

28-707.

Child abuse; privileges not available; penalties.

(1) A person commits child abuse if he or she knowingly, intentionally, or negligently causes or permits a minor child to be:

(a) Placed in a situation that endangers his or her life or physical or mental health;

(b) Cruelly confined or cruelly punished;

(c) Deprived of necessary food, clothing, shelter, or care;

(d) Placed in a situation to be sexually exploited through sex trafficking of a minor as defined in section [28-830](#) or by allowing, encouraging, or forcing such minor child to engage in debauchery, public indecency, or obscene or pornographic photography, films, or depictions;

(e) Placed in a situation to be sexually abused as defined in section [28-319](#), [28-319.01](#), or [28-320.01](#); or

(f) Placed in a situation to be a trafficking victim as defined in section [28-830](#).

(2) The statutory privilege between patient and physician, between client and professional counselor, and between husband and wife shall not be available for excluding or refusing testimony in any prosecution for a violation of this section.

(3) Child abuse is a Class I misdemeanor if the offense is committed negligently and does not result in serious bodily injury as defined in section [28-109](#) or death.

(4) Child abuse is a Class IIIA felony if the offense is committed knowingly and intentionally and does not result in serious bodily injury as defined in section [28-109](#) or death.

(5) Child abuse is a Class IIIA felony if the offense is committed negligently and results in serious bodily injury as defined in section [28-109](#).

(6) Child abuse is a Class IIA felony if the offense is committed negligently and results in the death of such child.

(7) Child abuse is a Class II felony if the offense is committed knowingly and intentionally and results in serious bodily injury as defined in such section.

(8) Child abuse is a Class IB felony if the offense is committed knowingly and intentionally and results in the death of such child.

(9) For purposes of this section, negligently refers to criminal negligence and means that a person knew or should have known of the danger involved and acted recklessly, as defined in section [28-109](#), with respect to the safety or health of the minor child.

Source

- Laws 1977, LB 38, § 146;
- Laws 1982, LB 347, § 10;
- Laws 1993, LB 130, § 3;
- Laws 1993, LB 430, § 3;
- Laws 1994, LB 908, § 1;
- Laws 1996, LB 645, § 15;
- Laws 1997, LB 364, § 9;
- [Laws 2006, LB 1199, § 9](#);
- [Laws 2010, LB507, § 3](#);
- [Laws 2012, LB799, § 2](#);
- [Laws 2013, LB255, § 1](#);
- [Laws 2015, LB605, § 44](#);
- [Laws 2019, LB519, § 9](#).
- **Effective Date: September 1, 2019**

Cross References

- **Appointment of guardian ad litem**, see section [43-272.01](#).
- **Registration of sex offenders**, see sections [29-4001](#) to [29-4014](#).

Annotations

- **1. Constitutionality**
- **2. Lesser-included offense**
- **3. Jury instructions**
- **4. Elements**
- **5. Miscellaneous**
- **1. Constitutionality**
- Multiple convictions for second degree murder and child abuse resulting in death do not violate the Double Jeopardy Clauses of the state or federal Constitution. State v. Molina, 271 Neb. 488, 713 N.W.2d 412 (2006).
- Subsections (1)(a) and (c) of this section are not void for vagueness and are thus constitutional. State v. Crowdell, 234 Neb. 469, 451 N.W.2d 695 (1990).
- **2. Lesser-included offense**
- Negligent child abuse and intentional child abuse are lesser-included offenses of child abuse resulting in serious bodily injury and child abuse resulting in death. State v. Molina, 271 Neb. 488, 713 N.W.2d 412 (2006).
- Misdemeanor child abuse is a lesser-included offense of felony child abuse. State v. Parks, 253 Neb. 939, 573 N.W.2d 453 (1998).

- Misdemeanor child abuse is a lesser-included offense of felony child abuse. It is the defendant's state of mind which differentiates the offenses—if the abuse is committed knowingly and intentionally, it is a felony; if committed negligently, it is a misdemeanor. *State v. Nguth*, 13 Neb. App. 783, 701 N.W.2d 852 (2005).
- **3. Jury instructions**
- Where a jury instruction properly reflects the State's alternative theories of guilt under different subsections of this section, a jury can convict the defendant if it finds the defendant committed any of the prohibited acts, and an appellate court will affirm the conviction if the evidence was sufficient to support any of the State's theories of guilt. *State v. Knutson*, 288 Neb. 823, 852 N.W.2d 307 (2014).
- Involuntary manslaughter is a lesser-included offense of child abuse resulting in death, and the jury should be so instructed if there is a rational basis upon which it could conclude that the defendant committed child abuse negligently, but not knowingly and intentionally. *State v. Sinica*, 277 Neb. 629, 764 N.W.2d 111 (2009).
- Jury instruction given by trial court adequately distinguished the crimes of intentional child abuse and negligent child abuse. *State v. Fitzgerald*, 1 Neb. App. 315, 493 N.W.2d 357 (1992).
- **4. Elements**
- Criminal endangerment in subsection (1)(a) of this section encompasses not only conduct directed at the child but also conduct which presents the likelihood of injury due to the child's having been placed in a situation caused by the defendant's conduct. *State v. Mendez-Osorio*, 297 Neb. 520, 900 N.W.2d 776 (2017).
- The State is not required to prove a minor child was in the exclusive care or custody of the defendant when the child abuse occurred. *State v. Olbricht*, 294 Neb. 974, 885 N.W.2d 699 (2016).
- Evidence must be sufficient for the factfinder to conclude beyond a reasonable doubt that the unlawful conduct resulted in death. *State v. Muro*, 269 Neb. 703, 695 N.W.2d 425 (2005).
- "Endangers" as used in subsection (1)(a) of this section means to expose a minor child's life or health to danger or the peril of probable harm or loss. *State v. Crowdell*, 234 Neb. 469, 451 N.W.2d 695 (1990).
- The term cruelly punished as used in this statute has acquired a relatively widely accepted connotation in the law and is capable of an easily understood meaning. *State v. Sinica*, 220 Neb. 792, 372 N.W.2d 445 (1985).
- **5. Miscellaneous**
- This section contains multiple gradations of felony child abuse, depending upon the result of the abusive conduct. *State v. Muro*, 269 Neb. 703, 695 N.W.2d 425 (2005).
- Under subsection (2) of this section, the statutory privilege between patient and professional counselor is not available in a prosecution for child abuse. *State v. McMillion*, 23 Neb. App. 687, 875 N.W.2d 877 (2016).
- A general finding of guilt under this section would not be a finding of felony assault because it is possible to commit the crime of child abuse by means other than by felony assault. *In re Interest of Janet J.*, 12 Neb. App. 42, 666 N.W.2d 741 (2003).