

One Hundred Third Legislature - First Session - 2013

Introducer's Statement of Intent

LB115

Chairperson: Senator Brad Ashford

Committee: Judiciary

Date of Hearing: February 07, 2013

The following constitutes the reasons for this bill and the purposes which are sought to be accomplished thereby:

The Nebraska Supreme Court established in *State v. Smith*, 282 Neb. 720 (2011), and *State v. Smith*, 284 Neb. 636 (2012), that the State's manslaughter statute, section 28-305, has two separate and distinct parts. The first is a voluntary offense where a person has intentionally killed another person but such offense is mitigated due to the presence of a legally sufficient provocation. The second distinct manslaughter offense is the unintentional killing of a person while in the commission of an unlawful act.

LB 115 brings the Nebraska statutes into conformity with the two Nebraska Supreme Court decisions by separating manslaughter into the described voluntary and involuntary offenses and incorporating the Supreme Court's definitions of "sudden quarrel" and "legally sufficient provocation." The punishment for voluntary manslaughter is set as a class II felony based upon the fact that it is an intentional killing. Such classification is a mitigation of the next higher intentional killing, second degree murder, which is a class IB felony. Involuntary manslaughter continues to be a class III felony.

LB 115 also addresses the issue raised by the Supreme Court in *State v. Smith*, CR 284 Neb. 636 (2012), regarding section 29-2027 which requires trial courts to instruct juries in all levels of murder cases to consider first degree murder, second degree murder and manslaughter regardless of either the evidence or level of murder offense charged. The bill repeals section 29-2027.

Principal Introducer: _____

Senator Scott Lautenbaugh