

LEGISLATURE OF NEBRASKA
ONE HUNDRED SECOND LEGISLATURE
FIRST SESSION
LEGISLATIVE BILL 61
Final Reading

Introduced by Heidemann, 1.

Read first time January 06, 2011

Committee: Judiciary

A BILL

1 FOR AN ACT relating to crimes and offenses; to amend section
2 28-311.08, Reissue Revised Statutes of Nebraska, and
3 section 29-4003, Revised Statutes Cumulative Supplement,
4 2010; to change provisions and penalties relating to
5 unlawful intrusion; to harmonize provisions; and to
6 repeal the original sections.

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

1 Section 1. Section 28-311.08, Reissue Revised Statutes of
2 Nebraska, is amended to read:

3 28-311.08 (1) It shall be unlawful for any person to
4 knowingly intrude upon any other person without his or her consent or
5 knowledge in a place of solitude or seclusion.

6 (2) For purposes of this section:

7 (a) Intrude means either the:

8 (i) Viewing of another person in a state of undress as it
9 is occurring; or

10 (ii) Recording viewing or recording, either by video,
11 photographic, digital, audio, or other electronic means, of a another
12 person in a state of undress; and

13 (b) Place of solitude or seclusion means a place where a
14 person would intend to be in a state of undress and have a reasonable
15 expectation of privacy, including, but not limited to, any facility,
16 public or private, used as a restroom, tanning booth, locker room,
17 shower room, fitting room, or dressing room.

18 ~~(3) Violation~~ (3)(a) Violation of this section involving
19 an intrusion as defined in subdivision (2)(a)(i) of this section is a
20 Class III-I misdemeanor, unless the victim is under the age of
21 eighteen in which case a violation is a Class II misdemeanor. Lack of
22 knowledge as to the victim's age is not a defense to the enhanced
23 penalty under this section.

24 (b) Violation of this section involving an intrusion as
25 defined in subdivision (2)(a)(ii) of this section is a Class IV

1 felony.

2 (c) Violation of this section is a Class III felony if
3 video or an image from the intrusion is distributed to another person
4 or otherwise made public in any manner which would enable it to be
5 viewed by another person.

6 (4) As part of sentencing following a conviction for a
7 violation of this section, the court shall make a finding as to the
8 ages of the defendant and the victim at the time the offense
9 occurred. If the defendant is found to have been nineteen years of
10 age or older and the victim is found to have been less than eighteen
11 years of age at such time, then the defendant shall be required to
12 register under the Sex Offender Registration Act.

13 (5) No person shall be prosecuted for unlawful intrusion
14 pursuant to subdivision (3)(b) or (c) of this section unless the
15 indictment for such offense is found by a grand jury or a complaint
16 filed before a magistrate within three years after the later of:

17 (a) The commission of the crime;

18 (b) Law enforcement's or a victim's receipt of actual or
19 constructive notice of either the existence of a video or other
20 electronic recording of the unlawful intrusion or the distribution of
21 images, video, or other electronic recording of the unlawful
22 intrusion; or

23 (c) The youngest victim of the intrusion reaching the age
24 of twenty-one years.

25 Sec. 2. Section 29-4003, Revised Statutes Cumulative

1 Supplement, 2010, is amended to read:

2 29-4003 (1)(a) The Sex Offender Registration Act applies
3 to any person who on or after January 1, 1997:

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

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

9 (B) False imprisonment of a minor pursuant to section
10 28-314 or 28-315;

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

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

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

16 (F) Sexual abuse of a vulnerable adult pursuant to
17 subdivision (1)(c) of section 28-386;

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

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

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

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

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

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

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

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

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

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

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

24 (b) In addition to the registrable offenses under
25 subdivision (1)(a) of this section, the Sex Offender Registration Act

1 applies to any person who on or after January 1, 2010:

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

5 (I) Murder in the first degree pursuant to section
6 28-303;

7 (II) Murder in the second degree pursuant to section
8 28-304;

9 (III) Manslaughter pursuant to section 28-305;

10 (IV) Assault in the first degree pursuant to section
11 28-308;

12 (V) Assault in the second degree pursuant to section
13 28-309;

14 (VI) Assault in the third degree pursuant to section
15 28-310;

16 (VII) Stalking pursuant to section 28-311.03;

17 (VIII) Unlawful intrusion ~~on a minor~~ pursuant to
18 subsection (4) of section 28-311.08;

19 (IX) Kidnapping pursuant to section 28-313;

20 (X) False imprisonment pursuant to section 28-314 or
21 28-315;

22 (XI) Sexual abuse of an inmate or parolee in the first
23 degree pursuant to section 28-322.02;

24 (XII) Sexual abuse of an inmate or parolee in the second
25 degree pursuant to section 28-322.03;

1 (XVIII) Sexual abuse of a protected individual pursuant to
2 section 28-322.04;

3 (XIV) Incest pursuant to section 28-703;

4 (XV) Child abuse pursuant to subdivision (1)(d) or (e) of
5 section 28-707;

6 (XVI) Enticement by electronic communication device
7 pursuant to section 28-833; or

8 (XVII) Attempt, solicitation, aiding or abetting, being
9 an accessory, or conspiracy to commit an offense listed in
10 subdivisions (1)(b)(i)(A)(I) through (1)(b)(i)(A)(XVI) of this
11 section.

12 (B) In order for the Sex Offender Registration Act to
13 apply to the offenses listed in subdivisions (1)(b)(i)(A)(I), (II),
14 (III), (IV), (V), (VI), (VII), (IX), and (X) of this section, a court
15 shall have found that evidence of sexual penetration or sexual
16 contact, as those terms are defined in section 28-318, was present in
17 the record, which shall include consideration of the factual basis
18 for a plea-based conviction and information contained in the
19 presentence report;

20 (ii) Has ever pled guilty to, pled nolo contendere to, or
21 been found guilty of any offense that is substantially equivalent to
22 a registrable offense under subdivision (1)(b)(i) of this section by
23 any village, town, city, state, territory, commonwealth, or other
24 jurisdiction of the United States, by the United States Government,
25 by court-martial or other military tribunal, or by a foreign

1 jurisdiction, notwithstanding a procedure comparable in effect to
2 that described under section 29-2264 or any other procedure to
3 nullify a conviction other than by pardon; or

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

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

10 Sec. 3. Original section 28-311.08, Reissue Revised
11 Statutes of Nebraska, and section 29-4003, Revised Statutes
12 Cumulative Supplement, 2010, are repealed.