

CHAPTER 134: OFFENSES AGAINST PUBLIC MORALS

Section

- 134.01 Prostitution
- 134.02 Public indecency
- 134.03 Gambling

§ 134.01 PROSTITUTION.

(A) Except as provided in division (C) of this section, any person who performs, offers, or agrees to perform any act of sexual contact or sexual penetration, as those terms are defined in Neb. RS 28-318, with any person not his or her spouse, in exchange for money or other thing of value, commits the offense of prostitution.

(B) It is an affirmative defense to prosecution under this section that such person was a trafficking victim as defined in Neb. RS 28-830.

(C) If the law enforcement officer determines, after a reasonable detention for investigative purposes, that a person suspected of or charged with a violation of division (A) of this section is:

(1) A person engaging in those acts as a direct result of being a trafficking victim as defined in Neb. RS 28-830, such person shall be immune from prosecution for a prostitution offense; or

(2) A person under 18 years of age, such person shall be immune from prosecution for a prostitution offense under this section and shall be subject to temporary custody under Neb. RS 43-248 and further disposition under the Nebraska Juvenile Code. A law enforcement officer who takes a person under 18 years of age into custody under this section shall immediately report an allegation of a violation of Neb. RS 28-831 to the Department of Health and Human Services which shall commence an investigation within 24 hours under the Child Protection and Family Safety Act.

(Neb. RS 28-801) Penalty, see § 10.99

§ 134.02 PUBLIC INDECENCY.

A person, 18 years of age or over, commits the offense of 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 as defined in Neb. RS 28-318;
 - (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.
- (Neb. RS 28-806) Penalty, see § 10.99

§ 134.03 GAMBLING.

- (A) For the purpose of this section, the definitions found in Neb. RS 28-1101 shall be used.
- (B) A person commits the offense of promoting gambling if he or she knowingly:
 - (1) Advances or profits from any unlawful gambling activity by:
 - (a) Engaging in bookmaking;
 - (b) Receiving, in connection with any unlawful gambling scheme or enterprise, any amount of money played in the scheme or enterprise in any 1 day; or
 - (c) Betting something of value in an amount of \$500 or more with one or more persons in one day; or

(Neb. RS 28-1102 and 28-1103)
 - (2) Participates in unlawful gambling as a player by betting less than \$500 in any one day.

(Neb. RS 28-1104)
- (C) (1) A person commits the offense of possession of a gambling device if he or she manufactures, sells, transports, places, possesses, or conducts or negotiates any transaction affecting or designed to affect ownership, custody, or use of any gambling device, knowing that it shall be used in the advancement of unlawful gambling activity.
- (2) This division shall not apply to any coin-operated mechanical gaming device, computer gaming device, electronic gaming device, or video gaming device which has the capability of awarding free games, which is intended to be played and is in fact played for amusement only, and which may allow the player the right to replay such gaming device at no additional cost, which right to replay shall not be considered money or property, except that such mechanical game:
 - (a) Can be discharged of accumulated free replays only by reactivating the game for one additional play for each accumulated free replay; and
 - (b) Makes no permanent record directly or indirectly of free replays so awarded.

(3) Notwithstanding any other provisions of this division, any mechanical game or device classified by the federal government as an illegal gambling device and requiring a federal Gambling Device Tax Stamp as required by the Internal Revenue Service in its administration of 26 U.S.C. 4461 and 4462, amended July 1, 1965, by Public Law 89-44, are hereby declared to be illegal and excluded from the exemption granted in this division.
(Neb. RS 28-1107)

(D) In any prosecution under this section, it shall be an affirmative defense that the writing, paper, instrument, or article possessed by the defendant was neither used nor intended to be used in the advancement of an unlawful gambling activity.
(Neb. RS 28-1108)

(E) Proof of possession of any gambling device shall be prima facie evidence of possession thereof with knowledge of its contents and character.
(Neb. RS 28-1109)

(F) It shall be no defense to a prosecution under any provision of this section relating to gambling that the gambling is conducted outside this city and is not in violation of the laws of the jurisdiction in which it is conducted.
(Neb. RS 28-1110)

(G) In addition to any other penalty, a sentencing court may order that any money, securities, negotiable instruments, firearms, conveyances, or electronic communication devices as defined in Neb. RS 28-833 or any equipment, components, peripherals, software, hardware, or accessories related to electronic communication devices, or any gambling devices be forfeited as a part of the sentence imposed if it finds by clear and convincing evidence adduced at a separate hearing in the same prosecution, conducted pursuant to Neb. RS 28-1601, that any or all such property was derived from, used, or intended to be used to facilitate a violation of this section.
(Neb. RS 28-1111)

(H) In any prosecution for an offense defined in this section, when the defendant's status as a player constitutes an excusing condition, the fact that the defendant was a player shall constitute an affirmative defense.
(Neb. RS 28-1112)

(I) Nothing in this section shall be construed to:

(1) Apply to or prohibit wagering on the results of horseraces by the parimutuel or certificate method when conducted by licensees within the racetrack enclosure at licensed horserace meetings; or

(2) Prohibit or punish the conducting or participating in any bingo, lottery by the sale of pickle cards, lottery, raffle, or gift enterprise when conducted in accordance with the Nebraska Bingo Act, the Nebraska County and City Lottery Act, the Nebraska Lottery and Raffle Act, the Nebraska Pickle Card Lottery Act, the Nebraska Small Lottery and Raffle Act, the State Lottery Act, or Neb. RS 9-701.
(Neb. RS 28-1113)

(J) In any prosecution under this section in which it is necessary to prove the occurrence of a sporting event, a published report of its occurrence in any daily newspaper, magazine, or other periodically printed publication of general circulation shall be admissible in evidence and shall constitute prima facie evidence of the occurrence of the event.
(Neb. RS 28-1117) Penalty, see § 10.99