

Sex Crimes: Definitions and Penalties Nebraska

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Sexual Assault in the First Degree

Question	Answer
How is it defined?	<ul style="list-style-type: none"> • Any person who subjects another person to sexual penetration: <ul style="list-style-type: none"> • Without the consent of the victim, or • Who knew or should have known that the victim was mentally or physically incapable of resisting or appraising the nature of his or her conduct, or • When the actor is 19 years of age or older and the victim is at least 12 but less than 16 years of age.
What are the punishments for this crime?	<ul style="list-style-type: none"> • Sexual assault in the first degree is a Class II felony with a minimum of 1 year and maximum of 50 years' imprisonment. The sentencing judge shall consider whether the actor caused serious personal injury to the victim in reaching the decision on the sentence. • Any person who is found guilty of sexual assault in the first degree for a second time when the first conviction was pursuant to this section or any other state or federal law with essentially the same elements as this section shall be sentenced to a mandatory minimum term of 25 years' imprisonment.
Anything else I should know?	<ul style="list-style-type: none"> • Sexual penetration: <ul style="list-style-type: none"> • Sexual intercourse in its ordinary meaning, cunnilingus, fellatio, anal intercourse, or any intrusion, however slight, of any part of the actor's or victim's body or any object manipulated by the actor into the genital or anal openings of the victim's body which can be reasonably construed as being for nonmedical, non-health purposes or non-law enforcement purposes. • Shall not require emission of semen. NE St § 28-318(6). • Serious personal injury: <ul style="list-style-type: none"> • Great bodily injury or disfigurement, extreme mental anguish or mental trauma, pregnancy, disease, or loss or impairment of a sexual or reproductive organ. NE St § 28-318(4) • Without consent: <ul style="list-style-type: none"> • (i) The victim was compelled to submit due to the use of force or threat of force or coercion, or (ii) the victim expressed a lack of consent through words, or (iii) the victim expressed a lack of consent through conduct, or (iv) the consent, if any was actually given, was the result of the actor's deception as to the identity of the actor or the nature or purpose of the act on the part of the actor; • The victim need only resist, either verbally or physically, so as to make the victim's refusal to consent genuine and real and so as to reasonably make known to the actor the victim's refusal to consent; and

	<ul style="list-style-type: none"> • A victim need not resist verbally or physically where it would be useless or futile to do so. NE St § 28-318(8). • Force or threat of force: <ul style="list-style-type: none"> • The use of physical force which overcomes the victim's resistance; or • The threat of physical force, express or implied, against the victim or a third person that places the victim in fear of death or in fear of serious personal injury to the victim or a third person where the victim reasonably believes that the actor has the present or future ability to execute the threat. NE St § 28-318(9).
Statutory citation(s):	<ul style="list-style-type: none"> • NE St § 28-319

Sexual Assault in the Second or Third Degree

Question	Answer
How is it defined?	<ul style="list-style-type: none"> • Any person who subjects another person to sexual contact <ul style="list-style-type: none"> • Without consent of the victim, or • Who knew or should have known that the victim was physically or mentally incapable of resisting or appraising the nature of his or her conduct. NE St § 28-320(1).
What are the punishments for this crime?	<ul style="list-style-type: none"> • Second Degree: Class IIA felony with no minimum years and a maximum of 20 years' imprisonment if the actor caused serious personal injury to the victim. NE St § 28-320(2). • Third Degree: Class I misdemeanor with no minimum years and a maximum of 1 year of imprisonment or \$1,000 fine, or both if the actor shall not have caused serious personal injury to the victim. NE St § 28-320(3).
Anything else I should know?	<ul style="list-style-type: none"> • Sexual contact: <ul style="list-style-type: none"> • The intentional touching of the victim's sexual or intimate parts (genital area, groin, inner thighs, buttocks, or breasts), or • The intentional touching of the victim's clothing covering the immediate area of the victim's sexual or intimate parts, or • The touching by the victim of the actor's sexual or intimate parts, or the clothing covering the immediate area of the actor's sexual or intimate parts when such touching is intentionally caused by the actor. • Only includes conduct which can be reasonably construed as being for the purpose of sexual arousal or gratification of either party. NE St § 28-318(5). • Without consent: <ul style="list-style-type: none"> • (i) The victim was compelled to submit due to the use of force or threat of force or coercion, or

