

LEGISLATIVE BILL 57

Approved by the Governor April 13, 2006

Introduced by Foley, 29; Dw. Pedersen, 39; Erdman, 47; Flood, 19; Friend, 10; Redfield, 12

AN ACT relating to crimes and offenses; to amend section 60-6,198, Reissue Revised Statutes of Nebraska, and section 28-101, Revised Statutes Cumulative Supplement, 2004; to adopt the Assault of an Unborn Child Act; to provide penalties; to enhance penalties for certain assaults committed on a pregnant woman; to provide a penalty for causing serious bodily injury to an unborn child while driving under the influence; to harmonize provisions; to repeal the original sections; and to declare an emergency.

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

Section 1. Section 28-101, Revised Statutes Cumulative Supplement, 2004, is amended to read:

28-101 Sections 28-101 to 28-1350 and sections 2 to 9 of this act shall be known and may be cited as the Nebraska Criminal Code.

Sec. 2. Sections 2 to 8 of this act shall be known and may be cited as the Assault of an Unborn Child Act.

Sec. 3. For purposes of the Assault of an Unborn Child Act, unborn child means an individual member of the species Homo sapiens at any stage of development in utero.

Sec. 4. (1) A person commits the offense of assault of an unborn child in the first degree if he or she, during the commission of any criminal assault on a pregnant woman, intentionally or knowingly causes serious bodily injury to her unborn child.

(2) Assault of an unborn child in the first degree is a Class III felony.

Sec. 5. (1) A person commits the offense of assault of an unborn child in the second degree if he or she, during the commission of any criminal assault on a pregnant woman, recklessly causes serious bodily injury to her unborn child with a dangerous instrument.

(2) Assault of an unborn child in the second degree is a Class IIIA felony.

Sec. 6. (1) A person commits the offense of assault of an unborn child in the third degree if he or she, during the commission of any criminal assault on a pregnant woman, recklessly causes serious bodily injury to her unborn child.

(2) Assault of an unborn child in the third degree is a Class I misdemeanor.

Sec. 7. The Assault of an Unborn Child Act does not apply to:

(1) Any act or conduct that is committed or engaged in by the mother of the unborn child;

(2) Any medical procedure performed with the consent of the mother;
or

(3) Dispensing a drug or device in accordance with law or administering a drug or device prescribed in accordance with law.

Sec. 8. Assault on a pregnant woman and assault on her unborn child shall be considered as separate acts or conduct for purposes of prosecution.

Sec. 9. (1) 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, unless such criminal offense is already punishable as a Class IB felony or higher classification: Assault in the first degree, section 28-308; assault in the second degree, section 28-309; assault in the third degree, section 28-310; sexual assault in the first degree, section 28-319; sexual assault in the second or third degree, section 28-320; sexual assault of a child in the second or third degree, section 28-320.01; sexual abuse of an inmate or parolee in the first degree, section 28-322.01; sexual abuse of an inmate or parolee in the second degree, section 28-322.03; sexual abuse of a protected individual in the first or second degree, section 28-322.04; domestic assault in the first, second, or third degree, section 28-323; assault on an officer in the first degree, section 28-929; assault on an officer in the second degree, section 28-930; assault on an officer in the third degree, section 28-931; assault on an officer using a motor vehicle, section 28-931.01; assault by a confined person, section 28-933; proximately causing serious bodily injury while operating a motor vehicle, section 60-6,198; and sexual assault of a child in the first degree, section

6, Legislative Bill 1199, Ninety-ninth Legislature, Second Session, 2006.

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

Sec. 10. Section 60-6,198, Reissue Revised Statutes of Nebraska, is amended to read:

60-6,198 (1) Any person who, while operating a motor vehicle in violation of section 60-6,196 or 60-6,197, proximately causes serious bodily injury to another person or an unborn child of a pregnant woman shall be guilty of a Class IIIA felony and the court shall, as part of the judgment of conviction, order the person not to drive any motor vehicle for any purpose for a period of at least sixty days and not more than fifteen years from the date ordered by the court and shall order that the operator's license of such person be revoked for the same period.

(2) For purposes of this section, serious bodily injury shall mean bodily injury which involves a substantial risk of death, a substantial risk of serious permanent disfigurement, or a temporary or protracted loss or impairment of the function of any part or organ of the body.

(3) For purposes of this section, unborn child shall have the same meaning as in section 3 of this act.

Sec. 11. Original section 60-6,198, Reissue Revised Statutes of Nebraska, and section 28-101, Revised Statutes Cumulative Supplement, 2004, are repealed.

Sec. 12. Since an emergency exists, this act takes effect when passed and approved according to law.