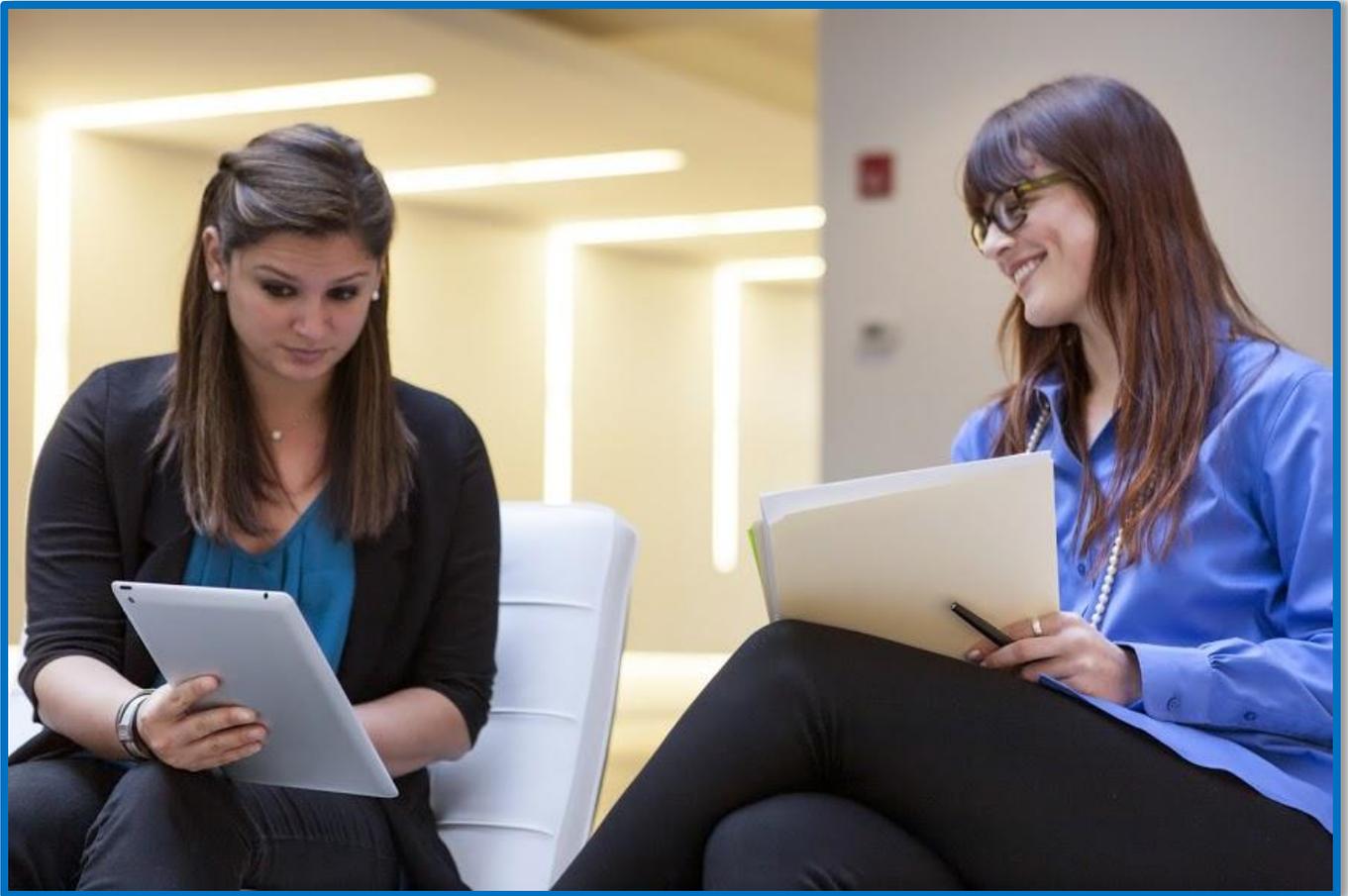


# SEXUAL ASSAULT CHARGES AND DEFENSES IN NEBRASKA

*“If you have been accused of sexual assault in Nebraska it is imperative that you take the accusation seriously. A conviction could negatively impact your life for years to come. Simply denying the accusation is not sufficient.”*





Being accused of a sex offense typically causes a ripple effect through your life, impacting everything from your work life to your home life. Unfortunately, the mere accusation of rape can have long lasting negative consequences for you and your family. If you have been accused of rape, officially or unofficially, the time to protect yourself and your future is now. Consulting with an experienced Nebraska criminal defense attorney is imperative; however, it may also help to know the basics about sexual assault charges in Nebraska and some common defenses to those charges.

