

LEGISLATIVE BILL 645

Approved by the Governor April 3, 1996

Introduced by Abboud, 12; Bromm, 23; Preister, 5; Pedersen, 39; Day, 19;
Witek, 31; Pirsch, 10; Wesely, 26

AN ACT relating to crimes and offenses; to amend sections 28-320.01, 28-707, 29-2929, 29-2930, 29-2934, and 29-2935, Reissue Revised Statutes of Nebraska; to create the Sex Offender Registration Act; to provide a penalty; to change provisions relating to sexual assault of a child and child abuse; to change and eliminate provisions relating to the Convicted Sex Offender Act; to eliminate resentencing provisions; to provide for an individual discharge plan; to harmonize provisions; to provide operative dates; to repeal the original sections; and to outright repeal sections 29-2927 and 29-2931 to 29-2933, Reissue Revised Statutes of Nebraska.

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

Section 1. Sections 1 to 13 of this act shall be known and may be cited as the Sex Offender Registration Act.

Sec. 2. The Legislature finds that sex offenders present a high risk to commit repeat offenses. The Legislature further finds that efforts of law enforcement agencies to protect their communities, conduct investigations, and quickly apprehend sex offenders are impaired by the lack of available information about individuals who have pleaded guilty to or have been found guilty of sex offenses and who live in their jurisdiction. The Legislature further finds that state policy should assist efforts of local law enforcement agencies to protect their communities by requiring sex offenders to register with local law enforcement agencies as provided by the Sex Offender Registration Act.

Sec. 3. (1) The Sex Offender Registration Act shall apply to any person who on or after the operative date of this section:

(a) Pleads guilty to or is found guilty of:

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

(ii) False imprisonment of a minor pursuant to section 28-314 or 28-315;

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

(iv) Sexual assault of a child pursuant to section 28-320.01;

(v) Sexual assault of a vulnerable adult pursuant to subdivision (1)(c) of section 28-386;

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

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

(viii) Visual depiction of sexually explicit conduct of a child pursuant to section 28-1463.03 or 28-1463.05; or

(ix) Attempt, solicitation, or conspiracy to commit an offense listed in subdivisions (1)(a)(i) through (1)(a)(viii) of this section;

(b) Enters the state and has pleaded guilty to or has been found guilty of any offense in another state, territory, commonwealth, or other jurisdiction of the United States that is substantially equivalent to the offenses listed in subdivision (1)(a) of this section; or

(c) Is incarcerated in a jail, a penal facility, or any other public or private institution or is under probation or parole as a result of pleading guilty to or being found guilty of an offense listed in subdivisions (1)(a) and (b) of this section prior to the operative date of this section.

(2) The registration requirements of the act shall not apply to any person while he or she is incarcerated in a jail, a penal facility, or any other public or private institution.

(3) In the case of violations of sections 28-313, 28-314, or 28-315, the sentencing court shall determine at the time of sentencing, in light of all the facts, whether the convicted person shall be subject to the Sex Offender Registration Act.

Sec. 4. (1) Any person who becomes subject to the Sex Offender Registration Act shall register with the sheriff of the county in which the person resides or is temporarily domiciled within five working days of becoming subject to the act.

(2) If there is an address change for a person required to register, the person shall inform the sheriff with whom that person last registered of the new address, in writing, within five working days of the change. The

sheriff shall forward this information to the sheriff in the new jurisdiction where the person is relocating and would be required to register within five working days of the receipt of the new address.

(3) Each sheriff shall forward all written information, photographs, and fingerprints obtained pursuant to the act to the Nebraska State Patrol within five working days. The Nebraska State Patrol shall maintain a central registry of sex offenders required to register under the act.

Sec. 5. (1) Except as provided in subsection (2) of this section, any person to whom the Sex Offender Registration Act applies shall be required to register during any period of probation or parole and shall continue to comply with the act for a period of ten years after the date of discharge from probation, parole, or release from incarceration, whichever date is most recent.

(2)(a) When sentencing a person for an offense listed in subdivision (1)(a) of section 3 of this act, a court may also determine if the person is a sexually violent offender. When making its determination the court shall consider evidence from experts in the field of the behavior and treatment of sexual offenders.

