws of this state and of the political subdivision which employs the law enforcement officer or otherwise perform the functions of that office anywhere within his or her primary jurisdiction. Primary jurisdiction shall mean the geographic area within territorial limits of the state or political subdivision which employs the law enforcement officer.

(2) Any ~~such~~ law enforcement officer who is within this state, but beyond ~~the territorial limits of~~ his or her primary jurisdiction, ~~shall have~~ has the power and authority to enforce the laws of this state or any legal ordinance of any city or incorporated village or otherwise perform the functions of his or her office, including the authority to arrest and detain suspects, as if enforcing the laws or performing the functions within ~~the territorial limits of~~ his or her primary jurisdiction in the following cases:

(a) Any such law enforcement officer, if in a fresh attempt to apprehend a person suspected of committing a felony, may follow such person into any other jurisdiction in this state and there arrest and detain such person and return such person to the law enforcement officer's primary jurisdiction;

(b) Any such law enforcement officer, if in a fresh attempt to apprehend a person suspected of committing a misdemeanor or a traffic infraction, may follow such person anywhere in an area within twenty-five miles of the boundaries of the law enforcement officer's primary jurisdiction and there arrest and detain such person and return such person to the law enforcement officer's primary jurisdiction;

(c) Any such law enforcement officer shall have such enforcement and

arrest and detention authority when responding to a call in which a local, state, or federal law enforcement officer is in need of assistance. A law enforcement officer in need of assistance shall mean (i) a law enforcement officer whose life is in danger or (ii) a law enforcement officer who needs assistance in making an arrest and the suspect (A) will not be apprehended unless immediately arrested, (B) may cause injury to himself or herself or others or damage to property unless immediately arrested, or (C) may destroy or conceal evidence of the commission of a crime; and

(d) Any municipality or county may, under the provisions of the Interlocal Cooperation Act or the Joint Public Agency Act, enter into a contract with any other municipality or county for law enforcement services or joint law enforcement services. Under such an agreement, law enforcement personnel may have such enforcement authority within the jurisdiction of each of the participating political subdivisions if provided for in the agreement. Unless otherwise provided in the agreement, each participating political subdivision shall provide liability insurance coverage for its own law enforcement personnel as provided in section 13-1802.

(3) When probable cause exists to believe that a person is operating or in the actual physical control of any motor vehicle, motorboat, or aircraft while under the influence of alcoholic liquor or of any drug or otherwise in violation of section 28-1465, 28-1466, 28-1472, 37-1254.01, 37-1254.02, 60-4,163, 60-4,164, 60-6,196, 60-6,197, 60-6,211.01, or 60-6,211.02, the law enforcement officer has the power and authority to do any of the following or any combination thereof:

(a) Transport such person to a facility outside of the law enforcement officer's primary jurisdiction for appropriate chemical testing of the person;

(b) Administer outside of the law enforcement officer's primary jurisdiction any post-arrest test advisement to the person; or

(c) With respect to such person, perform other procedures or functions outside of the law enforcement officer's primary jurisdiction which are directly and solely related to enforcing the laws that concern a person operating or being in the actual physical control of any motor vehicle, motorboat, or aircraft while under the influence of alcoholic liquor or of any other drug or otherwise in violation of section 28-1465, 28-1466, 28-1472, 37-1254.01, 37-1254.02, 60-4,163, 60-4,164, 60-6,196, 60-6,197, 60-6,211.01, or 60-6,211.02.

(4) For purposes of this section:

(a) Law enforcement officer has the same meaning as peace officer as defined in section 49-801 and also includes conservation officers of the Game and Parks Commission; and

(b) Primary jurisdiction means the geographic area within the territorial limits of the state or political subdivision which employs the law enforcement officer.

Sec. 10. For purposes of sections 29-2315.01 to 29-2325, prosecuting attorney means a county attorney, city attorney, or designated attorney.

