

LEGISLATURE OF NEBRASKA
ONE HUNDRED FIFTH LEGISLATURE
FIRST SESSION

LEGISLATIVE BILL 178

Introduced by Bolz, 29.

Read first time January 10, 2017

Committee: Judiciary

1 A BILL FOR AN ACT relating to crimes and offenses; to amend sections
2 25-2740, 28-101, 28-311.04, 28-358.01, 28-1206, 29-404.02, and
3 29-422, Reissue Revised Statutes of Nebraska; to provide for sexual
4 assault protection orders; to define and redefine terms; to provide
5 a penalty; to change provisions relating to court procedures,
6 penalties for stalking, possession of a weapon by a prohibited
7 person, and arrests without warrants; to harmonize provisions; and
8 to repeal the original sections.
9 Be it enacted by the people of the State of Nebraska,

1 Section 1. Section 25-2740, Reissue Revised Statutes of Nebraska, is
2 amended to read:

3 25-2740 (1) For purposes of this section:

4 (a) Domestic relations matters means proceedings under sections
5 28-311.09 and 28-311.10 (including harassment protection orders and valid
6 foreign harassment protection orders), sections 4 and 5 of this act
7 (including sexual assault protection orders and valid foreign sexual
8 assault protection orders), the Conciliation Court Law and sections
9 42-347 to 42-381 (including dissolution, separation, annulment, custody,
10 and support), section 43-512.04 (including child support or medical
11 support), section 42-924 (including domestic protection orders), sections
12 43-1401 to 43-1418 (including paternity determinations and parental
13 support), and sections 43-1801 to 43-1803 (including grandparent
14 visitation); and

15 (b) Paternity or custody determinations means proceedings to
16 establish the paternity of a child under sections 43-1411 to 43-1418 or
17 proceedings to determine custody of a child under section 42-364.

18 (2) Except as provided in subsection (3) of this section, in
19 domestic relations matters, a party shall file his or her petition or
20 complaint and all other court filings with the clerk of the district
21 court. The party shall state in the petition or complaint whether such
22 party requests that the proceeding be heard by a county court judge or by
23 a district court judge. If the party requests the case be heard by a
24 county court judge, the county court judge assigned to hear cases in the
25 county in which the matter is filed at the time of the hearing is deemed
26 appointed by the district court and the consent of the county court judge
27 is not required. Such proceeding is considered a district court
28 proceeding, even if heard by a county court judge, and an order or
29 judgment of the county court in a domestic relations matter has the force
30 and effect of a district court judgment. The testimony in a domestic
31 relations matter heard before a county court judge shall be preserved as

1 provided in section 25-2732.

2 (3) In addition to the jurisdiction provided for paternity or
3 custody determinations under subsection (2) of this section, a county
4 court or separate juvenile court which already has jurisdiction over the
5 child whose paternity or custody is to be determined has jurisdiction
6 over such paternity or custody determination.

7 Sec. 2. Section 28-101, Reissue Revised Statutes of Nebraska, is
8 amended to read:

9 28-101 Sections 28-101 to 28-1357, ~~28-1418.01, 28-1429.03,~~ and
10 28-1601 to 28-1603 and sections 4 and 5 of this act shall be known and
11 may be cited as the Nebraska Criminal Code.

12 Sec. 3. Section 28-311.04, Reissue Revised Statutes of Nebraska, is
13 amended to read:

14 28-311.04 (1) Except as provided in subsection (2) of this section,
15 any person convicted of violating section 28-311.03 is guilty of a Class
16 I misdemeanor.

17 (2) Any person convicted of violating section 28-311.03 is guilty of
18 a Class IIIA felony if:

19 (a) The person has a prior conviction under such section or a
20 substantially conforming criminal violation within the last seven years;

21 (b) The victim is under sixteen years of age;

22 (c) The person possessed a deadly weapon at any time during the
23 violation;

24 (d) The person was also in violation of section 28-311.09, 42-924,
25 or 42-925 or section 4 of this act, or in violation of a valid foreign
26 harassment protection order recognized pursuant to section 28-311.10 or a
27 valid foreign sexual assault protection order recognized pursuant to
28 section 5 of this act at any time during the violation; or

29 (e) The person has been convicted of any felony in this state or has
30 been convicted of a crime in another jurisdiction which, if committed in
31 this state, would constitute a felony and the victim or a family or

1 household member of the victim was also the victim of such previous
2 felony.

