

LEGISLATURE OF NEBRASKA  
ONE HUNDRED SIXTH LEGISLATURE  
FIRST SESSION

**LEGISLATIVE BILL 164**

Introduced by Hunt, 8; Crawford, 45; Howard, 9; McCollister, 20; Morfeld, 46; Walz, 15.

Read first time January 11, 2019

Committee:

1 A BILL FOR AN ACT relating to crimes and offenses; to amend sections  
2 28-367.01 and 29-4003, Reissue Revised Statutes of Nebraska, and  
3 section 28-101, Revised Statutes Cumulative Supplement, 2018; to  
4 prohibit the electronic transmission or online posting of certain  
5 photographs or videos as prescribed; to redefine sexual  
6 exploitation; to provide for a registrable offense under the Sex  
7 Offender Registration Act; to provide penalties; to harmonize  
8 provisions; and to repeal the original sections.  
9 Be it enacted by the people of the State of Nebraska,

1 Section 1. Section 28-101, Revised Statutes Cumulative Supplement,  
2 2018, is amended to read:

3 28-101 Sections 28-101 to 28-1357 and 28-1601 to 28-1603 and section  
4 2 of this act shall be known and may be cited as the Nebraska Criminal  
5 Code.

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

7 (a) Harassment means engaging in conduct directed at a depicted  
8 person that is intended to cause substantial emotional harm to the  
9 depicted person;

10 (b) Nudity means: (i) The showing of the human male or female  
11 genitals, pubic area, or buttocks without any covering or with less than  
12 a full opaque covering; (ii) the showing of the female breasts without  
13 any covering or with less than a full opaque covering; or (iii) the  
14 depiction of covered male genitals in a discernibly turgid state; and

15 (c) Sexually explicit conduct has the same meaning as in section  
16 28-1463.02.

17 (2) A person violates this section if he or she, knowing the content  
18 of a transmission or online post, knowingly and without the consent of  
19 the depicted person:

20 (a) Electronically transmits or posts online, in one or more  
21 transmissions or posts, a photograph or video which depicts nudity or  
22 sexually explicit conduct of a person eighteen years of age or older when  
23 the transmission or post is harassment or causes financial loss to the  
24 depicted person and serves no legitimate purpose to the depicted person;  
25 or

26 (b) Causes the electronic transmission or online posting, in one or  
27 more transmissions or posts, of a photograph or video which depicts  
28 nudity or sexually explicit conduct of a person eighteen years of age or  
29 older when the transmission or post is harassment or causes financial  
30 loss to the depicted person and serves no legitimate purpose to the  
31 depicted person.

1       (3) Any person who violates this section is guilty of a Class I  
2 misdemeanor for a first offense and a Class IV felony for a second or  
3 subsequent offense.

4       (4) A person is subject to the personal jurisdiction of this state  
5 and prosecution for any conduct made unlawful by this section which the  
6 person engages in while:

7       (a) Either within or outside of this state if, by such conduct, the  
8 person commits a violation of this section which involves an individual  
9 who resides in this state; or

10       (b) Within this state if, by such conduct, the person commits a  
11 violation of this section which involves an individual who resides within  
12 or outside this state.

13       (5) Subsection (2) of this section does not apply to:

14       (a) The activities of law enforcement and prosecution agencies in  
15 the investigation and prosecution of criminal offenses;

16       (b) Legitimate medical, scientific, or educational activities;

17       (c) Any person who electronically transmits or posts online a  
18 photograph or video depicting no person other than himself or herself  
19 engaged in nudity or sexually explicit conduct;

20       (d) The electronic transmission or online posting of a photograph or  
21 video that was originally made for commercial purposes;

22       (e) Any person who electronically transmits or posts online a  
23 photograph or video depicting a person voluntarily engaged in nudity or  
24 sexually explicit conduct in a public setting; or

25       (f) The electronic transmission is made pursuant to or in  
26 anticipation of a civil action.

27       (6) There shall be a rebuttable presumption that an information  
28 service, system, or access software provider that provides or enables  
29 computer access by multiple users to a computer server, including  
30 specifically a service or system that provides access to the Internet,  
31 for content provided by another person, does not know the content of an

1 electronic transmission or online post.

2 (7) Any violation of this section shall constitute a separate  
3 offense and shall not merge with any other offense.

4 Sec. 3. Section 28-367.01, Reissue Revised Statutes of Nebraska, is  
5 amended to read:

6 28-367.01 Sexual exploitation includes, but is not limited to, a  
7 violation of section 28-311.08 or section 2 of this act and causing,  
8 allowing, permitting, inflicting, or encouraging a vulnerable adult to  
9 engage in voyeurism, in exhibitionism, in prostitution, or in the lewd,  
10 obscene, or pornographic photographing, filming, or depiction of the  
11 vulnerable adult.

