

AMENDMENTS TO LB 920

Introduced by Judiciary

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

3 Section 1. Section 28-311.09, Reissue Revised Statutes of
4 Nebraska, is amended to read:

5 28-311.09 (1) Any victim who has been harassed as
6 defined by section 28-311.02 may file a petition and affidavit
7 for a harassment protection order as provided in subsection
8 (3) of this section. Upon the filing of such a petition and
9 affidavit in support thereof, the judge or court may issue a
10 harassment protection order without bond enjoining the respondent
11 from (a) imposing any restraint upon the person or liberty of
12 the petitioner, (b) harassing, threatening, assaulting, molesting,
13 attacking, or otherwise disturbing the peace of the petitioner, or
14 (c) telephoning, contacting, or otherwise communicating with the
15 petitioner.

16 (2) The petition for a harassment protection order shall
17 state the events and dates of acts constituting the alleged
18 harassment.

19 (3) A petition for a harassment protection order shall be
20 filed with the clerk of the district court, and the proceeding may
21 be heard by the county court or the district court as provided in
22 section 25-2740.

23 (4) A petition for a harassment protection order filed

1 pursuant to subsection (1) of this section may not be withdrawn
2 except upon order of the court. An order issued pursuant to
3 subsection (1) of this section shall specify that it is effective
4 for a period of one year unless otherwise dismissed or modified
5 by the court. Any person who knowingly violates an order issued
6 pursuant to subsection (1) of this section after service or notice
7 as described in subdivision (8)(b) of this section shall be guilty
8 of a Class II misdemeanor.

9 (5) (a) Fees to cover costs associated with the filing of
10 a petition for a harassment protection order or the issuance or
11 service of a harassment protection order seeking only the relief
12 provided by this section shall not be charged, except that a court
13 may assess such fees and costs if the court finds, by clear and
14 convincing evidence, that the statements contained in the petition
15 were false and that the harassment protection order was sought in
16 bad faith.

17 (b) A court may also assess costs associated with the
18 filing of a petition for a harassment protection order or the
19 issuance or service of a harassment protection order seeking only
20 the relief sought in the harassment protection order against the
21 respondent.

22 (6) The clerk of the district court shall make available
23 standard application and affidavit forms for a harassment
24 protection order with instructions for completion to be used by a
25 petitioner. The clerk and his or her employees shall not provide
26 assistance in completing the forms. The State Court Administrator
27 shall adopt and promulgate the standard application and affidavit

1 forms provided for in this section as well as the standard
2 temporary and final harassment protection order forms and provide
3 a copy of such forms to all clerks of the district courts in this
4 state. These standard temporary and final harassment protection
5 order forms shall be the only such forms used in this state.

6 (7) Any order issued under subsection (1) of this section
7 may be issued ex parte without notice to the respondent if it
8 reasonably appears from the specific facts shown by affidavit of
9 the petitioner that irreparable harm, loss, or damage will result
10 before the matter can be heard on notice. If the specific facts
11 included in the affidavit (a) do not show that the petitioner will
12 suffer irreparable harm, loss, or damage or (b) show that, for any
13 other compelling reason, an ex parte order should not be issued,
14 the court or judge may forthwith cause notice of the application
15 to be given to the adverse party stating that he or she may show
16 cause, not more than fourteen days after service upon him or her,
17 why such order should not be entered. If such ex parte order is
18 issued without notice to the respondent, the court shall forthwith
19 cause notice of the petition and order to be given the respondent
20 stating that, upon service on the respondent, the order shall
21 remain in effect for a period of one year unless the respondent
22 shows cause why the order should not remain in effect for a period
23 of one year. The court shall also cause to be served upon the
24 respondent a form with which to request a show-cause hearing. If
25 the respondent wishes to appear and show cause why the order should
26 not remain in effect for a period of one year, he or she shall
27 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 ~~(8)~~ (8) (a) Upon the issuance of any harassment protection
8 order under this section, the clerk of the court shall forthwith
9 provide the petitioner, without charge, with two certified copies
10 of such order. The clerk of the court shall also forthwith provide
11 the local police department or local law enforcement agency and
12 the local sheriff's office, without charge, with one copy each
13 of such order and one copy each of the sheriff's return thereon.
14 The clerk of the court shall also forthwith provide a copy of
15 the harassment protection order to the sheriff's office in the
16 county where the respondent may be personally served together
17 with instructions for service. Upon receipt of the order and
18 instructions for service, such sheriff's office shall forthwith
19 serve the harassment protection order upon the respondent and file
20 its return thereon with the clerk of the court which issued the
21 harassment protection order within fourteen days of the issuance
22 of the harassment protection order. If any harassment protection
23 order is dismissed or modified by the court, the clerk of the court
24 shall forthwith provide the local police department or local law
25 enforcement agency and the local sheriff's office, without charge,
26 with one copy each of the order of dismissal or modification.