## SEXUAL ASSAULT DEFINED

In the State of Nebraska, the crime of “rape” is officially classified as “sexual assault.” Like most states, Nebraska classifies sexual assault by degrees, depending the severity of the accusations and other relevant characteristics of the alleged crime as follows:

- **First Degree** --- “Any person who subjects another person to sexual penetration (a) without the consent of the victim, (b) who knew or should have known that the victim was mentally or physically incapable of resisting or appraising the nature of his or her conduct, or (c) when the actor is nineteen years of age or older and the victim is at least twelve but less than sixteen years of age is guilty of sexual assault in the first degree.”
- **Second Degree** – “Any person who subjects another person to sexual contact (a) without consent of the victim, or (b) who knew or should have known that the victim was physically or mentally incapable of resisting or appraising the nature of his or her conduct is guilty of sexual assault in either the second degree or third degree. Sexual assault shall be in the second degree and is a Class III felony if the actor shall have caused serious personal injury to the victim.”
- **Third Degree** – “Sexual assault shall be in the third degree and is a Class I misdemeanor if the actor shall not have caused serious personal injury to the victim.”

## PENALTIES FOR SEXUAL ASSAULT

The penalties for a conviction for sexual assault in Nebraska depend on the level of the offense as follows:

- **First Degree as a Class II Felony** – minimum of one year in prison and a maximum of 50 years in prison.
- **Second Degree as a Class III Felony** – minimum of one year in prison and a maximum of 25 years and/or a \$25,000 fine.
- **Third Degree as a Class I Misdemeanor**—no minimum sentence and a maximum of up to one year imprisonment and/or a \$1,000 fine.

## REGISTERING AS A SEX OFFENDER

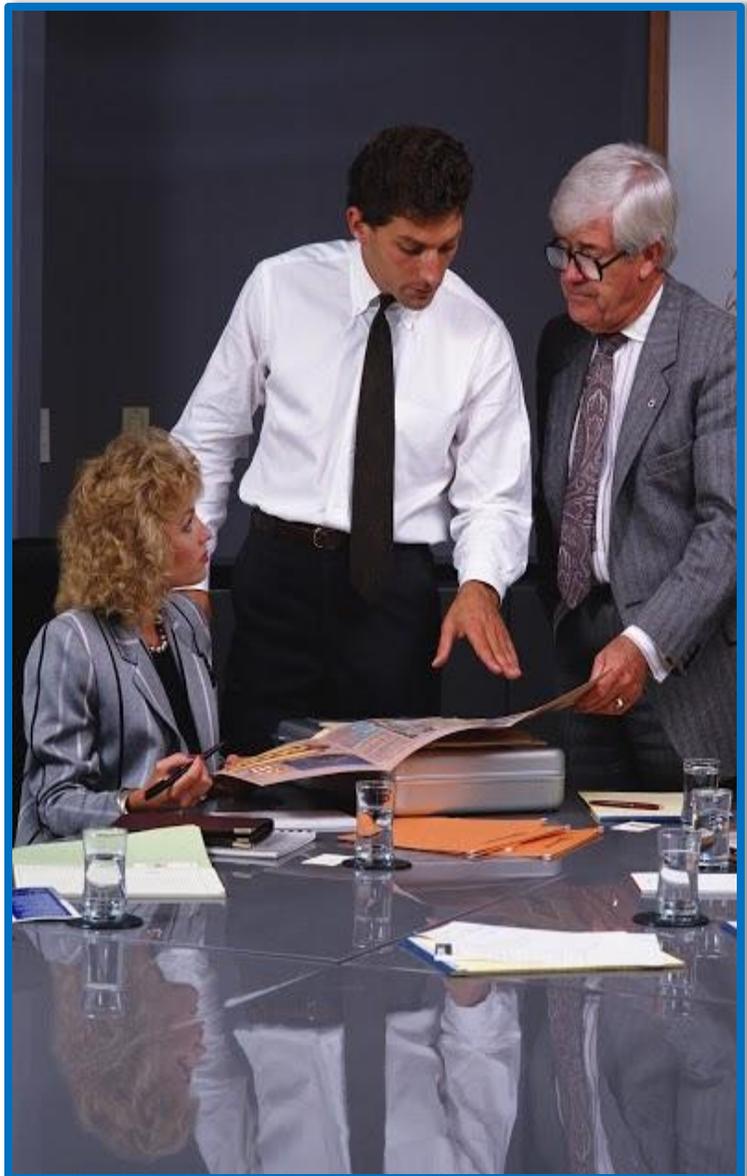
In addition to any term of incarceration ordered as part of the sentencing when convicted of a sexual assault offense, an offender will be ordered to register as a sex offender with the Nebraska Sex Offender Registry. The list of offenses that require an offender to register is long and includes Sexual Assault in the 1<sup>st</sup>, 2<sup>nd</sup>, and 3<sup>rd</sup> degree. The amount of time an offender is required to remain registered with the Sex Offender Registry depends on the offense for which he/she was convicted as follows:

- **15 years** for an offense not punishable by imprisonment for more than one year. (usually misdemeanor offenses)
- **25 years** for an offense punishable by imprisonment for more than one year. (usually non-violent felonies)

- **Life** for an offense punishable by imprisonment for more than one year AND the offense was an aggravated offense OR had a prior sex offense conviction OR the offender has been determined to be a lifetime registrant in another jurisdiction.