(b) If the sentencing court determines that a person is a sexually violent offender, the person shall be required to register under the Sex Offender Registration Act until the sentencing court determines that the person no longer suffers from a mental abnormality or personality disorder that makes the person likely to engage in a sexually violent offense. Such determination shall not be made until ten years after the date of discharge from probation, parole, or release from incarceration, whichever date is most recent.

(c) In addition to complying with the annual verification requirements in section 6 of this act, a person determined to be a sexually violent offender shall verify the registration information every three months after the initial registration date.

(d) For purposes of this section:

(i) Mental abnormality means a congenital or acquired condition of a person that affects the emotional or volitional capacity of the person in a manner that predisposes that person to the commission of a criminal sexual act to a degree that makes the person a menace to the health and safety of other persons; and

(ii) Sexually violent offender means a person who has been convicted of one or more offenses listed in subdivision (1)(a) of section 3 of this act and who suffers from a mental abnormality or personality disorder that makes the person likely to engage in sexually violent offenses directed at a stranger, or at a person with whom a relationship has been established or promoted, for the primary purpose of victimization.

Sec. 6. (1) Registration information required by the Sex Offender Registration Act shall be in a form approved by the Nebraska State Patrol and shall include the following information:

(a) The name and all aliases which the person has used or under which the person has been known;

(b) A complete description of the person, including date of birth, social security number, photographs, and fingerprints;

(c) A listing of each offense listed in section 3 of this act to which the person pleaded guilty or was found guilty, the jurisdiction where each offense was committed, the court in which the person pleaded guilty or was found guilty of each offense, and the name under which the person pleaded guilty or was found guilty of each offense;

(d) The name and location of each jail, penal facility, or public or private institution to which the person was incarcerated for each offense and the actual time served or confined; and

(e) The address of the person's current residence and place of employment.

(2) For the duration of the registration period required by the act, registration information shall be verified annually within thirty days after the anniversary date of the person's initial registration date. To properly verify, the following shall occur:

(a) The Nebraska State Patrol shall mail a nonforwardable verification form to the last-reported address of the person;

(b) The verification form shall be signed by the person and state whether the person still resides at the address last reported to the patrol; and

(c) The person shall mail the verification form to the patrol within ten days after receipt of the form.

(3) If the person fails to complete and mail the verification form to the patrol within ten days after receipt of the form, the person shall be

in violation of this section unless the person proves that he or she has not changed his or her residence address.

(4) If the person falsifies the registration or verification form, the person shall be in violation of this section.

Sec. 7. (1) The court shall provide written notification of the duty to register at the time of sentencing to any defendant who has pleaded guilty or has been found guilty of an offense listed in subdivision (1)(a) of section 3 of this act. The written notification shall be signed by the defendant and retained by the court. A copy of the notification shall be provided to the county attorney and the defendant.

(2) The Department of Correctional Services shall provide written notification of the duty to register pursuant to the Sex Offender Registration Act to any person committed to its custody for an offense listed in subdivision (1)(a) of section 3 of this act prior to the person's release from incarceration. The written notification shall be signed by the person and retained by the department. A copy of the notification shall be provided to the person.

(3) The sheriff of each county shall cause written notification of the duty to register to be provided to any person who enters this state from another jurisdiction and makes application for a motor vehicle operator's license. The written notification shall be signed by the person and retained by the sheriff's office. A copy of the notification shall be provided to the person.

(4) All written notification as provided in this section shall be on a form prepared by the Attorney General.

Sec. 8. No person subject to the Sex Offender Registration Act shall knowingly and willfully furnish any false or misleading information in the registration.

Sec. 9. Access to information obtained under the Sex Offender Registration Act shall be restricted and provided only to law enforcement agencies or their authorized representatives pursuant to rules and regulations adopted by the Nebraska State Patrol in consultation with the Attorney General.

Sec. 10. (1) Any person having a duty to register under the Sex Offender Registration Act may file a petition with the district court for an order to expunge the information.

(2) The petition shall be filed in the district court of the county in which the petitioner was convicted of an offense listed in section 3 of this act. If the petitioner was convicted in another state, the petition shall be filed in the district court of the county in which the petitioner resides. The county attorney shall be named as the respondent and shall be served with a copy of the petition.

