

LEGISLATURE OF NEBRASKA
ONE HUNDRED SIXTH LEGISLATURE
FIRST SESSION

LEGISLATIVE BILL 141

FINAL READING

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.

Read first time January 11, 2019

Committee: Judiciary

- 1 A BILL FOR AN ACT relating to crimes and offenses; to amend sections
- 2 28-115 and 28-310.01, Reissue Revised Statutes of Nebraska; to
- 3 prohibit assault by strangulation or suffocation as prescribed; to
- 4 provide for an enhanced penalty for assault by strangulation or
- 5 suffocation of a pregnant woman; to harmonize provisions; and to
- 6 repeal the original sections.
- 7 Be it enacted by the people of the State of Nebraska,

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

3 28-115 (1) Except as provided in subsection (2) of this section, any
4 person who commits any of the following criminal offenses against a
5 pregnant woman shall be punished by the imposition of the next higher
6 penalty classification than the penalty classification prescribed for the
7 criminal offense:

8 (a) Assault in the first degree, section 28-308;

9 (b) Assault in the second degree, section 28-309;

10 (c) Assault in the third degree, section 28-310;

11 (d) Assault by strangulation or suffocation, section 28-310.01;

12 (e) ~~(d)~~ Sexual assault in the first degree, section 28-319;

13 (f) ~~(e)~~ Sexual assault in the second or third degree, section
14 28-320;

15 (g) ~~(f)~~ Sexual assault of a child in the first degree, section
16 28-319.01;

17 (h) ~~(g)~~ Sexual assault of a child in the second or third degree,
18 section 28-320.01;

19 (i) ~~(h)~~ Sexual abuse of an inmate or parolee in the first degree,
20 section 28-322.02;

21 (j) ~~(i)~~ Sexual abuse of an inmate or parolee in the second degree,
22 section 28-322.03;

23 (k) ~~(j)~~ Sexual abuse of a protected individual in the first or
24 second degree, section 28-322.04;

25 (l) ~~(k)~~ Domestic assault in the first, second, or third degree,
26 section 28-323;

27 (m) ~~(l)~~ Assault on an officer, an emergency responder, a state
28 correctional employee, a Department of Health and Human Services
29 employee, or a health care professional in the first degree, section
30 28-929;

31 (n) ~~(m)~~ Assault on an officer, an emergency responder, a state

1 correctional employee, a Department of Health and Human Services
2 employee, or a health care professional in the second degree, section
3 28-930;

4 ~~(o)~~ ~~(n)~~ Assault on an officer, an emergency responder, a state
5 correctional employee, a Department of Health and Human Services
6 employee, or a health care professional in the third degree, section
7 28-931;

8 ~~(p)~~ ~~(o)~~ Assault on an officer, an emergency responder, a state
9 correctional employee, a Department of Health and Human Services
10 employee, or a health care professional using a motor vehicle, section
11 28-931.01;

12 ~~(q)~~ ~~(p)~~ Assault by a confined person, section 28-932;

13 ~~(r)~~ ~~(q)~~ Confined person committing offenses against another person,
14 section 28-933; and

15 ~~(s)~~ ~~(r)~~ Proximately causing serious bodily injury while operating a
16 motor vehicle, section 60-6,198.

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

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

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

26 28-310.01 (1) A person commits the offense of assault by
27 strangulation or suffocation if the person knowingly and intentionally:
28 ~~or~~

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

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

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

5 **(3) (2) Except as provided in subsection (4) (3) of this section, a**
6 **violation of this section strangulation** is a Class IIIA felony.

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

9 (a) The person used or attempted to use a dangerous instrument while
10 committing the offense;

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

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

15 **(5) (4) It is an affirmative defense that an act constituting**
16 **strangulation or suffocation** was the result of a legitimate medical
17 procedure.

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