

E AND R AMENDMENTS TO LB 310

Introduced by Larson, 40, Chairman Enrollment and Review

1 1. Strike the original sections and all amendments
2 thereto and insert the following new 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1 pursuant to subsection (1) of this section may not be withdrawn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 modified by the court.
5 Any person who knowingly violates an order issued pursuant to
6 subsection (1) of this section after service shall be guilty of a
7 Class II misdemeanor.

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

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

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

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

5 (7) Any order issued under subsection (1) of this section
6 may be issued ex parte without notice to the respondent if it
7 reasonably appears from the specific facts shown by affidavit of
8 the petitioner that irreparable harm, loss, or damage will result
9 before the matter can be heard on notice. If the specific facts
10 included in the affidavit (a) do not show that the petitioner will
11 suffer irreparable harm, loss, or damage or (b) show that, for any
12 other compelling reason, an ex parte order should not be issued,
13 the court ~~ex judge~~ may forthwith cause notice of the application
14 to be given to the adverse party respondent stating that he or she
15 may show cause, not more than fourteen days after service, ~~upon him~~
16 ~~ex her~~, why such order should not be entered. If such ex parte
17 order is issued without notice to the respondent, the court shall
18 forthwith cause notice of the petition and order and a form with
19 which to request a show-cause hearing 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) Upon the issuance of any harassment protection order,
8 ~~under this section,~~ the clerk of the court shall forthwith provide
9 the petitioner, without charge, with two certified copies of such
10 order. The clerk of the court shall also forthwith provide the
11 local police department or local law enforcement agency and the
12 local sheriff's office, without charge, with one copy each of
13 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 (9) A peace officer may, with or without a warrant,

1 arrest a person if (a) the officer has probable cause to believe
2 that the person has committed a violation of ~~an~~ a harassment
3 protection order issued pursuant to this section or a violation
4 of a valid foreign harassment protection order recognized pursuant
5 to section 28-311.10 and (b) a petitioner under this section
6 provides the peace officer with a copy of a harassment protection
7 order, ~~or~~ the peace officer determines that such an order exists
8 after communicating with the local law enforcement agency, or a
9 person protected under a valid foreign harassment protection order
10 recognized pursuant to section 28-311.10 provides the peace officer
11 with a copy of a ~~valid foreign harassment protection~~ such order.

12 (10) A peace officer making an arrest pursuant to
13 subsection (9) of this section shall take such person into custody
14 and take such person before a ~~judge~~ of the county court or
15 the court which issued the harassment protection order within
16 a reasonable time. At such time the court shall establish the
17 conditions of such person's release from custody, including the
18 determination of bond or recognizance, as the case may be. The
19 court shall issue an order directing that such person shall have no
20 contact with the alleged victim of the harassment.

21 Sec. 2. Section 42-903, Reissue Revised Statutes of
22 Nebraska, is amended to read:

23 42-903 For purposes of the Protection from Domestic Abuse
24 Act, unless the context otherwise requires:

25 (1) Abuse means the occurrence of one or more of the
26 following acts between household members:

27 (a) Attempting to cause or intentionally and knowingly

1 causing bodily injury with or without a dangerous instrument;

2 (b) Placing, by ~~physical menace,~~ means of credible
3 threat, another person in fear of ~~imminent~~ bodily injury; or

4 (c) Engaging in sexual contact or sexual penetration
5 without consent as defined in section 28-318;

6 (2) Department means the Department of Health and Human
7 Services;

8 (3) Family or household members includes spouses or
9 former spouses, children, persons who are presently residing
10 together or who have resided together in the past, persons who
11 have a child in common whether or not they have been married
12 or have lived together at any time, other persons related
13 by consanguinity or affinity, and persons who are presently
14 involved in a dating relationship with each other or who have
15 been involved in a dating relationship with each other. For
16 purposes of this subdivision, dating relationship means frequent,
17 intimate associations primarily characterized by the expectation
18 of affectional or sexual involvement, but does not include a
19 casual relationship or an ordinary association between persons in a
20 business or social context; and

21 (4) Law enforcement agency means the police department
22 or town marshal in incorporated municipalities, the office of the
23 sheriff in unincorporated areas, and the Nebraska State Patrol.

24 Sec. 3. Section 42-924, Reissue Revised Statutes of
25 Nebraska, is amended to read:

26 42-924 (1) Any victim of domestic abuse may file a
27 petition and affidavit for a protection order as provided in

1 subsection (2) of this section. Upon the filing of such a petition
2 and affidavit in support thereof, the ~~judge or~~ court may issue a
3 protection order without bond granting the following relief:

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

6 (b) Enjoining the respondent from threatening,
7 assaulting, molesting, attacking, or otherwise disturbing the peace
8 of the petitioner;

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

11 (d) Removing and excluding the respondent from the
12 residence of the petitioner, regardless of the ownership of the
13 residence;

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

16 (f) Awarding the petitioner temporary custody of any
17 minor children not to exceed ninety days; or

18 (g) Ordering such other relief deemed necessary to
19 provide for the safety and welfare of the petitioner and any
20 designated family or household member.

21 (2) Petitions for protection orders shall be filed with
22 the clerk of the district court, and the proceeding may be heard
23 by the county court or the district court as provided in section
24 25-2740.

25 (3) A petition filed pursuant to subsection (1) of this
26 section may not be withdrawn except upon order of the court. An
27 order issued pursuant to subsection (1) of this section shall

1 specify that it is effective for a period of one year and, if
2 the order grants temporary custody, the number of days of custody
3 granted to the petitioner unless otherwise modified by the court.
4 Any person who knowingly violates an order issued pursuant to
5 subsection (1) of this section or section 42-931 after service
6 shall be guilty of a Class ~~II~~ I misdemeanor, except that ~~(a)~~ any
7 person convicted of violating such order who has a prior conviction
8 for violating a protection order shall be guilty of a Class ~~I~~
9 ~~misdemeanor~~ and ~~(b)~~ any person convicted of violating such order
10 who has a prior conviction for violating the same protection order
11 or a protection order granted to the same petitioner shall be
12 guilty of a Class IV felony. IV felony.

13 (4) If there is any conflict between sections 42-924 to
14 42-926 and any other provision of law, sections 42-924 to 42-926
15 shall govern.

16 Sec. 4. Original sections 28-311.09, 42-903, and 42-924,
17 Reissue Revised Statutes of Nebraska, are repealed.

18 2. On page 1, strike lines 2 through 7 and insert
19 "28-311.09, 42-903, and 42-924, Reissue Revised Statutes of
20 Nebraska; to change provisions relating to protection order
21 petitions, definitions, and penalties; and to repeal the original
22 sections."