

28-320.02.

Sexual assault; use of electronic communication device; prohibited acts; penalties.

(1) No person shall knowingly solicit, coax, entice, or lure (a) a child sixteen years of age or younger or (b) a peace officer who is believed by such person to be a child sixteen years of age or younger, by means of an electronic communication device as that term is defined in section [28-833](#), to engage in an act which would be in violation of section [28-319](#), [28-319.01](#), or [28-320.01](#) or subsection (1) or (2) of section [28-320](#). A person shall not be convicted of both a violation of this subsection and a violation of section [28-319](#), [28-319.01](#), or [28-320.01](#) or subsection (1) or (2) of section [28-320](#) if the violations arise out of the same set of facts or pattern of conduct and the individual solicited, coaxed, enticed, or lured under this subsection is also the victim of the sexual assault under section [28-319](#), [28-319.01](#), or [28-320.01](#) or subsection (1) or (2) of section [28-320](#).

(2) A person who violates this section is guilty of a Class ID felony. If a person who violates this section 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](#), [28-813.01](#), [28-833](#), [28-1463.03](#), or [28-1463.05](#) or subsection (1) or (2) of section [28-320](#), the person is guilty of a Class IC felony.

Source

- [Laws 2004, LB 943, § 3](#);
- [Laws 2006, LB 1199, § 8](#);
- [Laws 2009, LB97, § 13](#).

Cross References

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

Annotations

- Subsection (1) of this section does not criminalize an attempt to commit one of the specified crimes. Instead, it unambiguously criminalizes the persuasion itself. Because this section is focused on persuading a child to engage in an illegal sexual act, the relevant time for determining whether the encouraged sexual act was illegal will generally be when the defendant was engaged in the persuasion. Depending upon the substance of the persuasion, however, this may not always be true. But where the facts did not warrant requiring further proof of the defendant's intent to commit an illegal sexual act, the State was not required to prove that he took a substantial step toward committing such act. *State v. Knutson*, 288 Neb. 823, 852 N.W.2d 307 (2014).

- This section does not implicate speech regarding otherwise legal activity; it targets only speech used for the purpose of enticing a child to engage in illegal sexual conduct, and such speech is not protected by the First Amendment. *State v. Rung*, 278 Neb. 855, 774 N.W.2d 621 (2009).
- Under the former law, a person was guilty of a Class IIIA felony where a person knowingly solicits, coaxes, entices, or lures (1) a child 16 years of age or younger or (2) a peace officer who is believed by such person to be a child 16 years of age or younger, by means of a computer as that term is defined in section 28-1343, to engage in a sexual act. *State v. Atchison*, 15 Neb. App. 422, 730 N.W.2d 115 (2007).