

NEBRASKA STATE OBSCENITY & LIBRARY/SCHOOL FILTERING STATUTES

(Last Updated Summer 2012)

R.R.S. Neb.

R.R.S. Neb. § 28-805. Debauching a minor; penalty

- (1) Any person not a minor commits the offense of debauching a minor if he or she shall debauch or deprave the morals of any boy or girl under the age of seventeen years by:
 - (a) Lewdly inducing such boy or girl carnally to know any other person; or
 - (b) Soliciting any such boy or girl to visit a house of prostitution or other place where prostitution, debauchery, or other immoral practices are permitted or encouraged, for the purpose of prostitution or sexual penetration; or
 - (c) Arranging or assisting in arranging any meeting for such purpose between any such boy or girl and any female or male of dissolute character or any inmate of any place where prostitution, debauchery, or other immoral practices are permitted or encouraged; or
 - (d) Arranging or aiding or assisting in arranging any meeting between any such boy or girl and any other person for the purpose of sexual penetration.
- (2) Debauching a minor is a Class I misdemeanor.

§ 28-806. Public indecency; penalty

- (1) A person, eighteen years of age or over, commits public indecency if such person performs or procures, or assists any other person to perform, in a public place and where the conduct may reasonably be expected to be viewed by members of the public:
 - (a) An act of sexual penetration; or
 - (b) An exposure of the genitals of the body done with intent to affront or alarm any person; or
 - (c) A lewd fondling or caressing of the body of another person of the same or opposite sex.
- (2) Public indecency is a Class II misdemeanor.

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

- (1) Adult shall mean any married person or any unmarried person of the age of eighteen years or older;
- (2) Commercial film and photographic print processor shall mean any person who for compensation develops exposed photographic film into negatives, slides, or prints or who for compensation makes prints from negatives or slides. The term shall include, but not be limited to, any employee of such a person but shall not include employees of law enforcement agencies and prosecuting attorneys involved in the investigation and prosecution of criminal offenses or to persons involved in legitimate medical, scientific, or educational activities;
- (3) Distribute shall mean to transfer possession, whether with or without consideration, by any means;
- (4) Disseminate shall mean to manufacture, issue, publish, sell, lend, distribute, transmit, exhibit, or present materials or to offer in person or through an agent or by

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- placing an advertisement for the same, whether with or without consideration, or agree to do the same;
- (5) Knowingly shall mean having general knowledge of, reason to know, or a belief or reasonable ground for belief which warrants further inspection or inquiry of the character and content of any material, taken as a whole, described in this section, which is reasonably susceptible to examination by the defendant;
 - (6) Harmful to minors shall mean that quality of any description or representation, in whatever form, of nudity, sexual conduct, sexual excitement, or sadomasochistic abuse, when it (a) predominantly appeals to the prurient, shameful, or morbid interest of minors, (b) is patently offensive to prevailing standards in the adult community as a whole with respect to what is suitable material for minors, and (c) is lacking in serious literary, artistic, political, or scientific value for minors;
 - (7) Material or work shall mean any book, magazine, newspaper, comic book, pamphlet, or other printed or written material or any picture, drawing, photograph, figure, image, motion picture, whether or not positive or negative exhibited or screened, play, nightclub, live performance, television production, other pictorial representation or electric reproduction, recording transcription, mechanical or otherwise, or other articles, equipment, machines, or materials;
 - (8) Minor shall mean any unmarried person under the age of eighteen years;
 - (9) Nudity shall mean the showing of the human, post-pubertal male or female genitals, pubic area, or buttocks with less than a full opaque covering, the depiction of covered male genitals in a discernibly turgid state, or the showing of the female breast with less than a full opaque covering of any portion thereof below the top of the nipple;
 - (10) Obscene shall mean (a) that an average person applying contemporary community standards would find that the work, material, conduct, or live performance taken as a whole predominantly appeals to the prurient interest or a shameful or morbid interest in nudity, sex, or excretion, (b) the work, material, conduct, or live performance depicts or describes in a patently offensive way sexual conduct specifically set out in sections 28-807 to 28-829, and (c) the work, conduct, material, or live performance taken as a whole lacks serious literary, artistic, political, or scientific value;
 - (11) Place shall mean any building, structure, or place or any separate part or portion thereof or the ground itself;
 - (12) Person shall mean any individual, partnership, limited liability company, firm, association, corporation, trustee, lessee, agent, assignee, or other legal entity;
 - (13) Performance, whether with or without consideration, shall mean any play, motion picture, dance, or other exhibition performed before an audience;
 - (14) Promote shall mean to manufacture, issue, sell, give, provide, lend, mail, deliver, transfer, transmit, publish, distribute, circulate, disseminate, present, exhibit, or place an order for advertising or to knowingly offer in person or through an agent or agree to do the same;
 - (15) Sexual conduct shall mean acts of masturbation, homosexuality, sodomy, sexual intercourse, or prolonged physical contact with a person's clothed or unclothed genitals, pubic area, or buttocks or, if such person is female, breast;
 - (16) Sexual excitement shall mean the condition of human male or female genitals when in a state of sexual stimulation or arousal; and
 - (17) Sadomasochistic abuse shall mean flagellation or torture by or upon a nude person or a person clad in undergarments, a mask, or a bizarre costume or the

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condition of being fettered, bound, or otherwise physically restrained when performed to predominantly appeal to the shameful or morbid interest.

