

LEGISLATURE OF NEBRASKA
NINETY-NINTH LEGISLATURE
FIRST SESSION

LEGISLATIVE BILL 280

Introduced by Thompson, 14

Read first time January 10, 2005

Committee: Judiciary

A BILL

1 FOR AN ACT relating to abuse and neglect; to amend sections 28-727,
2 28-807, and 28-813.02, Reissue Revised Statutes of
3 Nebraska, and sections 28-710 and 28-711, Revised
4 Statutes Supplement, 2004; to define terms; to provide
5 additional reporting requirements and immunity; and to
6 repeal the original sections.
7 Be it enacted by the people of the State of Nebraska,

1 Section 1. Section 28-710, Revised Statutes Supplement,
2 2004, is amended to read:

3 28-710. For purposes of sections 28-710 to 28-727,
4 unless the context otherwise requires:

5 (1) Abuse or neglect means knowingly, intentionally, or
6 negligently causing or permitting a minor child to be:

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

9 (b) Cruelly confined or cruelly punished;

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

12 (d) Left unattended in a motor vehicle if such minor
13 child is six years of age or younger;

14 (e) Sexually abused; or

15 (f) Sexually exploited by allowing, encouraging, or
16 forcing such person to solicit for or engage in prostitution,
17 debauchery, public indecency, or obscene or pornographic
18 photography, films, or depictions;

19 (2) Commercial film processor and photographic print
20 processor have the same meaning as in section 28-807;

21 (3) Computer service provider means any person who fixes,
22 installs, or repairs computers, software, or hardware. The term
23 shall include any computer manufacturer, hardware or software
24 manufacturer, or third-party service company, which provides
25 service to its customers in the form of fixing, installing, or
26 repairing computers, software, or hardware; or any employee of an
27 information technology, information services, or management
28 information system department of a business who fixes, installs,

1 repairs, or supports computers, software, or hardware;

2 (4) Department means the Department of Health and Human
3 Services;

4 ~~(3)~~ (5) Law enforcement agency means the police
5 department or town marshal in incorporated municipalities, the
6 office of the sheriff in unincorporated areas, and the Nebraska
7 State Patrol; and

8 ~~(4)~~ (6) Out-of-home abuse or neglect means abuse or
9 neglect occurring in day care homes, foster homes, day care
10 centers, group homes, and other child care facilities or
11 institutions.

12 Sec. 2. Section 28-711, Revised Statutes Supplement,
13 2004, is amended to read:

14 28-711. (1) When any physician, medical institution,
15 nurse, school employee, social worker, commercial film processor,
16 photographic print processor, computer service provider, or other
17 person has reasonable cause to believe that a child has been
18 subjected to abuse or neglect or observes such child being
19 subjected to conditions or circumstances which reasonably would
20 result in abuse or neglect, or observes child pornography or
21 sexually explicit conduct as defined in section 28-1463.02
22 involving a minor, he or she shall report such incident or cause a
23 report to be made to the proper law enforcement agency or to the
24 department on the toll-free number established by subsection (2) of
25 this section. Such report may be made orally by telephone with the
26 caller giving his or her name and address, shall be followed by a
27 written report, and to the extent available shall contain the
28 address and age of the abused or neglected child, the address of

1 the person or persons having custody of the abused or neglected
2 child, the nature and extent of the abuse or neglect or the
3 conditions and circumstances which would reasonably result in such
4 abuse or neglect, any evidence of previous abuse or neglect
5 including the nature and extent, and any other information which in
6 the opinion of the person may be helpful in establishing the cause
7 of such abuse or neglect and the identity of the perpetrator or
8 perpetrators. Law enforcement agencies receiving any reports of
9 abuse or neglect under this subsection shall notify the state
10 central registry on the next working day by telephone or mail.

11 (2) The department shall establish a statewide toll-free
12 number to be used by any person any hour of the day or night, any
13 day of the week, to make reports of abuse or neglect. Reports of
14 abuse or neglect not previously made to or by a law enforcement
15 agency shall be made immediately to such agency by the department.

16 Sec. 3. Section 28-727, Reissue Revised Statutes of
17 Nebraska, is amended to read:

18 28-727. Upon request, a physician or the person in
19 charge of an institution, school, facility, business, or agency
20 making a legally mandated report shall receive a summary of the
21 findings of and actions taken by the department in response to his
22 or her report. The amount of detail such summary contains shall
23 depend on the source of the report and shall be established by
24 regulations of the department.