3 Sec. 4. (1) Any victim of a sexual assault offense may file a
4 petition and affidavit for a sexual assault protection order as provided
5 in subsection (3) of this section. Upon the filing of such a petition and
6 affidavit in support thereof, the court may issue a sexual assault
7 protection order without bond enjoining the respondent from (a) imposing
8 any restraint upon the person or liberty of the petitioner, (b)
9 harassing, threatening, assaulting, molesting, attacking, or otherwise
10 disturbing the peace of the petitioner, or (c) telephoning, contacting,
11 or otherwise communicating with the petitioner.

12 (2) The petition for a sexual assault protection order shall state
13 the events and dates of acts constituting the sexual assault offense.

14 (3) A petition for a sexual assault protection order shall be filed
15 with the clerk of the district court and the proceeding may be heard by
16 the county court or the district court as provided in section 25-2740.

17 (4) A petition for a sexual assault protection order may not be
18 withdrawn except upon order of the court. A sexual assault protection
19 order shall specify that it is effective for a period of two years unless
20 renewed pursuant to subsection (11) of this section or otherwise
21 dismissed or modified by the court. Any person who knowingly violates a
22 sexual assault protection order after service or notice as described in
23 subdivision (8)(b) of this section shall be guilty of a Class I
24 misdemeanor for a first offense. For any second or subsequent violation
25 of a sexual assault protection order within a twenty-four month period,
26 or any third or subsequent violation, whenever committed, such person
27 shall be guilty of a Class IV felony.

28 (5)(a) Fees to cover costs associated with the filing of a petition
29 for issuance or renewal of a sexual assault protection order or the
30 issuance or service of a sexual assault protection order seeking only the
31 relief provided by this section shall not be charged, except that a court

1 may assess such fees and costs if the court finds, by clear and
2 convincing evidence, that the statements contained in the petition were
3 false and that the sexual assault protection order was sought in bad
4 faith.

5 (b) A court may also assess costs associated with the filing of a
6 petition for issuance or renewal of a sexual assault protection order or
7 the issuance or service of a sexual assault protection order seeking only
8 the relief provided by this section against the respondent.

9 (6) The clerk of the district court shall make available standard
10 application and affidavit forms for issuance and renewal of a sexual
11 assault protection order with instructions for completion to be used by a
12 petitioner. The clerk and his or her employees shall not provide
13 assistance in completing the forms. The State Court Administrator shall
14 adopt and promulgate the standard application and affidavit forms
15 provided for in this section as well as the standard temporary and final
16 sexual assault protection order forms and provide a copy of such forms to
17 all clerks of the district courts in this state. Such standard temporary
18 and final sexual assault protection order forms shall be the only forms
19 used in this state.

20 (7) A sexual assault protection order may be issued or renewed ex
21 parte without notice to the respondent if it reasonably appears from the
22 specific facts shown by affidavit of the petitioner that irreparable
23 harm, loss, or damage will result before the matter can be heard on
24 notice. If the specific facts included in the affidavit (a) do not show
25 that the petitioner will suffer irreparable harm, loss, or damage or (b)
26 show that, for any other compelling reason, an ex parte order should not
27 be issued or renewed, the court may forthwith cause notice of the
28 application to be given to the respondent stating that he or she may show
29 cause, not more than fourteen days after service, why such order should
30 not be entered. If such ex parte order is issued or renewed without
31 notice to the respondent, the court shall forthwith cause notice of the

1 petition and order and a form with which to request a show-cause hearing
2 to be given the respondent stating that, upon service on the respondent,
3 the order shall remain in effect for a period of two years unless the
4 respondent shows cause why the order should not remain in effect for a
5 period of two years. If the respondent wishes to appear and show cause
6 why the order should not remain in effect for a period of two years, he
7 or she shall affix his or her current address, telephone number, and
8 signature to the form and return it to the clerk of the district court
9 within five days after service upon him or her. Upon receipt of the
10 request for a show-cause hearing, the court shall immediately schedule a
11 show-cause hearing to be held within thirty days after the receipt of the
12 request for a show-cause hearing and shall notify the petitioner and
13 respondent of the hearing date.