(3) The court may grant the petition and issue an order to expunge the information if the petitioner shows by clear and convincing evidence that the (a) petitioner's duty to register has expired, (b) petitioner does not have a criminal charge pending and is not under criminal investigation for an offense listed in section 3 of this act, and (c) petitioner is not a substantial risk to commit another offense listed in section 3 of this act.

Sec. 11. Any person required to register under the Sex Offender Registration Act who violates the act is guilty of a Class IV felony unless the act which caused the person to be placed on the registry was a misdemeanor, in which case a violation of the Sex Offender Registration Act shall be a crime of the same class or within the same penalty range as the original act.

Sec. 12. Law enforcement officials, their employees, and state officials shall be immune from liability for good faith conduct under the Sex Offender Registration Act.

Sec. 13. The Attorney General and the Nebraska State Patrol shall adopt and promulgate rules and regulations to carry out the Sex Offender Registration Act.

Sec. 14. Section 28-320.01, Reissue Revised Statutes of Nebraska, is amended to read:

28-320.01. (1) A person commits sexual assault of a child if he or she subjects another person fourteen years of age or younger to sexual contact and the actor is at least nineteen years of age or older.

(2) Sexual assault of a child is a Class IV felony for the first offense, and a Class III felony for all subsequent offenses.

(3) Any person who is found guilty of sexual assault of a child under this section and who has previously been convicted (a) under this section, (b) under section 28-319 of first degree or attempted first degree sexual assault, or (c) in any other state or federal court under laws with essentially the same elements as this section or section 28-319 shall be

guilty of a Class IC felony.

Sec. 15. Section 28-707, Reissue Revised Statutes of Nebraska, is amended to read:

28-707. (1) A person commits child abuse if he or she knowingly, intentionally, or negligently causes or permits a minor child to be:

(a) Placed in a situation that endangers his or her life or physical or mental health; or

(b) Cruelly confined or cruelly punished; or

(c) Deprived of necessary food, clothing, shelter, or care;

(d) Placed in a situation to be sexually exploited by allowing, encouraging, or forcing such minor child to solicit for or engage in prostitution, debauchery, public indecency, or obscene or pornographic photography, films, or depictions; or

(e) Placed in a situation to be sexually abused as defined in section 28-319 or 28-320.01.

(2) The statutory privilege between patient and physician, between client and professional counselor, and between husband and wife shall not be available for excluding or refusing testimony in any prosecution for a violation of this section.

(3) Child abuse is a Class I misdemeanor if the offense is committed negligently.

(4) Child abuse is a Class IV felony if the offense is committed knowingly and intentionally and does not result in serious bodily injury as defined in section 28-109.

(5) Child abuse is a Class III felony if the offense is committed knowingly and intentionally and results in serious bodily injury as defined in such section.

(6) Child abuse is a Class IB felony if the offense is committed knowingly and intentionally and results in the death of such child.

Sec. 16. Section 29-2929, Reissue Revised Statutes of Nebraska, is amended to read:

29-2929. (1) The inpatient treatment program operated by the Department of Public Institutions shall conduct annual reviews of each convicted sex offender in the program and submit annual progress reports to the ~~sentencing court~~ and the Department of Correctional Services.

(2) If the offender is uncooperative while in the inpatient treatment program or is found not to be amenable to treatment, the Director of Public Institutions shall cause the offender to be returned to the Department of Correctional Services in accordance with procedures established by the Department of Public Institutions. The Department of Correctional Services shall be responsible for physical transfer of the offender from the inpatient treatment facility to the Department of Correctional Services. The Department of Public Institutions shall, at the time of the transfer, provide the Department of Correctional Services a report summarizing the offender's response to and progress while in treatment and the reasons for the transfer and shall provide access to the treatment records as requested by the Department of Correctional Services.

(3) All days of confinement in a treatment program operated by the Department of Public Institutions shall be credited to the offender's term of imprisonment.