Sec. 11. Section 29-2315.01, Reissue Revised Statutes of Nebraska, is amended to read:

29-2315.01. The ~~county~~ prosecuting attorney may take exception to any ruling or decision of the court made during the prosecution of a cause by presenting to the trial court the application for leave to docket an appeal with reference to the rulings or decisions of which complaint is made. Such application shall contain a copy of the ruling or decision complained of, the basis and reasons for objection thereto, and a statement by the ~~county~~ prosecuting attorney as to the part of the record he or she proposes to present to the appellate court. Such application shall be presented to the trial court within twenty days after the final order is entered in the cause, and upon presentation, if the trial court finds it is in conformity with the truth, the judge of the trial court shall sign the same and shall further indicate thereon whether in his or her opinion the part of the record which the ~~county~~ prosecuting attorney proposes to present to the appellate court is adequate for a proper consideration of the matter. The ~~county~~ prosecuting attorney shall then present such application to the appellate court within thirty days from the date of the final order. If the application is granted, the ~~county~~ prosecuting attorney shall within thirty days from such granting order a bill of exceptions in accordance with section 29-2020 if such bill of exceptions is desired and otherwise proceed to obtain a review of the case as provided in section 25-1912.

Sec. 12. Section 29-2316, Reissue Revised Statutes of Nebraska, is amended to read:

29-2316. The judgment of the court in any action taken pursuant to

section 29-2315.01 shall not be reversed nor in any manner affected when the defendant in the trial court has been placed legally in jeopardy, but in such cases the decision of the appellate court shall determine the law to govern in any similar case which may be pending at the time the decision is rendered or which may thereafter arise in the state. When the decision of the appellate court establishes that the final order of the trial court was erroneous and the defendant had not been placed legally in jeopardy prior to the entry of such erroneous order, the trial court may upon application of the ~~county~~ prosecuting attorney issue its warrant for the rearrest of the defendant and the cause against him or her shall thereupon proceed in accordance with the law as determined by the decision of the appellate court.

Sec. 13. Section 29-2317, Reissue Revised Statutes of Nebraska, is amended to read:

29-2317. (1) A prosecuting attorney, ~~including any county attorney, city attorney, or designated assistant,~~ may take exception to any ruling or decision of the county court made during the prosecution of a cause by presenting to the court a notice of intent to take an appeal to the district court with reference to the rulings or decisions of which complaint is made.

(2) The notice shall contain a copy of the rulings or decisions complained of, the basis and reasons for objection thereto, and a statement by the prosecuting attorney as to the part of the record he or she proposes to present to the district court. The notice shall be presented to the court within twenty days after the final order is entered in the cause. If the court finds it is in conformity with the truth, the judge shall sign it and shall indicate thereon whether, in his or her opinion, the part of the record which the prosecuting attorney proposes to present to the district court is adequate for a proper consideration of the matter.

(3) The prosecuting attorney shall then file the notice in the district court within thirty days from the date of final order and within thirty days from the date of filing the notice shall file a bill of exceptions covering the part of the record referred to in the notice. Such appeal shall be on the record.

Sec. 14. Section 29-2319, Reissue Revised Statutes of Nebraska, is amended to read:

29-2319. (1) The judgment of the court in any action taken under the provisions of sections 29-2317 and 29-2318 shall not be reversed nor in any manner affected when the defendant in the trial court has been placed legally in jeopardy, but in such cases the decision of the district court shall determine the law to govern in any similar case which may be pending at the time the decision is rendered, or which may thereafter arise in the district.

(2) When the decision of the district court establishes that the final order of the trial court was erroneous and that the defendant had not been placed legally in jeopardy prior to the entry of such erroneous order, the trial court may upon application of the prosecuting attorney issue its warrant for the rearrest of the defendant and the cause against ~~him~~ the defendant shall thereupon proceed in accordance with the law as determined by the decision of the district court.

(3) ~~When the district court affirms the final order of the trial court, the~~ The prosecuting attorney may take exception to ~~the~~ any ruling or decision of the district court in the manner provided by sections 29-2315.01 to 29-2316.

