

LEGISLATURE OF NEBRASKA  
ONE HUNDRED SEVENTH LEGISLATURE  
FIRST SESSION

**LEGISLATIVE BILL 315**

Introduced by Cavanaugh, J., 9.

Read first time January 13, 2021

Committee: Judiciary

- 1 A BILL FOR AN ACT relating to crimes and offenses; to amend section
- 2 28-323, Reissue Revised Statutes of Nebraska, and section 28-310.01,
- 3 Revised Statutes Cumulative Supplement, 2020; to change penalties
- 4 for certain assault offenses; and to repeal the original sections.
- 5 Be it enacted by the people of the State of Nebraska,

1 Section 1. Section 28-310.01, Revised Statutes Cumulative  
2 Supplement, 2020, is amended to read:

3 28-310.01 (1) A person commits the offense of assault by  
4 strangulation or suffocation if the person knowingly and intentionally:

5 (a) Impedes the normal breathing or circulation of the blood of  
6 another person by applying pressure on the throat or neck of the other  
7 person; or

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

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

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

14 (4) A violation of this section is a Class IIA felony if:

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

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

19 (c) The person has been previously convicted of a violation of this  
20 section or of any other state or federal law with essentially the same  
21 elements.

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

25 Sec. 2. Section 28-323, Reissue Revised Statutes of Nebraska, is  
26 amended to read:

27 28-323 (1) A person commits the offense of domestic assault in the  
28 third degree if he or she:

29 (a) Intentionally and knowingly causes bodily injury to his or her  
30 intimate partner;

31 (b) Threatens an intimate partner with imminent bodily injury; or

1 (c) Threatens an intimate partner in a menacing manner.

2 (2) A person commits the offense of domestic assault in the second  
3 degree if he or she intentionally and knowingly causes bodily injury to  
4 his or her intimate partner with a dangerous instrument.

5 (3) A person commits the offense of domestic assault in the first  
6 degree if he or she intentionally and knowingly causes serious bodily  
7 injury to his or her intimate partner.

8 (4) Violation of subdivision (1)(a) or (b) of this section is a:

9 (a) Class I misdemeanor for a first offense; and ~~, except that for~~  
10 ~~any subsequent violation of subdivision (1)(a) or (b) of this section,~~  
11 ~~any person so offending is guilty of a~~

12 (b) Class IIIA felony if the person has previously been convicted of  
13 violating subdivision (1)(a) or (b) or subsection (2) or (3) of this  
14 section or any other state or federal law with essentially the same  
15 elements as any of such subdivisions or subsections.

16 (5) Violation of subdivision (1)(c) of this section is a Class I  
17 misdemeanor.

18 (6) Violation of subsection (2) of this section is a:

19 (a) Class IIA IIIA felony for a first offense; and ~~, except that for~~  
20 ~~any second or subsequent violation of such subsection, any person so~~  
21 ~~offending is guilty of a~~

22 (b) Class II IIA felony if the person has previously been convicted  
23 of violating subsection (2) or (3) of this section or any other state or  
24 federal law with essentially the same elements as either of such  
25 subsections.

26 (7) Violation of subsection (3) of this section is a Class II IIA  
27 ~~felony, except that for any second or subsequent violation under such~~  
28 ~~subsection, any person so offending is guilty of a Class II felony.~~

29 (8) For purposes of this section, intimate partner means a spouse; a  
30 former spouse; persons who have a child in common whether or not they  
31 have been married or lived together at any time; and persons who are or

1 were involved in a dating relationship. For purposes of this subsection,  
2 dating relationship means frequent, intimate associations primarily  
3 characterized by the expectation of affectional or sexual involvement,  
4 but does not include a casual relationship or an ordinary association  
5 between persons in a business or social context.

6 Sec. 3. Original section 28-323, Reissue Revised Statutes of  
7 Nebraska, and section 28-310.01, Revised Statutes Cumulative Supplement,  
8 2020, are repealed.