

LEGISLATURE OF NEBRASKA
ONE HUNDRED FIFTH LEGISLATURE
FIRST SESSION

LEGISLATIVE BILL 394

Introduced by Morfeld, 46.

Read first time January 13, 2017

Committee: Judiciary

1 A BILL FOR AN ACT relating to domestic violence; to amend sections
2 28-1206, 42-903, and 42-924, Reissue Revised Statutes of Nebraska;
3 to change provisions relating to possession of a deadly weapon by a
4 prohibited person and domestic violence protection orders; to
5 redefine terms; to harmonize provisions; and to repeal the original
6 sections.
7 Be it enacted by the people of the State of Nebraska,

1 Section 1. Section 28-1206, Reissue Revised Statutes of Nebraska, is
2 amended to read:

3 28-1206 (1) A person commits the offense of possession of a deadly
4 weapon by a prohibited person if he or she:

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

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

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

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

11 (iv) Is the subject of a current and validly issued harassment
12 protection order and is knowingly violating such order; or

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

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

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

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

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

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

30 (B) ~~(II)~~ A crime that has, as an element, the use or attempted use
31 of physical force or the threatened use of a deadly weapon; and

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

6 (ii)(A) ~~(B)(I)~~ Assault in the third degree under section 28-310,
7 stalking under subsection (1) of section 28-311.04, false imprisonment in
8 the second degree under section 28-315, or first offense domestic assault
9 in the third degree under subsection (1) of section 28-323 or any attempt
10 or conspiracy to commit one of these offenses; and

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

16 (b) ~~(ii)~~ A person shall not be considered to have been convicted of
17 a misdemeanor crime of domestic violence unless:

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

20 (ii) (B) In the case of a prosecution for a misdemeanor crime of
21 domestic violence for which a person was entitled to a jury trial in the
22 jurisdiction in which the case was tried, either:

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

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

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

27 (a) Domestic ~~, subject of a current and validly issued domestic~~
28 violence protection order means a protection order ~~pertains to a current~~
29 court order that was validly issued pursuant to section 28-311.09 or
30 42-924; and

31 (b) Harassment protection order means a protection order issued

1 pursuant to section 28-311.09 or that meets or exceeds the criteria set
2 forth in section 28-311.10 regarding protection orders issued by a court
3 in any other state or a territory, possession, or tribe.

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

6 42-903 For purposes of the Protection from Domestic Abuse Act,
7 unless the context otherwise requires:

8 (1) Abuse means the occurrence of one or more of the following acts
9 between family or household members:

10 (a) Attempting to cause or intentionally and knowingly causing
11 bodily injury with or without a dangerous instrument;

12 (b) Placing, by means of credible threat, another person in fear of
13 bodily injury. For purposes of this subdivision, credible threat means a
14 verbal or written threat, including a threat performed through the use of
15 an electronic communication device, or a threat implied by a pattern of
16 conduct or a combination of verbal, written, or electronically
17 communicated statements and conduct that is made by a person with the
18 apparent ability to carry out the threat so as to cause the person who is
19 the target of the threat to reasonably fear for his or her safety or the
20 safety of his or her family. It is not necessary to prove that the person
21 making the threat had the intent to actually carry out the threat. The
22 present incarceration of the person making the threat shall not prevent
23 the threat from being deemed a credible threat under this section; or

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

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

27 (3) Family or household members includes spouses or former spouses,
28 children, persons who are presently residing together or who have resided
29 together in the past, persons who have a child in common whether or not
30 they have been married or have lived together at any time, other persons
31 related by consanguinity or affinity, and persons who are presently

1 involved in a dating relationship with each other or who have been
2 involved in a dating relationship with each other. For purposes of this
3 subdivision, dating relationship means frequent, intimate associations
4 primarily characterized by the expectation of affectional or sexual
5 involvement, but does not include a casual relationship or an ordinary
6 association between persons in a business or social context; and

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

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

12 42-924 (1)(a) ~~(1)~~ Any victim of domestic abuse may file a petition
13 and affidavit for a protection order as provided in subsection (2) of
14 this section. Upon the filing of such a petition and affidavit in support
15 thereof, the court may issue a protection order without bond granting the
16 following relief:

17 (i) ~~(a)~~ Enjoining the respondent from imposing any restraint upon
18 the petitioner or upon the liberty of the petitioner;

19 (ii) ~~(b)~~ Enjoining the respondent from threatening, assaulting,
20 molesting, attacking, or otherwise disturbing the peace of the
21 petitioner;

22 (iii) ~~(c)~~ Enjoining the respondent from telephoning, contacting, or
23 otherwise communicating with the petitioner;

24 (iv) ~~(d)~~ Removing and excluding the respondent from the residence of
25 the petitioner, regardless of the ownership of the residence;

26 (v) ~~(e)~~ Ordering the respondent to stay away from any place
27 specified by the court;

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

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

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

4 (b) As part of any protection order issued pursuant to this section,
5 the court shall enjoin the respondent from purchasing or possessing a
6 firearm, as defined in section 28-1201, and shall inform the respondent
7 that such possession is a felony under section 28-1206.

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

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

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

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

25 Sec. 4. Original sections 28-1206, 42-903, and 42-924, Reissue
26 Revised Statutes of Nebraska, are repealed.