

LEGISLATURE OF NEBRASKA
ONE HUNDREDTH LEGISLATURE
SECOND SESSION
LEGISLATIVE BILL 1025

Introduced by McGill, 26.

Read first time January 17, 2008

Committee: Judiciary

A BILL

1 FOR AN ACT relating to domestic violence; to amend section 42-925,
2 Reissue Revised Statutes of Nebraska, and section 28-323,
3 Revised Statutes Cumulative Supplement, 2006; to require
4 notice of federal law as prescribed; to change provisions
5 for issuance of protection orders; and to repeal the
6 original sections.
7 Be it enacted by the people of the State of Nebraska,

1 Section 1. Section 28-323, Revised Statutes Cumulative
2 Supplement, 2006, is amended to read:

3 28-323 (1) A person commits the offense of domestic
4 assault in the third degree if he or she:

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

7 (b) Places, by physical menace, his or her intimate
8 partner in fear of imminent bodily injury.

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

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

16 (4) Violation of subsection (1) of this section is a
17 Class I misdemeanor, except that for any second or subsequent
18 violation of such subsection within twelve years after the date of
19 the current conviction, any person so offending against the same
20 intimate partner is guilty of a Class IV felony.

21 (5) Violation of subsection (2) of this section is
22 a Class IIIA felony, except that for any second or subsequent
23 violation of such subsection within twelve years after the date of
24 the current conviction, any person so offending against the same
25 intimate partner is guilty of a Class III felony.

1 (6) Violation of subsection (3) of this section is
2 a Class III felony, except that for any second or subsequent
3 violation under such subsection within twelve years after the date
4 of the current conviction, any person so offending against the same
5 intimate partner is guilty of a Class II felony.

6 (7) For purposes of this section, intimate partner means
7 a spouse; a former spouse; persons who have a child in common
8 whether or not they have been married or lived together at
9 any time; and persons who are or were involved in a dating
10 relationship. For purposes of this subsection, dating relationship
11 means frequent, intimate associations primarily characterized by
12 the expectation of affectional or sexual involvement, but does not
13 include a casual relationship or an ordinary association between
14 persons in a business or social context.

15 (8) When sentencing a person convicted of the offense
16 of domestic assault under this section, the court shall provide
17 written or oral notification to the defendant that it may be a
18 violation of federal law for the individual: To ship or transport
19 in interstate or foreign commerce, or possess in or affecting
20 commerce, any firearm or ammunition; or to receive any firearm or
21 ammunition which has been shipped or transported in interstate or
22 foreign commerce.

23 (9) The State Court Administrator's Office shall create a
24 standard notification that provides the information in subsection
25 (8) of this section and shall provide a copy of such notification

1 to all judges in this state.

2 Sec. 2. Section 42-925, Reissue Revised Statutes of
3 Nebraska, is amended to read:

4 42-925 ~~Any~~ (1) An order issued under subsection (1)
5 of section 42-924 may be issued ex parte to the respondent if
6 it reasonably appears from the specific facts included in the
7 affidavit that the petitioner will be in immediate danger of abuse
8 before the matter can be heard on notice. If an order is issued
9 ex parte, an evidentiary hearing shall be scheduled not more than
10 thirty days after service of such order, and the court shall
11 cause notice of the hearing to be given to the petitioner and
12 the respondent. If the respondent appears at the hearing and shows
13 cause why such order should not remain in effect, the court shall
14 rescind the order. If the respondent does not so appear and show
15 cause, the order shall be affirmed.

16 (2) If an order under subsection (1) of section 42-924
17 is not issued ex parte, an evidentiary hearing shall be scheduled
18 not more than fourteen days after the filing of the petition, and
19 the court shall cause notice of the hearing to be given to the
20 petitioner and the respondent. If the respondent does not appear at
21 the hearing and show cause why such order should not be issued, the
22 court shall issue such order.

23 (3) An order issued under subsection (1) of section
24 42-924 shall remain in effect for a period of one year from
25 the date of issuance, unless vacated by the court prior to such

1 date. If the order grants temporary custody, such custody shall
2 not exceed the number of days specified by the court unless the
3 respondent shows cause why the order should not remain in effect.

4 (4) The court shall also cause notice to be served upon
5 the respondent pursuant to section 28-323 that it may be unlawful
6 under federal law for any person who is subject to a protection
7 order to possess or receive any firearm or ammunition.~~(1) If the~~
8 ~~specific facts included in the affidavit do not show that the~~
9 ~~petitioner will be in immediate danger of abuse or (2) if the~~
10 ~~court does not issue an ex parte order or grants only part of the~~
11 ~~relief sought,~~ the court or judge may forthwith cause notice of
12 the petition to be given to the respondent stating that he or she
13 may show cause, not more than fourteen days after service upon him
14 or her, why such order should not be entered. If such ex parte
15 order is issued to the respondent, the court shall forthwith cause
16 notice of the petition and order to be given the respondent stating
17 that, upon service on the respondent, the order shall remain in
18 effect for a period of one year and, if the order grants temporary
19 custody, that such custody shall not exceed the number of days
20 specified by the court unless the respondent shows cause why the
21 order should not remain in effect. The court shall also cause
22 to be served upon the respondent a form with which to request a
23 show-cause hearing. If the respondent wishes to appear and show
24 cause why the order should not remain in effect, he or she shall
25 affix his or her current address, telephone number, and signature

1 to the form and return it to the clerk of the district court
2 within five days after service upon him or her. Upon receipt of
3 the request for a show-cause hearing, the court shall immediately
4 schedule a show-cause hearing to be held within thirty days after
5 the receipt of the request for a show-cause hearing and shall
6 notify the petitioner and respondent of the hearing date.

7 Sec. 3. Original section 42-925, Reissue Revised Statutes
8 of Nebraska, and section 28-323, Revised Statutes Cumulative
9 Supplement, 2006, are repealed.