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

1 of the order of dismissal or modification.

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

12 (9) A peace officer shall, with or without a warrant, arrest a
13 person if (a) the officer has probable cause to believe that the person
14 has committed a violation of a sexual assault protection order issued
15 pursuant to this section or a violation of a valid foreign sexual assault
16 protection order recognized pursuant to section 5 of this act and (b) a
17 petitioner under this section provides the peace officer with a copy of
18 such order or the peace officer determines that such an order exists
19 after communicating with the local law enforcement agency.

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

28 (11) An order issued under subsection (1) of this section may be
29 renewed biennially. To request renewal of the order, the petitioner shall
30 file a petition for renewal and affidavit in support thereof at least
31 forty-five days prior to the date the order is set to expire. The

1 petition for renewal shall state the reasons a renewal is sought and
2 shall be filed with the clerk of the district court, and the proceeding
3 thereon may be heard by the county court or the district court as
4 provided in section 25-2740. A petition for renewal will otherwise be
5 governed in accordance with the procedures set forth in subsections (4)
6 through (10) of this section.

7 (12) For purposes of this section, sexual assault offense means:

8 (a) Conduct amounting to sexual assault under section 28-319 or
9 28-320 or sexual assault of a child under section 28-319.01 or 28-320.01
10 or an attempt to commit any of such offenses; or

11 (b) Subjecting or attempting to subject another person to sexual
12 contact or sexual penetration without his or her consent, as such terms
13 are defined in section 28-318.

14 Sec. 5. (1) A valid foreign sexual assault protection order or
15 order similar to a sexual assault protection order issued by a court of
16 another state, territory, possession, or tribe shall be accorded full
17 faith and credit by the courts of this state and enforced as if it were
18 issued in this state.

19 (2) A foreign sexual assault protection order issued by a court of
20 another state, territory, possession, or tribe shall be valid if:

21 (a) The issuing court had jurisdiction over the parties and matter
22 under the law of such state, territory, possession, or tribe;

23 (b) The respondent was given reasonable notice and an opportunity to
24 be heard sufficient to protect the respondent's right to due process
25 before the order was issued; and

26 (c) The sexual assault protection order from another jurisdiction
27 has not been rendered against both the petitioner and the respondent,
28 unless: (i) The respondent filed a cross or counter petition, complaint,
29 or other written pleading seeking such a sexual assault protection order;
30 and (ii) the issuing court made specific findings of sexual assault
31 offenses against both the petitioner and respondent and determined that

1 each party was entitled to such an order.

2 (3) There is a presumption of the validity of the foreign protection
3 order when the order appears authentic on its face.

4 (4) A peace officer may rely upon a copy of any putative valid
5 foreign sexual assault protection order which has been provided to the
6 peace officer by any source.

7 Sec. 6. Section 28-358.01, Reissue Revised Statutes of Nebraska, is
8 amended to read:

9 28-358.01 (1) Isolation means intentional acts (a) committed for the
10 purpose of preventing, and which do prevent, a vulnerable adult or senior
11 adult from having contact with family, friends, or concerned persons, (b)
12 committed to prevent a vulnerable adult or senior adult from receiving
13 his or her mail or telephone calls, (c) of physical or chemical restraint
14 of a vulnerable adult or senior adult committed for purposes of
15 preventing contact with visitors, family, friends, or other concerned
16 persons, or (d) which restrict, place, or confine a vulnerable adult or
17 senior adult in a restricted area for purposes of social deprivation or
18 preventing contact with family, friends, visitors, or other concerned
19 persons.