27 (b) If the respondent is present at a hearing convened

1 pursuant to this section and the harassment protection order is
2 not dismissed or modified, such respondent shall be deemed to have
3 notice by the court at such hearing that the protection order will
4 be granted and remain in effect and further service of such notice
5 described in this subsection shall not be required for purposes of
6 prosecution under this section. If the respondent has been properly
7 served with the ex parte order and fails to appear at the hearing
8 required under this section, the temporary order shall be deemed to
9 be granted and remain in effect and the service of the ex parte
10 order will serve as notice required under this section.

11 (9) A peace officer may with or without a warrant arrest
12 a person if (a) the officer has probable cause to believe that
13 the person has committed a violation of an order issued pursuant
14 to this section or a violation of a valid foreign harassment
15 protection order recognized pursuant to section 28-311.10 and (b)
16 a petitioner under this section provides the peace officer with
17 a copy of a harassment protection order or the peace officer
18 determines that such an order exists after communicating with the
19 local law enforcement agency or a person protected under a valid
20 foreign harassment protection order recognized pursuant to section
21 28-311.10 provides the peace officer with a copy of a valid foreign
22 harassment protection order.

23 (10) A peace officer making an arrest pursuant to
24 subsection (9) of this section shall take such person into custody
25 and take such person before a judge of the county court or
26 the court which issued the harassment protection order within
27 a reasonable time. At such time the court shall establish the

1 conditions of such person's release from custody, including the
2 determination of bond or recognizance, as the case may be. The
3 court shall issue an order directing that such person shall have no
4 contact with the alleged victim of the harassment.

5 Sec. 2. Section 42-924, Reissue Revised Statutes of
6 Nebraska, is amended to read:

7 42-924 (1) Any victim of domestic abuse may file a
8 petition and affidavit for a protection order as provided in
9 subsection (2) of this section. Upon the filing of such a petition
10 and affidavit in support thereof, the judge or court may issue a
11 protection order without bond granting the following relief:

12 (a) Enjoining the respondent from imposing any restraint
13 upon the petitioner or upon the liberty of the petitioner;

14 (b) Enjoining the respondent from threatening,
15 assaulting, molesting, attacking, or otherwise disturbing the peace
16 of the petitioner;

17 (c) Enjoining the respondent from telephoning,
18 contacting, or otherwise communicating with the petitioner;

19 (d) Removing and excluding the respondent from the
20 residence of the petitioner, regardless of the ownership of the
21 residence;

22 (e) Ordering the respondent to stay away from any place
23 specified by the court;

24 (f) Awarding the petitioner temporary custody of any
25 minor children not to exceed ninety days; ~~or~~

26 (g) Enjoining the respondent from possessing or
27 purchasing a firearm as defined in section 28-1201; or

1 ~~(g)~~ (h) Ordering such other relief deemed necessary to
2 provide for the safety and welfare of the petitioner and any
3 designated family or household member.

4 (2) Petitions for protection orders shall be filed with
5 the clerk of the district court, and the proceeding may be heard
6 by the county court or the district court as provided in section
7 25-2740.

8 (3) A petition filed pursuant to subsection (1) of this
9 section may not be withdrawn except upon order of the court. An
10 order issued pursuant to subsection (1) of this section shall
11 specify that it is effective for a period of one year and, if
12 the order grants temporary custody, the number of days of custody
13 granted to the petitioner unless otherwise modified by the court.

14 (4) Any person who knowingly violates ~~an~~ a protection
15 order issued pursuant to subsection (1) of this section or section
16 42-931 after service or notice as described in subsection (2)
17 of section 42-926 shall be guilty of a Class II misdemeanor,
18 except that (a) any person convicted of violating such order who
19 has a prior conviction for violating a protection order shall be
20 guilty of a Class I misdemeanor and (b) any person convicted of
21 violating such order who has a prior conviction for violating the
22 same protection order or a protection order granted to the same
23 petitioner shall be guilty of a Class IV felony.

24 ~~(4)~~ (5) If there is any conflict between sections 42-924
25 to 42-926 and any other provision of law, sections 42-924 to 42-926
26 shall govern.