	<p>(ii) the victim expressed a lack of consent through words, or (iii) the victim expressed a lack of consent through conduct, or (iv) the consent, if any was actually given, was the result of the actor's deception as to the identity of the actor or the nature or purpose of the act on the part of the actor;</p> <ul style="list-style-type: none"> • The victim need only resist, either verbally or physically, so as to make the victim's refusal to consent genuine and real and so as to reasonably make known to the actor the victim's refusal to consent; and • A victim need not resist verbally or physically where it would be useless or futile to do so. NE St § 28-318(8).
Statutory citation(s):	<ul style="list-style-type: none"> • NE St § 28-320

Sexual Assault of a Child

Question	Answer
How is it defined?	<ul style="list-style-type: none"> • “Statutory rape” is commonly used to refer to sexual penetration that is illegal because it involves a youth. <ul style="list-style-type: none"> • Nebraska has no specific statutory rape statute, but this concern is captured under <i>NE St § 28-319.01</i> “Sexual Assault of a Child.” • In the first degree: <ul style="list-style-type: none"> • He or she subjects another person under 12 years of age to sexual penetration and the actor is at least 19 years of age or older, or • When he or she subjects another person who is at least 12 years of age but less than 16 years of age to sexual penetration and the actor is 25 years of age or older. • The age of the actor shall be an essential element of the offense that must be proved beyond a reasonable doubt. • In the second degree: <ul style="list-style-type: none"> • He or she subjects another person 14 years of age or younger to sexual contact and the actor is at least 19 years of age or older, and • Actor causes serious personal injury to the victim. • In the third degree: <ul style="list-style-type: none"> • He or she subjects another person 14 years of age or younger to sexual contact and the actor is at least 19 years of age or older, and • Actor does not cause serious personal injury to the victim.

<p>What are the punishments for this crime?</p>	<ul style="list-style-type: none"> • First degree, first offense: <ul style="list-style-type: none"> • Mandatory minimum sentence of 15 years' imprisonment and maximum sentence of life imprisonment. • First degree, repeated offenses: <ul style="list-style-type: none"> • Mandatory minimum sentence of 25 years' imprisonment and maximum sentence of life imprisonment. • Second degree, first offense: <ul style="list-style-type: none"> • Minimum sentence of one year imprisonment and maximum sentence of 50 years' imprisonment • Second degree, repeated offenses: <ul style="list-style-type: none"> • Mandatory minimum sentence of 25 years' imprisonment and maximum sentence of 50 years' imprisonment. • Third degree, first offense: <ul style="list-style-type: none"> • Minimum of no imprisonment and no post-release supervision and maximum of three years' imprisonment and eighteen months post-release supervision or \$10,000 fine, or both • Third degree, repeated offenses: <ul style="list-style-type: none"> • Mandatory minimum sentence of 5 years' imprisonment and maximum sentence of 50 years' imprisonment.
<p>Anything else I should know?</p>	<ul style="list-style-type: none"> • Serious personal injury: <ul style="list-style-type: none"> • Great bodily injury or disfigurement, extreme mental anguish or mental trauma, pregnancy, disease, or loss or impairment of a sexual or reproductive organ. • Sexual penetration: <ul style="list-style-type: none"> • Sexual intercourse in its ordinary meaning, cunnilingus, fellatio, anal intercourse, or any intrusion, however slight, of any part of the actor's or victim's body or any object manipulated by the actor into the genital or anal openings of the victim's body which can be reasonably construed as being for nonmedical, non-health or non-law enforcement purposes. Sexual penetration shall not require emission of semen. • Sexual contact: <ul style="list-style-type: none"> • The intentional touching of the victim's sexual or intimate parts (genital area, groin, inner thighs, buttocks, or breasts), or • The intentional touching of the victim's clothing covering the immediate area of the victim's sexual or intimate parts or • The touching by the victim of the actor's sexual or intimate parts, or the clothing covering the immediate area of the actor's sexual or intimate parts when such touching is intentionally caused by the actor. • Only includes conduct which can be reasonably construed as being for the purpose of sexual arousal or gratification of either party. • The touching of a child with the actor's sexual or intimate parts on any part of the child's body for purposes of sexual assault of a child. NE St § 28-318(6). • In a charge of sexual assault on a child, the following are not defenses: that the victim engaged in active concealment or misrepresentation of age, that the victim consented, or that there was a reasonable mistake as to the age of the victim. Evidence on the issue of the victim's chastity is

	irrelevant and inadmissible. <i>State v. Campbell</i> , 239 Neb. 14, 473 N.W.2d 420 (1991).
Statutory citation(s):	• NE St §§ 28-319.01, 28-320.01