Sec. 15. Section 29-2320, Reissue Revised Statutes of Nebraska, is amended to read:

29-2320. Whenever a defendant is found guilty of a felony following a trial or the entry of a plea of guilty or tendering a plea of nolo contendere, the ~~county~~ prosecuting attorney charged with the prosecution of such defendant may appeal the sentence imposed if such attorney reasonably believes, based on all of the facts and circumstances of the particular case, that the sentence is excessively lenient.

Sec. 16. Section 29-2321, Reissue Revised Statutes of Nebraska, is amended to read:

29-2321. Appeals under section 29-2320 shall be taken as follows:

(1) Within ten days of the imposition of sentence, the ~~county~~ prosecuting attorney shall request the approval of the Attorney General to proceed with such appeal. A copy of such request for approval shall be sent to the defendant or counsel for the defendant;

(2) If the Attorney General approves the request described in subdivision (1) of this section, the ~~county~~ prosecuting attorney shall file a notice of appeal indicating such approval in the district court. Such notice of appeal must be filed within twenty days of the imposition of sentence. A copy of the notice of appeal shall be sent to the defendant or counsel for the

defendant;

(3) If the Attorney General does not approve the request described in subdivision (1) of this section, an appeal under sections 29-2320 to 29-2325 shall not be permitted; and

(4) In addition to such notice of appeal, the docket fee required by section 33-103 shall be deposited with the clerk of the district court.

Upon compliance with the requirements of this section, the appeal shall proceed as provided by law for appeals to the Court of Appeals.

Sec. 17. Section 29-3524, Reissue Revised Statutes of Nebraska, is amended to read:

29-3524. Criminal justice agencies may assess reasonable fees, not to exceed actual costs, for search, retrieval, storing, maintaining, and copying of criminal justice records and may waive fees at their discretion. When fees for certified copies or other copies, printouts, or photographs of such records are specifically prescribed by law, such specific fees shall apply. All fees collected by the Nebraska State Patrol pursuant to this section shall be ~~deposited in~~ remitted to the State Treasurer for credit to the Nebraska State Patrol Cash Fund.

Sec. 18. Section 47-401, Reissue Revised Statutes of Nebraska, is amended to read:

47-401. (1) Any person sentenced to a city or county jail upon conviction for a misdemeanor, a felony, contempt, or nonpayment of any fine or forfeiture may be granted the privilege of leaving the jail during necessary and reasonable hours for any of the following purposes:

- (a) Seeking employment;
- (b) Working at his or her employment;
- (c) Conducting such person's own business or other self-employed occupation, including housekeeping and attending to the needs of such person's family;
- (d) Attending any high school, college, university, or other educational or vocational training program or institution;
- (e) Serious illness or death of a member of such person's immediate family; ~~or~~
- (f) Medical treatment; or
- (g) Outpatient or inpatient treatment for alcohol or substance abuse.

(2) Any person sentenced to a city or county jail upon conviction for a misdemeanor or nonpayment of any fine or forfeiture may be granted the privilege of serving the sentence or a part of the sentence at a house of correction, community residential center, work release center, halfway house, or other place of confinement properly designated as a jail facility in accordance with this section and sections 15-259, 47-117, 47-207, and 47-409.

(3) Any person sentenced to a city or county jail upon conviction for a misdemeanor, a felony, contempt, or nonpayment of any fine or forfeiture may be granted the privilege of serving all or part of the sentence under house arrest. For purposes of this subsection, house arrest ~~shall mean~~ means restricting an offender to a specific residence except for authorized periods of absence for employment or for medical, educational, or other reasons approved by the court. House arrest may be monitored by electronic surveillance devices or systems.

Sec. 19. Original sections 28-603, 28-604, 29-2315.01, 29-2316, 29-2317, 29-2319, 29-2320, 29-2321, 29-3524, and 47-401, Reissue Revised Statutes of Nebraska, and sections 28-101 and 29-215, Revised Statutes Supplement, 2002, are repealed.