AMENDMENTS TO LB141

Introduced by Judiciary.

1. Strike the original sections and insert the following new sections:

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) Sexual assault in the first degree, section 28-319;
(f) Sexual assault in the second or third degree, section 28-320;
(g) Sexual assault of a child in the first degree, section 28-319.01;
(h) Sexual assault of a child in the second or third degree, section 28-320.01;
(i) Sexual abuse of an inmate or parolee in the first degree, section 28-322.02;
(j) Sexual abuse of an inmate or parolee in the second degree, section 28-322.03;
(k) Sexual abuse of a protected individual in the first or second degree, section 28-322.04;
(l) Domestic assault in the first, second, or third degree,
section 28-323;

(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 first degree, section 28-929;

(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 second degree, section 28-930;

(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 in the third degree, section 28-931;

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

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

(s) 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 or intentionally:

(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) 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.