§ 28-808. Obscene literature and material; sale to minor, unlawful; penalty

- (1) It shall be unlawful for a person knowingly to sell, deliver, distribute, display for sale, or provide to a minor or knowingly to possess with intent to sell, deliver, distribute, display for sale, or provide to a minor:
 - (a) Any picture, photograph, drawing, sculpture, motion picture film, or similar visual representation or image of a person or portion of the human body or any replica, article, or device having the appearance of either male or female genitals which predominantly pruriently, shamefully, or morbidly depicts nudity, sexual conduct, sexual excitement, or sadomasochistic abuse and which, taken as a whole, is harmful to minors; or
 - (b) Any book, pamphlet, magazine, printed matter however produced, or sound recording which contains any matter enumerated in subdivision (1)(a) of this section or explicit and detailed verbal descriptions or narrative accounts of sexual excitement, sexual conduct, or sadomasochistic abuse of a predominantly prurient, shameful, or morbid nature and which, taken as a whole, is harmful to minors.
- (2) Any person who violates this section shall be guilty of a Class I misdemeanor.

§ 28-809. Obscene motion picture, show, or presentation; admit minor; unlawful; penalty

- (1) It shall be unlawful for any person knowingly to exhibit to a minor or knowingly to provide to a minor an admission ticket or pass or knowingly to admit a minor to premises whereon there is exhibited a motion picture, show, or other presentation which, in whole or in part, predominantly pruriently, shamefully, or morbidly depicts nudity, sexual conduct, or sadomasochistic abuse and which, taken as a whole, is harmful to minors.
- (2) Any person who violates this section shall be guilty of a Class I misdemeanor.

§ 28-810. Prosecution; defense

- It shall be a defense to a prosecution under sections 28-808 and 28-809 that:
 - (1) Such person had reasonable cause to believe that the minor involved was eighteen years of age or more, and that such reasonable cause is based on but not limited to the presentation by the minor exhibited to such person of a draft card, driver's license, birth certificate, or other official or apparently official document purporting to establish that such minor was eighteen years of age or more;
 - (2) The minor was accompanied by his parent or guardian and such person had reasonable cause to believe that the person accompanying the minor was the parent or guardian of that minor;

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- (3) Such person had reasonable cause to believe that the person was the parent or guardian of the minor; and
- (4) Such person's activity falls within the defenses to a prosecution contained in section 28-815.

§ 28-811. False representation; unlawful employment of minor; exceptions; penalty

- (1) It shall be unlawful for any minor to falsely represent to any person mentioned in section 28-808 or 28-809, or to his or her agent, that such minor is eighteen years of age or older with the intent to procure any materials set forth in section 28-808 or with the intent to procure such minor's admission to any motion picture, show, or other presentation as set forth in section 28-809.
- (2) It shall be unlawful for any person to knowingly make a false representation to any person mentioned in section 28-808 or 28-809, or to his or her agent, that he or she is the parent or guardian of any minor or that any minor is eighteen years of age with the intent to procure any material set forth in section 28-808 or with the intent to procure such minor's admission to any motion picture, show, or other presentation as set forth in section 28-809.
- (3) It shall be unlawful for any person to hire as an employee a minor whose duties it will be to assist in any manner the sale, delivery, distribution, or exhibition of material declared obscene by sections 28-807 to 28-829, except that this section shall not apply if such minor's parents or legal guardian should consent to such employment by giving the employer a written affidavit prior to the minor's employment.
- (4) Any person who violates this section shall be guilty of a Class II misdemeanor.

§ 28-813. Obscene literature or material; prepares; distributes; promotes; penalty

- (1) It shall be unlawful for a person knowingly to (a) print, copy, manufacture, prepare, produce, or reproduce obscene material for the purpose of sale or distribution, (b) publish, circulate, sell, rent, lend, transport in interstate commerce, distribute, or exhibit any obscene material, (c) have in his or her possession with intent to sell, rent, lend, transport, or distribute any obscene material, or (d) promote any obscene material or performance.
- (2) It shall be unlawful for a person to place an order for any advertising promoting the sale or distribution of material represented or held out to be obscene, whether or not such material exists in fact or is obscene. In all cases in which a charge for a violation of this section is brought against a person who cannot be found in this state, the executive authority of this state may demand extradition of such person from the executive authority of the state in which such person may be found.
- (3) A person commits an offense of promoting obscene material if knowing its content and character he or she (a) disseminates for monetary consideration any obscene material, (b) produces, presents, or directs obscene performances for monetary consideration, or (c) participates for monetary consideration in that part of a performance which makes it obscene.

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- (4) Any person who violates this section shall be guilty of a Class I misdemeanor.
28-813

§ 28-813.01. Sexually explicit conduct; visual depiction; unlawful; penalty; affirmative defense.