20 (2) Isolation does not include (a) medical isolation prescribed by a
21 licensed physician caring for the vulnerable adult or senior adult, (b)
22 action taken in compliance with a harassment protection order issued
23 pursuant to section 28-311.09, a valid foreign harassment protection
24 order recognized pursuant to section 28-311.10, a sexual assault
25 protection order issued pursuant to section 4 of this act, a valid
26 foreign sexual assault protection order recognized pursuant to section 5
27 of this act, an order issued pursuant to section 42-924, an ex parte
28 order issued pursuant to section 42-925, an order excluding a person from
29 certain premises issued pursuant to section 42-357, or a valid foreign
30 protection order recognized pursuant to section 42-931, or (c) action
31 authorized by an administrator of a nursing home pursuant to section

1 71-6021.

2 Sec. 7. Section 28-1206, Reissue Revised Statutes of Nebraska, is
3 amended to read:

4 28-1206 (1) A person commits the offense of possession of a deadly
5 weapon by a prohibited person if he or she:

6 (a) Possesses ~~Any person who possesses~~ a firearm, a knife, or brass
7 or iron knuckles and he or she:

8 (i) Has ~~who has~~ previously been convicted of a felony;

9 (ii) Is ~~, who is~~ a fugitive from justice;

10 (iii) Is ~~, or who is~~ the subject of a current and validly issued
11 domestic violence protection order,

12 harassment protection order, or sexual assault protection order and is
13 knowingly violating such order; or

14 (b) Possesses ~~, or (b) any person who possesses~~ a firearm or brass
15 or iron knuckles and he or she ~~who~~ has been convicted within the past
16 seven years of a misdemeanor crime of domestic violence, ~~commits the~~
17 ~~offense of possession of a deadly weapon by a prohibited person.~~

18 (2) The felony conviction may have been had in any court in the
19 United States, the several states, territories, or possessions, or the
20 District of Columbia.

21 (3)(a) Possession of a deadly weapon which is not a firearm by a
22 prohibited person is a Class III felony.

23 (b) Possession of a deadly weapon which is a firearm by a prohibited
24 person is a Class ID felony for a first offense and a Class IB felony for
25 a second or subsequent offense.

26 (4)(a)(i) ~~For purposes of this section, misdemeanor crime of~~
27 ~~domestic violence means~~ a crime that:

28 (i) Is ~~(A)(I) A crime that is~~ classified as a misdemeanor under the
29 laws of the United States or the District of Columbia or the laws of any
30 state, territory, possession, or tribe;

31 (ii) Has ~~(II) A crime that~~ has, as an element, the use or attempted

1 use of physical force or the threatened use of a deadly weapon; and

2 ~~(iii) Is (III) A crime that is~~ committed by another against his or
3 her spouse, his or her former spouse, a person with whom he or she has a
4 child in common whether or not they have been married or lived together
5 at any time, or a person with whom he or she is or was involved in a
6 dating relationship as defined in section 28-323. ~~;~~ or

7 (b) For purposes of this section, misdemeanor crime of domestic
8 violence also includes the following offenses, if committed by a person
9 against his or her spouse, his or her former spouse, a person with whom
10 he or she is or was involved in a dating relationship as defined in
11 section 28-323, or a person with whom he or she has a child in common
12 whether or not they have been married or lived together at any time:

13 (i) ~~(B)(I)~~ Assault in the third degree under section 28-310; ~~;~~

14 (ii) Stalking ~~stalking~~ under subsection (1) of section 28-311.04; ~~;~~

15 (iii) ~~False~~ imprisonment in the second degree under section
16 28-315; ~~;~~

17 (iv) ~~First or first~~ offense domestic assault in the third degree
18 under subsection (1) of section 28-323; or

19 (v) ~~Any~~ attempt or conspiracy to commit ~~any~~ one of ~~such~~ these
20 offenses. ~~;~~ and

21 ~~(II) The crime is committed by another against his or her spouse,~~
22 ~~his or her former spouse, a person with whom he or she has a child in~~
23 ~~common whether or not they have been married or lived together at any~~
24 ~~time, or a person with whom he or she is or was involved in a dating~~
25 ~~relationship as defined in section 28-323.~~

26 (c) ~~(ii)~~ A person shall not be considered to have been convicted of
27 a misdemeanor crime of domestic violence unless:

28 (i) ~~(A)~~ The person was represented by counsel in the case or
29 knowingly and intelligently waived the right to counsel in the case; and

30 (ii) ~~(B)~~ In the case of a prosecution for a misdemeanor crime of
31 domestic violence for which a person was entitled to a jury trial in the

1 jurisdiction in which the case was tried, either:

2 ~~(A) (I)~~ The case was tried to a jury; or

3 ~~(B) (II)~~ The person knowingly and intelligently waived the right to
4 have the case tried to a jury.

