

28-1463.03.

Visual depiction of sexually explicit conduct; prohibited acts.

(1) It shall be unlawful for a person to knowingly make, publish, direct, create, provide, or in any manner generate any visual depiction of sexually explicit conduct which has a child other than the defendant as one of its participants or portrayed observers.

(2) It shall be unlawful for a person knowingly to purchase, rent, sell, deliver, distribute, display for sale, advertise, trade, or provide to any person any visual depiction of sexually explicit conduct which has a child other than the defendant as one of its participants or portrayed observers.

(3) It shall be unlawful for a person to knowingly employ, force, authorize, induce, or otherwise cause a child to engage in any visual depiction of sexually explicit conduct which has a child as one of its participants or portrayed observers.

(4) It shall be unlawful for a parent, stepparent, legal guardian, or any person with custody and control of a child, knowing the content thereof, to consent to such child engaging in any visual depiction of sexually explicit conduct which has a child as one of its participants or portrayed observers.

Source

- Laws 1978, LB 829, § 1;
- R.S.1943, (1979), § 28-1463;
- Laws 1985, LB 668, § 3;
- [Laws 2009, LB97, § 18](#);
- [Laws 2019, LB630, § 5](#).
- **Effective Date: September 1, 2019**

Cross References

- **Registration of sex offenders**, see sections [29-4001](#) to [29-4014](#).

Annotations

- A person who generates differing and multiple prohibited visual depictions or causes a child to engage in the creation of such visual depictions commits multiple offenses of subsection (1) or (3) of this section, even though each such differing visual depiction involves the same subject captured in a narrow timeframe. *State v. Mather*, 264 Neb. 182, 646 N.W.2d 605 (2002).

- The sexual nature of a photograph is not determined solely from the subjects of the photograph, but from the motives of the persons generating the photograph. *State v. Saulsbury*, 243 Neb. 227, 498 N.W.2d 338 (1993).
- Under previous statute, the act of appearing in an obscene film depicting children was prohibited. *State v. Jensen*, 226 Neb. 40, 409 N.W.2d 319 (1987).
- Subsection (1) of this section is neither overbroad nor vague under federal Constitution, but there is an open question of constitutionality under the Constitution of Nebraska. One may "publish" by showing a videotape; the phrase "portrayed observer" is not unconstitutionally overbroad; the phrase "sexually explicit conduct" is not unconstitutionally vague; and sexual excitement is not an element or substantial motivational factor of some of the conduct proscribed under subsection (1) of this section. *State v. Burke*, 225 Neb. 625, 408 N.W.2d 239 (1987).