- (1) It shall be unlawful for a person to knowingly possess any visual depiction of sexually explicit conduct, as defined in section 28-1463.02, which has a child, as defined in such section, as one of its participants or portrayed observers.
- (2)
 - (a) Any person who is under nineteen years of age at the time he or she violates this section shall be guilty of a Class IV felony for each offense.
 - (b) Any person who is nineteen years of age or older at the time he or she violates this section shall be guilty of a Class III felony for each offense.
 - (c) Any person who violates this section and has previously been convicted of a violation of this section or section 28-308, 28-309, 28-310, 28-311, 28-313, 28-314, 28-315, 28-319, 28-319.01, 28-320.01, 28-833, 28-1463.03, or 28-1463.05 or subsection (1) or (2) of section 28-320 shall be guilty of a Class IC felony for each offense.
- (3) It shall be an affirmative defense to a charge made pursuant to this section that:
 - (a) The visual depiction portrays no person other than the defendant; or
 - (b) (i) The defendant was less than nineteen years of age; (ii) the visual depiction of sexually explicit conduct portrays a child who is fifteen years of age or older; (iii) the visual depiction was knowingly and voluntarily generated by the child depicted therein; (iv) the visual depiction was knowingly and voluntarily provided by the child depicted in the visual depiction; (v) the visual depiction contains only one child; (vi) the defendant has not provided or made available the visual depiction to another person except the child depicted who originally sent the visual depiction to the defendant; and (vii) the defendant did not coerce the child in the visual depiction to either create or send the visual depiction.

§ 28-813.02. Commercial film and photographic print processor; immune from liability; when

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

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§ 28-821. Conviction more than twice; continue business dealing in obscene work or conduct; effect

Any person who is convicted more than twice under sections 28-807 to 28-829 and continues to use, occupy, establish or conduct a business selling, distributing, disseminating, or exhibiting any **obscene** work, material, conduct or live performance shall be deemed to be maintaining a nuisance and shall be enjoined as provided for in sections 28-807 to 28-829.

§ 28-826. Tenant or occupant of building; use to commit violations; conviction; right of possession in owner

If a tenant or occupant of a building or tenement under lawful title used such place for the purposes of committing a violation of sections 28-807 to 28-829, and if such tenant or occupant is convicted of such violation, such conviction shall make the lease or other title which he holds void at the option of the owner, and without any act of the owner, cause the right of possession to revert and vest in such owner, who may without further process of law make immediate entry upon the premises and retake possession.

§ 28-827. Material or work; adjudicated obscene; contraband; proceeds of sale to county; other copies; disposal

Material or work introduced in evidence and judicially adjudicated to be obscene is contraband and there are no property rights therein. All monetary consideration received for such work, material, conduct or live performance is recoverable as damages to the county where sold or exhibited. The defendant, as part of the court order, shall be required to remove from the state all other identical copies owned or controlled by such defendant within five days after a court determination of obscenity thereof or the same shall be deemed forfeited to the state for destruction by the state.

§ 28-833. Enticement by electronic communication device; penalty.

- (1) A person commits the offense of enticement by electronic communication device if he or she is nineteen years of age or over and knowingly and intentionally utilizes an electronic communication device to contact a child under sixteen years of age or a peace officer who is believed by such person to be a child under sixteen years of age and in so doing:
 - (a) Uses or transmits any indecent, lewd, lascivious, or obscene language, writing, or sound;
 - (b) Transmits or otherwise disseminates any visual depiction of sexually explicit conduct as defined in section 28-1463.02; or
 - (c) Offers or solicits any indecent, lewd, or lascivious act.
- (2) Enticement by electronic communication device is a Class IV felony.
- (3) Enticement by electronic communication device is deemed to have been committed either at the place where the communication was initiated or where it was received.

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- (4) For purposes of this section, electronic communication device means any device which, in its ordinary and intended use, transmits by electronic means writings, sounds, visual images, or data of any nature to another electronic communication device.

2011 Neb. LB 1051

Added: Text highlighted in green

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Text

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

- Section 1. Section 28-348, Reissue Revised Statutes of Nebraska, is amended to read:
 - 28-348
 - Sections 28-348 to 28-387 and sections 7, 8, and 13 of this act shall be known and may be cited as the Adult Protective Services Act.---
- Sec. 4. Section **28-351**, Reissue Revised Statutes of Nebraska, is amended to read:
 - 28-351
 - Abuse ~~shall mean means~~ any knowing, or intentional, or negligent act or omission on the part of a caregiver, a vulnerable adult, or any other person which results in physical injury, unreasonable confinement, cruel punishment, sexual abuse, or sexual exploitation, or denial of essential services to of a vulnerable adult.---
- Sec. 8. Sexual exploitation includes, but is not limited to, unlawful intrusion as described in section 28-311.08 and causing, allowing, permitting, inflicting, or encouraging a vulnerable adult to engage in voyeurism, in exhibitionism, in prostitution, or in the lewd, **obscene**, or pornographic photographing, filming, or depiction of the vulnerable adult.

Approved by the Governor April 10, 2012