5 ~~(5) (b)~~ For purposes of this section:

6 ~~(a) Domestic~~ ~~, subject of a current and validly issued domestic~~
7 ~~violence protection order means a protection order pertains to a current~~
8 ~~court order that was validly issued pursuant to section 28-311.09 or~~
9 ~~42-924;~~

10 ~~(b) Harassment protection order means a protection order issued~~
11 ~~pursuant to section 28-311.09 or that meets or exceeds the criteria set~~
12 ~~forth in section 28-311.10 regarding protection orders issued by a court~~
13 ~~in any other state or a territory, possession, or tribe; and -~~

14 ~~(c) Sexual assault protection order means a protection order issued~~
15 ~~pursuant to section 4 of this act or that meets or exceeds the criteria~~
16 ~~set forth in section 5 of this act regarding protection orders issued by~~
17 ~~a court in any other state or a territory, possession, or tribe.~~

18 Sec. 8. Section 29-404.02, Reissue Revised Statutes of Nebraska, is
19 amended to read:

20 29-404.02 (1) Except as provided in section 42-928 ~~and section 4 of~~
21 ~~this act~~, a peace officer may arrest a person without a warrant if the
22 officer has reasonable cause to believe that such person has committed:

23 (a) A felony;

24 (b) A misdemeanor, and the officer has reasonable cause to believe
25 that such person either (i) will not be apprehended unless immediately
26 arrested, (ii) may cause injury to himself or herself or others or damage
27 to property unless immediately arrested, (iii) may destroy or conceal
28 evidence of the commission of such misdemeanor, or (iv) has committed a
29 misdemeanor in the presence of the officer; or

30 (c) One or more of the following acts to one or more household
31 members, whether or not committed in the presence of the peace officer:

1 (i) Attempting to cause or intentionally and knowingly causing
2 bodily injury with or without a dangerous instrument;

3 (ii) Placing, by physical menace, another in fear of imminent bodily
4 injury; or

5 (iii) Engaging in sexual contact or sexual penetration without
6 consent as defined in section 28-318.

7 (2) For purposes of this section:

8 (a) Household members includes ~~shall include~~ spouses or former
9 spouses, children, persons who are presently residing together or who
10 have resided together in the past, persons who have a child in common
11 whether or not they have been married or have lived together at any time,
12 other persons related by consanguinity or affinity, and persons who are
13 presently involved in a dating relationship with each other or who have
14 been involved in a dating relationship with each other; and

15 (b) Dating relationship means frequent, intimate associations
16 primarily characterized by the expectation of affectional or sexual
17 involvement, but does not include a casual relationship or an ordinary
18 association between persons in a business or social context.

19 Sec. 9. Section 29-422, Reissue Revised Statutes of Nebraska, is
20 amended to read:

21 29-422 It is hereby declared to be the policy of the State of
22 Nebraska to issue citations in lieu of arrest or continued custody to the
23 maximum extent consistent with the effective enforcement of the law and
24 the protection of the public. In furtherance of that policy, except as
25 provided in sections 42-928 and 42-929 and section 4 of this act, any
26 peace officer shall be authorized to issue a citation in lieu of arrest
27 or continued custody for any offense which is a traffic infraction, any
28 other infraction, or a misdemeanor and for any violation of a city or
29 village ordinance. Such authorization shall be carried out in the manner
30 specified in sections 29-422 to 29-429 and 60-684 to 60-686.

31 Sec. 10. Original sections 25-2740, 28-101, 28-311.04, 28-358.01,

1 28-1206, 29-404.02, and 29-422, Reissue Revised Statutes of Nebraska, are
2 repealed.