Sexual Assault of an Inmate or Parolee

Question	Answer
How is it defined?	<ul style="list-style-type: none"> • A person commits the offense of sexual abuse of an inmate or parolee if: <ul style="list-style-type: none"> • Such person subjects an inmate or parolee to sexual penetration (first degree), or • Such person subjects an inmate or parolee to sexual contact (second degree). • It is not a defense to a charge under this section that the inmate or parolee consented to such sexual penetration or sexual contact. • An otherwise lawful pat-down or body cavity search by a person is not a violation of this section.
What are the punishments for this crime?	<p>First degree:</p> <ul style="list-style-type: none"> • Class IIA felony: <ul style="list-style-type: none"> • No minimum sentence. • Maximum 20 years' imprisonment. NE St § 28-105. <p>Second degree:</p> <ul style="list-style-type: none"> • Class IIIA felony: <ul style="list-style-type: none"> • No minimum for imprisonment and no minimum for post-release supervision. • Maximum: 3 years' imprisonment and 18 months' post-release supervision or \$10,000 fine, or both. NE St § 28-105
Anything else I should know?	<ul style="list-style-type: none"> • Inmate or parolee: <ul style="list-style-type: none"> • Any individual confined in a facility operated by the Department of Correctional Services, or a city or county correctional jail facility or under parole supervision. • Sexual penetration: <ul style="list-style-type: none"> • Sexual intercourse in its ordinary meaning, cunnilingus, fellatio, anal intercourse, or any intrusion, however slight, of any part of the actor's or victim's body or any object manipulated by the actor into the genital or anal openings of the victim's body which can be reasonably construed as being for nonmedical, non-health or non-law enforcement purposes. • Shall not require emission of semen. • Sexual contact: <ul style="list-style-type: none"> • The intentional touching of the victim's sexual or intimate parts (genital area, groin, inner thighs, buttocks, or breasts), or

	<ul style="list-style-type: none"> • The intentional touching of the victim's clothing covering the immediate area of the victim's sexual or intimate parts or • The touching by the victim of the actor's sexual or intimate parts, or the clothing covering the immediate area of the actor's sexual or intimate parts when such touching is intentionally caused by the actor. • Only includes conduct which can be reasonably construed as being for the purpose of sexual arousal or gratification of either party.
Statutory citation(s):	• NE St §§ 28-322.01; 28-322.02; 28-322.03

Incest

Question	Answer
How is it defined?	<ul style="list-style-type: none"> • Any person who shall knowingly intermarry or engage in sexual penetration with any person who falls within the degrees of the below consanguinity or any person who engages in sexual penetration with his or her stepchild who is under 19 years of age commits incest. NE St § 28-703. <ul style="list-style-type: none"> • Consanguinity: between parents and children, grandparents and grandchildren of every degree, between brothers and sisters of the half as well as the whole blood, and between uncles and nieces, and aunts and nephews. NE St § 28-702.
What are the punishments for this crime?	<ul style="list-style-type: none"> • Class III felony (except that incest with a person who is under 18 years of age is a Class IIA felony): <ul style="list-style-type: none"> • Class III felony: <ul style="list-style-type: none"> • No minimum for imprisonment and no minimum for post-release supervision if imprisonment. • Maximum 4 years' imprisonment and 2 years' post-release supervision or \$25,000 fine, or both. NE St § 28-105. • Class IIA felony: <ul style="list-style-type: none"> • No minimum for imprisonment. • Maximum 20 years' imprisonment. NE St § 28-105
Anything else I should know?	<ul style="list-style-type: none"> • Sexual penetration: <ul style="list-style-type: none"> • Sexual intercourse in its ordinary meaning, cunnilingus, fellatio, anal intercourse, or any intrusion, however slight, of any part of the actor's or victim's body or any object manipulated by the actor into the genital or anal openings of the victim's body which can be reasonably construed as being for nonmedical, non-health or non-law enforcement purposes. • Shall not require emission of semen. • For parents and natural children, there is no age at which sexual relations become lawful; the law does

	not permit consent to such a relationship. 695 N.W.2d 165, 269 Neb. 507.
Statutory citation(s):	<ul style="list-style-type: none"> • NE St § 28-703

Sodomy

Question	Answer
How is it defined?	<ul style="list-style-type: none"> • Nebraska does not have an anti-sodomy law on the books.
What are the punishments for this crime?	<ul style="list-style-type: none"> • N/A
Anything else I should know?	<ul style="list-style-type: none"> • Any state laws that outright prohibit sodomy are unconstitutional under <i>Lawrence v. Texas</i>, 539 U.S. 588 (2003).
Statutory citation(s):	<ul style="list-style-type: none"> • N/A