27 Sec. 3. Section 42-925, Reissue Revised Statutes of

1 Nebraska, is amended to read:

2 42-925 (1) An order issued under subsection (1) of
3 section 42-924 may be issued ex parte to the respondent if
4 it reasonably appears from the specific facts included in the
5 affidavit that the petitioner will be in immediate danger of abuse
6 before the matter can be heard on notice. If an order is issued
7 ex parte, such order is a temporary order and the court shall
8 immediately schedule an evidentiary hearing to be held within
9 thirty days after service of such order, and the court shall
10 cause notice of the hearing to be given to the petitioner and the
11 respondent. forthwith cause notice of the petition and order to
12 be given to the respondent. The court shall also cause a form to
13 request a show-cause hearing to be served upon the respondent. If
14 the respondent wishes to appear and show cause why the order should
15 not remain in effect, he or she shall affix his or her current
16 address, telephone number, and signature to the form and return it
17 to the clerk of the district court within five days after service
18 upon him or her. Upon receipt of the request for a show-cause
19 hearing, the request of the petitioner, or upon the court's own
20 motion, the court shall immediately schedule a show-cause hearing
21 to be held within thirty days after the receipt of the request for
22 a show-cause hearing and shall notify the petitioner and respondent
23 of the hearing date. If the respondent appears at the hearing and
24 shows cause why such order should not remain in effect, the court
25 shall rescind the temporary order. If the respondent does not so
26 appear and show cause, the temporary order shall be affirmed and
27 shall be deemed the final protection order. If the respondent has

1 been properly served with the ex parte order and fails to appear
2 at the hearing required under this subsection, the temporary order
3 shall be affirmed and the service of the ex parte order shall be
4 notice of the final protection order for purposes of prosecution
5 under subsection (4) of section 42-924.

6 (2) If an order under subsection (1) of section 42-924
7 is not issued ex parte, the court shall immediately schedule an
8 evidentiary hearing to be held within fourteen days after the
9 filing of the petition, and the court shall cause notice of the
10 hearing to be given to the petitioner and the respondent. If the
11 respondent does not appear at the hearing and show cause why such
12 order should not be issued, the court shall issue ~~such~~ a final
13 protection order.

14 (3) The court may by rule or order refer or assign all
15 matters regarding orders issued under subsection (1) of section
16 42-924 to a referee for findings and recommendations.

17 (4) An order issued under subsection (1) of section
18 42-924 shall remain in effect for a period of one year from the
19 date of issuance, unless ~~vacated~~ dismissed or modified by the court
20 prior to such date. If the order grants temporary custody, such
21 custody shall not exceed the number of days specified by the court
22 unless the respondent shows cause why the order should not remain
23 in effect.

24 (5) The court shall also cause the notice created under
25 section 29-2291 to be served upon the respondent notifying the
26 respondent that it may be unlawful under federal law for a person
27 who is subject to a protection order to possess or receive any

1 firearm or ammunition.

2 Sec. 4. Section 42-926, Reissue Revised Statutes of
3 Nebraska, is amended to read:

4 42-926 (1) Upon the issuance of ~~any~~ a temporary or final
5 protection order under section 42-925, the clerk of the court
6 shall forthwith provide the petitioner, without charge, with two
7 certified copies of such order. The clerk of the court shall
8 also forthwith provide the local police department or local law
9 enforcement agency and the local sheriff's office, without charge,
10 with one copy each of such order and one copy each of the sheriff's
11 return thereon. The clerk of the court shall also forthwith provide
12 a copy of the protection order to the sheriff's office in the
13 county where the respondent may be personally served together
14 with instructions for service. Upon receipt of the order and
15 instructions for service, such sheriff's office shall forthwith
16 serve the protection order upon the respondent and file its return
17 thereon with the clerk of the court which issued the protection
18 order within fourteen days of the issuance of the protection
19 order. If any protection order is dismissed or modified by the
20 court, the clerk of the court shall forthwith provide the local
21 police department or local law enforcement agency and the local
22 sheriff's office, without charge, with one copy each of the order
23 of dismissal or modification.

24 (2) If the respondent was present at a hearing convened
25 pursuant to section 42-925 and the protection order was not
26 dismissed or modified, the respondent shall be deemed to have
27 notice by the court at such hearing that the protection order

1 will be granted and remain in effect and further service of notice
2 described in subsection (1) of this section is not required for
3 purposes of prosecution under subsection (4) of section 42-924.

4 Sec. 5. Original sections 28-311.09, 42-924, 42-925, and
5 42-926, Reissue Revised Statutes of Nebraska, are repealed.