25 Sec. 4. Section 28-807, Reissue Revised Statutes of
26 Nebraska, is amended to read:

27 28-807. As used in sections 28-807 to 28-829, unless the
28 context otherwise requires:

1 (1) Adult shall mean any married person or any unmarried
2 person of the age of eighteen years or older;

3 (2) Commercial film ~~and~~ processor or photographic print
4 processor shall mean any person who for compensation develops
5 exposed photographic film into negatives, slides, or prints or who
6 for compensation makes prints from negatives or slides. The term
7 shall include, but not be limited to, any employee of such a person
8 but shall not include employees of law enforcement agencies and
9 prosecuting attorneys involved in the investigation and prosecution
10 of criminal offenses or to persons involved in legitimate medical,
11 scientific, or educational activities;

12 (3) Computer service provider has the same meaning as in
13 section 28-710;

14 (4) Distribute shall mean to transfer possession, whether
15 with or without consideration, by any means;

16 ~~(4)~~ (5) Disseminate shall mean to manufacture, issue,
17 publish, sell, lend, distribute, transmit, exhibit, or present
18 materials or to offer in person or through an agent or by placing
19 an advertisement for the same, whether with or without
20 consideration, or agree to do the same;

21 ~~(5)~~ (6) Knowingly shall mean having general knowledge of,
22 reason to know, or a belief or reasonable ground for belief which
23 warrants further inspection or inquiry of the character and content
24 of any material, taken as a whole, described in this section, which
25 is reasonably susceptible to examination by the defendant;

26 ~~(6)~~ (7) Harmful to minors shall mean that quality of any
27 description or representation, in whatever form, of nudity, sexual
28 conduct, sexual excitement, or sadomasochistic abuse, when it (a)

1 predominantly appeals to the prurient, shameful, or morbid interest
2 of minors, (b) is patently offensive to prevailing standards in the
3 adult community as a whole with respect to what is suitable
4 material for minors, and (c) is lacking in serious literary,
5 artistic, political, or scientific value for minors;

6 ~~(7)~~ (8) Material or work shall mean any book, magazine,
7 newspaper, comic book, pamphlet, or other printed or written
8 material or any picture, drawing, photograph, figure, image, motion
9 picture, whether or not positive or negative exhibited or screened,
10 play, nightclub, live performance, television production, other
11 pictorial representation or electric reproduction, recording
12 transcription, mechanical or otherwise, or other articles,
13 equipment, machines, or materials;

14 ~~(8)~~ (9) Minor shall mean any unmarried person under the
15 age of eighteen years;

16 ~~(9)~~ (10) Nudity shall mean the showing of the human,
17 post-pubertal male or female genitals, pubic area, or buttocks with
18 less than a full opaque covering, the depiction of covered male
19 genitals in a discernibly turgid state, or the showing of the
20 female breast with less than a full opaque covering of any portion
21 thereof below the top of the nipple;

22 ~~(10)~~ (11) Obscene shall mean (a) that an average person
23 applying contemporary community standards would find that the work,
24 material, conduct, or live performance taken as a whole
25 predominantly appeals to the prurient interest or a shameful or
26 morbid interest in nudity, sex, or excretion, (b) the work,
27 material, conduct, or live performance depicts or describes in a
28 patently offensive way sexual conduct specifically set out in

1 sections 28-807 to 28-829, and (c) the work, conduct, material, or
2 live performance taken as a whole lacks serious literary, artistic,
3 political, or scientific value;

4 ~~(11)~~ (12) Place shall mean any building, structure, or
5 place or any separate part or portion thereof or the ground itself;

6 ~~(12)~~ (13) Person shall mean any individual, partnership,
7 limited liability company, firm, association, corporation, trustee,
8 lessee, agent, assignee, or other legal entity;

9 ~~(13)~~ (14) Performance, whether with or without
10 consideration, shall mean any play, motion picture, dance, or other
11 exhibition performed before an audience;

12 ~~(14)~~ (15) Promote shall mean to manufacture, issue, sell,
13 give, provide, lend, mail, deliver, transfer, transmit, publish,
14 distribute, circulate, disseminate, present, exhibit, or place an
15 order for advertising or to knowingly offer in person or through an
16 agent or agree to do the same;

17 ~~(15)~~ (16) Sexual conduct shall mean acts of masturbation,
18 homosexuality, sodomy, sexual intercourse, or prolonged physical
19 contact with a person's clothed or unclothed genitals, pubic area,
20 or buttocks or, if such person is female, breast;

21 ~~(16)~~ (17) Sexual excitement shall mean the condition of
22 human male or female genitals when in a state of sexual stimulation
23 or arousal; and

24 ~~(17)~~ (18) Sadomasochistic abuse shall mean flagellation
25 or torture by or upon a nude person or a person clad in
26 undergarments, a mask, or a bizarre costume or the condition of
27 being fettered, bound, or otherwise physically restrained when
28 performed to predominantly appeal to the shameful or morbid

1 interest.

2 Sec. 5. Section 28-813.02, Reissue Revised Statutes of
3 Nebraska, is amended to read:

4 28-813.02. Any commercial film ~~and~~ processor,
5 photographic print processor, or computer service provider who has
6 knowledge of or observes, within the scope of his or her
7 professional capacity or employment, and who participates in an
8 investigation or the making of any report pertaining to any film,
9 photograph, videotape, negative, or slide depicting a child under
10 the age of eighteen years engaged in an act of sexually explicit
11 conduct, as defined in section 28-1463.02, or participates in a
12 judicial proceeding resulting from such participation shall be
13 immune from any liability, civil or criminal, that might otherwise
14 be incurred or imposed, except for maliciously false statements.

15 Sec. 6. Original sections 28-727, 28-807, and 28-813.02,
16 Reissue Revised Statutes of Nebraska, and sections 28-710 and
17 28-711, Revised Statutes Supplement, 2004, are repealed.