Sec. 17. Section 29-2930, Reissue Revised Statutes of Nebraska, is amended to read:

29-2930. If the Department of Public Institutions determines that the convicted sex offender has received the maximum benefit of the inpatient treatment program operated by the Department of Public Institutions and is ready for treatment in an aftercare treatment program, the person in charge of the inpatient treatment program shall submit a written report to the sentencing court and the Department of Correctional Services documenting such findings and recommendations. Within thirty days of receipt of the report, the court shall conduct a hearing on the offender's status, develop an individual discharge plan documenting the findings and recommendations of the program and a designated aftercare treatment program. The individual discharge plan shall be provided to the Department of Correctional Services, the Board of Parole, and the designated aftercare treatment program.

Sec. 18. Section 29-2934, Reissue Revised Statutes of Nebraska, is amended to read:

29-2934. (1) Each person committed as a mentally disordered sex offender pursuant to sections 29-2911 to 29-2921 as such sections existed prior to July 15, 1992, who is being treated in a regional center or other secure public institution operated by the Department of Public Institutions and has at least one year remaining on his or her sentence as of such date shall, within one hundred eighty days after such date, be returned to the

district court which committed him or her for review and disposition consistent with the terms of this section.

(2) Each person committed to a regional center or other secure public institution operated by the Department of Public Institutions as a mentally disordered sex offender by a court pursuant to sections 29-2911 to 29-2921 as such sections existed prior to July 15, 1992, who is in a facility operated by the Department of Correctional Services awaiting treatment as of such date shall be placed in a treatment facility operated by the Department of Public Institutions for evaluation and treatment as soon as practical after space and staff become available. Within thirty days of such placement, the Department of Public Institutions shall determine, based on criteria and procedures established by the Department of Public Institutions, whether the offender will remain in the treatment program or be returned to the Department of Correctional Services to await court review or the end of his or her sentence. Within thirty days after the evaluation-and-treatment period, if the offender has at least one hundred eighty days remaining on his or her sentence, he or she shall be returned to the committing district court for review and disposition consistent with the terms of this section.

(3) The Department of Public Institutions shall prepare and present a report and recommendations for each offender to be reviewed by the district court under subsection (1) or (2) of this section.

(4) Each person identified in subsections (1) and (2) of this section who was committed as a mentally disordered sex offender by a court after having entered a plea of guilty or nolo contendere shall, upon return to the district court, elect whether to be resentenced under the Convicted Sex Offender Act or continue his or her commitment pursuant to sections 29-2911 to 29-2921 as such sections existed prior to July 15, 1992.

(5) For each person identified in subsections (1) and (2) of this section who was committed as a mentally disordered sex offender by a court after having entered a plea of not guilty and for each person identified in subsection (4) of this section who elected to be resentenced under the act, subsections (6) and (7) of this section shall apply.

(6) If the court finds that the offender is treatable in an inpatient treatment program operated by the Department of Public Institutions, the offender shall be returned to or placed in such a treatment program and sections 29-2929 to 29-2933 and 29-2930 shall apply.

(7) If the court finds that the offender is not amenable to treatment, is uncooperative in treatment, or has reached the maximum benefit of treatment in an inpatient treatment program operated by the Department of Public Institutions but cannot be placed in an aftercare treatment program under conditions set by the court consistent with public safety, the offender shall be placed in a facility operated by the Department of Correctional Services to serve the remainder of his or her original sentence.

~~(8) If the court finds that the offender has successfully completed an inpatient treatment program operated by the Department of Public Institutions and can be treated in an aftercare treatment program under conditions set by the court consistent with public safety, the court shall proceed in accordance with section 29-2931 and sections 29-2932 and 29-2933 shall apply.~~

Sec. 19. Section 29-2935, Reissue Revised Statutes of Nebraska, is amended to read:

29-2935. For purposes of evaluating the treatment process, the Office of Probation Parole Administration, the Department of Correctional Services, the Board of Parole, and the designated aftercare treatment programs shall allow appropriate access to data and information as requested by the Department of Public Institutions.

Sec. 20. Sections 1 to 13 of this act become operative on January 1, 1997. The other sections of this act become operative on their effective date.

Sec. 21. Original sections 28-320.01, 28-707, 29-2929, 29-2930, 29-2934, and 29-2935, Reissue Revised Statutes of Nebraska, are repealed.

Sec. 22. The following sections are outright repealed: Sections 29-2927 and 29-2931 to 29-2933, Reissue Revised Statutes of Nebraska.