## STATUTORY RAPE AND THE AGE OF CONSENT

Before discussing common defenses it is important to understand what statutory rape is in the State of Nebraska and at what age an individual can legally give consent to sexual conduct. “Consent” as defense only works if the alleged victim was legally allowed to give consent. The age of consent in Nebraska is usually 17 years old; however, it can decrease to 16 years old or increase to 18 years old depending on the age of the other party as well as the relationship between the parties. Nebraska has a “Romeo and Juliet” law that addresses consensual conduct between teenagers which allows an



individual who is 16 years old to consent to sexual conduct with someone who is no more than two years older. When the older party is in a position of authority over the younger party, however, such as a teacher and student, the age of consent can increase to 18 years old. When in doubt, always check with an experienced Nebraska criminal defense attorney.

## DEFENSES TO SEXUAL ASSAULT



Every prosecution for sexual assault is based on a unique set of facts and circumstances. For this reason, only an experienced criminal defense attorney can evaluate your case and advise you as to the defenses that may be available in your case;

however, there are some commonly used defenses in cases involving accusations of sexual assault, including:

- **Consent** – uses consent as a defense means that you admit the conduct in question occurred; however, your assertion is that the alleged victim was a willing participant. Note that this can **never** be used if the alleged victim is under the legal age of consent because remember that even if an underage participant initiated the conduct he/she *cannot legally consent*.

- **“Wrong person”**-- this defense is used when the alleged victim did not know the perpetrator prior to the sexual assault. Victims are often shown photo arrays or asked to participate in line-ups in an attempt to identify a perpetrator. More often than you may think the wrong person is identified by the alleged victim, either because he/she didn't really see the person clearly and/or because the police subtly encourage a specific identification.
- **“Never happened”** – with this defense you assert that the alleged assault never occurred. This defense is most often used when the conduct in question allegedly occurred months, or even years, before the alleged victim reported it.
- **Questionable motivation** – sadly, false allegations of sexual assault are often made by a jilted lover or an ex-spouse. Crying “rape” is a time honored way to get back at someone or to sway a court in a custody battle.
- **Evidentiary challenges** –the police are not infallible. Sometimes, evidence is collected illegally or there is a problem with the chain of custody once the evidence is legally collected. If the evidence was collected through an illegal search and seizure, or the chain of custody was tainted, it may be excluded from trial.

If you have been accused of sexual assault in Nebraska it is imperative that you take the accusation seriously. A conviction could negatively impact your life for years to come. Simply denying the accusation is not sufficient. Consult with an experienced Nebraska criminal defense attorney immediately to ensure that your rights are protected throughout the prosecution of the case.

## REFERENCES

Nebraska Revised Statutes 28-319, [Sexual Assault First Degree](#)

Nebraska Revised Statutes 28-320, [Sexual Assault Second and Third Degree](#)

Nebraska Government Website, [Nebraska Sex Offender Registry](#)

Criminal Defense Lawyer, [Nebraska Statutory Rape Laws](#)

US Legal, [Defenses](#)

## About Petersen Criminal Defense Law



### Omaha, Nebraska Law Firm: Committed To Making Your Voice Heard By The System

Established in 1995, Petersen Criminal Law follows a simple firm philosophy: Our clients are presumed innocent until proven guilty. Our firm's attorney, Thomas M. Petersen, has devoted his career to this philosophy, helping clients throughout the Omaha, Nebraska, area make sure their voices are heard in the criminal defense system.

In that time, he has handled over 6,000 criminal defense cases and represented clients in numerous trials. This experience means he is a battle-tested veteran of the criminal defense system who has committed himself to putting to work for you the insights he has gained.

### Your Decision Today Affects The Rest Of Your Life

Facing criminal charges means your future is at stake. You do not have to let a Nebraska criminal case ruin your life, though your choices today do affect your future.

For that reason, you want an adviser in your corner who has traveled this road before and understands the terrain. You do not want to test your ability to learn the law on your own when your own liberty is at stake.

No Lectures No Judging. We Just Defend You.

Call Petersen Criminal Law at 402-909-0367. You can also schedule your initial consult by contacting the firm online. All consultations with our firm remain completely confidential.

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