

LEGISLATURE OF NEBRASKA
ONE HUNDRED SECOND LEGISLATURE
SECOND SESSION
LEGISLATIVE BILL 920

Introduced by McGill, 26.

Read first time January 10, 2012

Committee: Judiciary

A BILL

1 FOR AN ACT relating to court procedure; to amend sections 28-311.09,
2 42-924, and 42-925, Reissue Revised Statutes of Nebraska;
3 to change provisions relating to harassment protection
4 orders and domestic abuse protection orders; to harmonize
5 provisions; and to repeal the original sections.
6 Be it enacted by the people of the State of Nebraska,

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

3 28-311.09 (1) Any victim who has been harassed as defined
4 by section 28-311.02 may file a petition and affidavit for a
5 harassment protection order as provided in subsection (3) of this
6 section. Upon the filing of such a petition and affidavit in support
7 thereof, the judge or court shall consider the filed documents as
8 offered evidence and may consider such documents for purposes of an
9 ex parte harassment protection order. 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 the
12 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 be
21 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
24 pursuant to subsection (1) of this section may not be withdrawn
25 except upon order of the court. An order issued pursuant to

1 subsection (1) of this section shall specify that it is effective for
2 a period of one year unless otherwise modified by the court. Any
3 person who knowingly violates an order issued pursuant to subsection
4 (1) of this section, after service being served with the order or
5 having actual notice of the order and the substance thereof, shall be
6 guilty of a Class II misdemeanor.

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

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

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

1 in this section as well as the standard temporary and final
2 harassment protection order forms and provide a copy of such forms to
3 all clerks of the district courts in this state. These standard
4 temporary and final harassment protection order forms shall be the
5 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 the
9 petitioner that irreparable harm, loss, or damage will result before
10 the matter can be heard on notice. If the specific facts included in
11 the affidavit (a) do not show that the petitioner will suffer
12 irreparable harm, loss, or damage or (b) show that, for any other
13 compelling reason, an ex parte order should not be issued, the court
14 or judge may forthwith cause notice of the application to be given to
15 the adverse party stating that he or she may show cause, not more
16 than fourteen days after service upon him or her, why such order
17 should not be entered. If such ex parte order is issued without
18 notice to the respondent, the court shall forthwith cause notice of
19 the petition and order to be given the respondent stating that, upon
20 service on the respondent, the order shall remain in effect for a
21 period of one year unless the respondent shows cause why the order
22 should not remain in effect for a period of one year. The court shall
23 also cause to be served upon the respondent a form with which to
24 request a show-cause hearing. If the respondent wishes to appear and
25 show cause why the order should not remain in effect for a period of

1 one year, he or she shall affix his or her current address, telephone
2 number, and signature to the form and return it to the clerk of the
3 district court within five days after service upon him or her. Upon
4 receipt of the request for a show-cause hearing, the court shall
5 immediately schedule a show-cause hearing to be held within thirty
6 days after the receipt of the request for a show-cause hearing and
7 shall notify the petitioner and respondent of the hearing date.

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

1 sheriff's office, without charge, with one copy each of the order of
2 dismissal or modification.

3 (9) A peace officer may with or without a warrant arrest
4 a person if (a) the officer has probable cause to believe that the
5 person has committed a violation of an order issued pursuant to this
6 section or a violation of a valid foreign harassment protection order
7 recognized pursuant to section 28-311.10 and (b) a petitioner under
8 this section provides the peace officer with a copy of a harassment
9 protection order or the peace officer determines that such an order
10 exists after communicating with the local law enforcement agency or a
11 person protected under a valid foreign harassment protection order
12 recognized pursuant to section 28-311.10 provides the peace officer
13 with a copy of a valid foreign harassment protection order.

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

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

25 42-924 (1) Any victim of domestic abuse may file a

1 petition and affidavit for a protection order as provided in
2 subsection (2) of this section. Upon the filing of such a petition
3 and affidavit in support thereof, the judge or court shall consider
4 the filed documents as offered evidence and may consider such
5 documents for purposes of an ex parte protection order. The judge or
6 court may issue a protection order without bond granting the
7 following relief:

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

10 (b) Enjoining the respondent from threatening,
11 assaulting, molesting, attacking, or otherwise disturbing the peace
12 of the petitioner;

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

15 (d) Removing and excluding the respondent from the
16 residence of the petitioner, regardless of the ownership of the
17 residence;

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

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

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

24 ~~(g)~~-(h) Ordering such other relief deemed necessary to
25 provide for the safety and welfare of the petitioner and any

1 designated family or household member.

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

6 (3) A petition filed pursuant to subsection (1) of this
7 section may not be withdrawn except upon order of the court. An order
8 issued pursuant to subsection (1) of this section shall specify that
9 it is effective for a period of one year and, if the order grants
10 temporary custody, the number of days of custody granted to the
11 petitioner unless otherwise modified by the court. Any person who
12 knowingly violates an order issued pursuant to subsection (1) of this
13 section or section 42-931, after service-being served with the order
14 or having actual notice of the order and the substance thereof, shall
15 be guilty of a Class II misdemeanor, except that (a) any person
16 convicted of violating such order who has a prior conviction for
17 violating a protection order shall be guilty of a Class I misdemeanor
18 and (b) any person convicted of violating such order who has a prior
19 conviction for violating the same protection order or a protection
20 order granted to the same petitioner shall be guilty of a Class IV
21 felony.

22 (4) If there is any conflict between sections 42-924 to
23 42-926 and any other provision of law, sections 42-924 to 42-926
24 shall govern.

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

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

8 (3) The court may by rule or order refer or assign all
9 matters regarding orders issued under subsection (1) of section
10 42-924 to a referee for findings and recommendations.

11 (4) An order issued under subsection (1) of section
12 42-924 shall remain in effect for a period of one year from the date
13 of issuance, unless vacated by the court prior to such date. If the
14 order grants temporary custody, such custody shall not exceed the
15 number of days specified by the court unless the respondent shows
16 cause why the order should not remain in effect.

17 (5) The court shall also cause the notice created under
18 section 29-2291 to be served upon the respondent notifying the
19 respondent that it may be unlawful under federal law for a person who
20 is subject to a protection order to possess or receive any firearm or
21 ammunition.

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