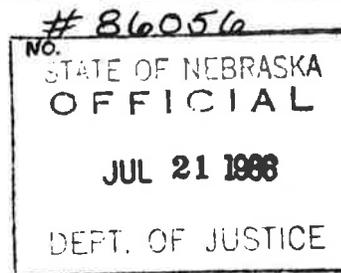


DEPARTMENT OF JUSTICE

STATE OF NEBRASKA

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ROBERT M SPIRE
Attorney General
A EUGENE CRUMP
Deputy Attorney General

DATE: July 11, 1986

SUBJECT: Definition of "Years of Age or Younger" in Rape Statute

REQUESTED BY: Charles A. Kandt
Lincoln County Attorney

WRITTEN BY: Robert M. Spire, Attorney General
William L. Howland, Assistant Attorney General

This is in response to your question of whether a girl 14 years and six months old is within the scope of a statute covering persons "fourteen years of age or younger".

Neb.Rev.Stat. §28-320.01 (Reissue 1985) makes it a crime to subject "another person fourteen years of age or younger" to sexual contact when the actor is nineteen or older. There are apparently no Nebraska cases on the point. Case law from other jurisdictions, however, upholds the strict interpretation of statutes using the phrase "or under" or similar language; i.e., that even one day past the age preceding the "or under" language is too old to fall within the statute.

In Knott v. Rawlings, 250 Ia. 892, 96 N.W.2d 900 (1959), the court held that a child 16 years, six months, and three days old is not a child within the meaning of a statute prohibiting lewd acts in the presence or on the body of a child "the age of sixteen years or under." The court stated that if the Legislature had intended the statute to apply, it would have used the phrase "the age of seventeen years or under." Id. at 896, 96 N.W.2d at 902.

A statute making it a crime to contribute to the delinquency of one "sixteen (16) years of age or younger" was held not to include a child 16 years and four months old in Gibson v. People, 44 Colo. 600, 99 P. 333 (1908). The court employed language similar to that in Knott in stating what the Legislature should have done had it wanted the statute to apply in the case.

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Page -2-

July 11, 1986

People v. Dudley, 53 Cal. App.2d 181, 127 P.2d 569 (1942), went so far as to hold that a child becomes 14 on the day before the anniversary of his birth.

The authority in other jurisdictions thus is heavily weighted toward a strict interpretation of the statute. See, Annot., 73 A.L.R.2d 874 (1960). It is our opinion that a girl fourteen years and six months old does not fall within Neb.Rev.Stat. §28-320.01 (Reissue 1985).

Sincerely,

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APPROVED:



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