12 Sec. 4. Section 29-4003, Reissue Revised Statutes of Nebraska, is  
13 amended to read:

14 29-4003 (1)(a) The Sex Offender Registration Act applies to any  
15 person who on or after January 1, 1997:

16 (i) Has ever pled guilty to, pled nolo contendere to, or been found  
17 guilty of any of the following:

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

21 (B) False imprisonment of a minor pursuant to section 28-314 or  
22 28-315;

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

24 (D) Sexual assault of a child in the second or third degree pursuant  
25 to section 28-320.01;

26 (E) Sexual assault of a child in the first degree pursuant to  
27 section 28-319.01;

28 (F) Sexual abuse of a vulnerable adult or senior adult pursuant to  
29 subdivision (1)(c) of section 28-386;

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

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

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

3 (J) Knowingly possessing any visual depiction of sexually explicit  
4 conduct which has a child as one of its participants or portrayed  
5 observers pursuant to section 28-813.01;

6 (K) Criminal child enticement pursuant to section 28-311;

7 (L) Child enticement by means of an electronic communication device  
8 pursuant to section 28-320.02;

9 (M) Debauching a minor pursuant to section 28-805; or

10 (N) Attempt, solicitation, aiding or abetting, being an accessory,  
11 or conspiracy to commit an offense listed in subdivisions (1)(a)(i)(A)  
12 through (1)(a)(i)(M) of this section;

13 (ii) Has ever pled guilty to, pled nolo contendere to, or been found  
14 guilty of any offense that is substantially equivalent to a registrable  
15 offense under subdivision (1)(a)(i) of this section by any village, town,  
16 city, state, territory, commonwealth, or other jurisdiction of the United  
17 States, by the United States Government, by court-martial or other  
18 military tribunal, or by a foreign jurisdiction, notwithstanding a  
19 procedure comparable in effect to that described under section 29-2264 or  
20 any other procedure to nullify a conviction other than by pardon;

21 (iii) Is incarcerated in a jail, a penal or correctional facility,  
22 or any other public or private institution or is under probation or  
23 parole as a result of pleading guilty to or being found guilty of a  
24 registrable offense under subdivision (1)(a)(i) or (ii) of this section  
25 prior to January 1, 1997; or

26 (iv) Enters the state and is required to register as a sex offender  
27 under the laws of another village, town, city, state, territory,  
28 commonwealth, or other jurisdiction of the United States.

29 (b) In addition to the registrable offenses under subdivision (1)(a)  
30 of this section, the Sex Offender Registration Act applies to any person  
31 who on or after January 1, 2010:

1 (i)(A) Except as provided in subdivision (1)(b)(i)(B) of this  
2 section, has ever pled guilty to, pled nolo contendere to, or been found  
3 guilty of any of the following:

- 4 (I) Murder in the first degree pursuant to section 28-303;
- 5 (II) Murder in the second degree pursuant to section 28-304;
- 6 (III) Manslaughter pursuant to section 28-305;
- 7 (IV) Assault in the first degree pursuant to section 28-308;
- 8 (V) Assault in the second degree pursuant to section 28-309;
- 9 (VI) Assault in the third degree pursuant to section 28-310;
- 10 (VII) Stalking pursuant to section 28-311.03;
- 11 (VIII) Violation of section 28-311.08 requiring registration under  
12 the act pursuant to subsection (5) of section 28-311.08;
- 13 (IX) Violation of section 2 of this act;
- 14 (X) ~~(IX)~~ Kidnapping pursuant to section 28-313;
- 15 (XI) ~~(X)~~ False imprisonment pursuant to section 28-314 or 28-315;
- 16 (XII) ~~(XI)~~ Sexual abuse of an inmate or parolee in the first degree  
17 pursuant to section 28-322.02;
- 18 (XIII) ~~(XII)~~ Sexual abuse of an inmate or parolee in the second  
19 degree pursuant to section 28-322.03;
- 20 (XIV) ~~(XIII)~~ Sexual abuse of a protected individual pursuant to  
21 section 28-322.04;
- 22 (XV) ~~(XIV)~~ Incest pursuant to section 28-703;
- 23 (XVI) ~~(XV)~~ Child abuse pursuant to subdivision (1)(d) or (e) of  
24 section 28-707;
- 25 (XVII) ~~(XVI)~~ Enticement by electronic communication device pursuant  
26 to section 28-833; or
- 27 (XVIII) ~~(XVII)~~ Attempt, solicitation, aiding or abetting, being an  
28 accessory, or conspiracy to commit an offense listed in subdivisions (1)  
29 (b)(i)(A)(I) through (1)(b)(i)(A)(XVII) ~~(1)(b)(i)(A)(XVI)~~ of this  
30 section.

31 (B) In order for the Sex Offender Registration Act to apply to the

1 offenses listed in subdivisions (1)(b)(i)(A)(I), (II), (III), (IV), (V),  
2 (VI), (VII), ~~(X)~~ ~~(IX)~~, and ~~(XI)~~ ~~(X)~~ of this section, a court shall have  
3 found that evidence of sexual penetration or sexual contact, as those  
4 terms are defined in section 28-318, was present in the record, which  
5 shall include consideration of the factual basis for a plea-based  
6 conviction and information contained in the presentence report;

7 (ii) Has ever pled guilty to, pled nolo contendere to, or been found  
8 guilty of any offense that is substantially equivalent to a registrable  
9 offense under subdivision (1)(b)(i) of this section by any village, town,  
10 city, state, territory, commonwealth, or other jurisdiction of the United  
11 States, by the United States Government, by court-martial or other  
12 military tribunal, or by a foreign jurisdiction, notwithstanding a  
13 procedure comparable in effect to that described under section 29-2264 or  
14 any other procedure to nullify a conviction other than by pardon; or

15 (iii) Enters the state and is required to register as a sex offender  
16 under the laws of another village, town, city, state, territory,  
17 commonwealth, or other jurisdiction of the United States.

18 (2) A person appealing a conviction of a registrable offense under  
19 this section shall be required to comply with the act during the appeals  
20 process.

21 Sec. 5. Original sections 28-367.01 and 29-4003, Reissue Revised  
22 Statutes of Nebraska, and section 28-101, Revised Statutes Cumulative  
23 Supplement, 2018, are repealed.