

LEGISLATIVE BILL 141

Approved by the Governor March 27, 2019

Introduced by DeBoer, 10; Blood, 3; Bolz, 29; Crawford, 45; Dorn, 30; Howard, 9; Hunt, 8; Lathrop, 12; McCollister, 20; Morfeld, 46; Pansing Brooks, 28; Quick, 35; Vargas, 7; Wishart, 27.

A BILL FOR AN ACT relating to crimes and offenses; to amend sections 28-115 and 28-310.01, Reissue Revised Statutes of Nebraska; to prohibit assault by strangulation or suffocation as prescribed; to provide for an enhanced penalty for assault by strangulation or suffocation of a pregnant woman; to harmonize provisions; and to repeal the original sections.

Be it enacted by the people of the State of Nebraska,

Section 1. Section 28-115, Reissue Revised Statutes of Nebraska, is amended to read:

28-115 (1) Except as provided in subsection (2) of this section, any person who commits any of the following criminal offenses against a pregnant woman shall be punished by the imposition of the next higher penalty classification than the penalty classification prescribed for the criminal offense:

- (a) Assault in the first degree, section 28-308;
- (b) Assault in the second degree, section 28-309;
- (c) Assault in the third degree, section 28-310;
- (d) Assault by strangulation or suffocation, section 28-310.01;
- (e) ~~(d)~~ Sexual assault in the first degree, section 28-319;
- (f) ~~(e)~~ Sexual assault in the second or third degree, section 28-320;
- (g) ~~(f)~~ Sexual assault of a child in the first degree, section 28-319.01;
- (h) ~~(g)~~ Sexual assault of a child in the second or third degree, section 28-320.01;
- (i) ~~(h)~~ Sexual abuse of an inmate or parolee in the first degree, section 28-322.02;
- (j) ~~(i)~~ Sexual abuse of an inmate or parolee in the second degree, section 28-322.03;
- (k) ~~(j)~~ Sexual abuse of a protected individual in the first or second degree, section 28-322.04;
- (l) ~~(k)~~ Domestic assault in the first, second, or third degree, section 28-323;
- (m) ~~(l)~~ Assault on an officer, an emergency responder, a state correctional employee, a Department of Health and Human Services employee, or a health care professional in the first degree, section 28-929;
- (n) ~~(m)~~ Assault on an officer, an emergency responder, a state correctional employee, a Department of Health and Human Services employee, or a health care professional in the second degree, section 28-930;
- (o) ~~(n)~~ Assault on an officer, an emergency responder, a state correctional employee, a Department of Health and Human Services employee, or a health care professional in the third degree, section 28-931;
- (p) ~~(o)~~ Assault on an officer, an emergency responder, a state correctional employee, a Department of Health and Human Services employee, or a health care professional using a motor vehicle, section 28-931.01;
- (q) ~~(p)~~ Assault by a confined person, section 28-932;
- (r) ~~(q)~~ Confined person committing offenses against another person, section 28-933; and
- (s) ~~(r)~~ Proximately causing serious bodily injury while operating a motor vehicle, section 60-6,198.

(2) The enhancement in subsection (1) of this section does not apply to any criminal offense listed in subsection (1) of this section that is already punishable as a Class I, IA, or IB felony. If any criminal offense listed in subsection (1) of this section is punishable as a Class I misdemeanor, the penalty under this section is a Class IIIA felony.

(3) The prosecution shall allege and prove beyond a reasonable doubt that the victim was pregnant at the time of the offense.

Sec. 2. Section 28-310.01, Reissue Revised Statutes of Nebraska, is amended to read:

28-310.01 (1) A person commits the offense of assault by strangulation or suffocation if the person knowingly and intentionally: ~~or~~

(a) ~~Impedes intentionally impedes~~ the normal breathing or circulation of the blood of another person by applying pressure on the throat or neck of the other person; or -

(b) Impedes the normal breathing of another person by covering the mouth and nose of the person.

(2) An offense is committed under this section regardless of whether a visible injury resulted.

(3) ~~(2)~~ Except as provided in subsection (4) ~~(3)~~ of this section, a violation of this section ~~strangulation~~ is a Class IIIA felony.

(4) A violation of this section ~~(3)~~ ~~Strangulation~~ is a Class IIA felony if:

- (a) The person used or attempted to use a dangerous instrument while

committing the offense;

(b) The person caused serious bodily injury to the other person while committing the offense; or

(c) The person has been previously convicted of a violation of this section strangulation.

(5) (4) It is an affirmative defense that an act constituting strangulation or suffocation was the result of a legitimate medical procedure.

Sec. 3. Original sections 28-115 and 28-310.01, Reissue Revised Statutes of Nebraska, are repealed.