

LEGISLATIVE BILL 623

Approved by the Governor March 22, 1978

Introduced by Judiciary Committee, Barnett, 26, Chmn.;
Carsten, 2; Stoney, 4; Reutzel, 15; Venditte,
7; Nichol, 48; E. Dvorak, 8;

AN ACT to adopt the Protection From Domestic Abuse Act;
to provide penalties; to amend sections
29-2219 and 29-2262, Reissue Revised Statutes
of Nebraska, 1943, relating to probation; to
require counseling as a condition of probation
for certain offenses as prescribed; to provide
an operative date; to repeal the original
sections; and to declare an emergency.

Be it enacted by the people of the State of Nebraska,

Section 1. Sections 1 to 27 of this act shall be known and may be cited as the Protection From Domestic Abuse Act.

Sec. 2. The Legislature hereby finds and declares that there is a present and growing need to develop services which will lessen and reduce the trauma of domestic abuse. It is the intent of this act to provide abused family and household members necessary services including shelter, counseling, social services, and limited medical care and legal assistance.

Sec. 3. As used sections 1 to 27 of this act, unless the context otherwise requires:

(1) Abuse shall mean the occurrence of one or more of the following acts between spouses, persons living as spouses, or adult members of the same household:

(a) Attempting to cause or intentionally, knowingly, or recklessly causing bodily injury or serious bodily injury with or without a deadly weapon; or

(b) Placing, by physical menace, another in fear of imminent serious bodily injury;

(2) Department shall mean the Department of Public Welfare;

(3) Family shall mean spouses, persons living as spouses, and children;

(4) Household members shall mean persons related to a person subjected to domestic abuse by blood or marriage; and

(5) Law enforcement agency shall mean the police department or town marshal in incorporated municipalities and the office of the sheriff in unincorporated areas.

Sec. 4. The department shall establish and maintain comprehensive support services to aid victims of domestic abuse and to provide prevention and treatment programs to aid victims of domestic abuse, their families, and abusers.

Sec. 5. The comprehensive support services shall include but not be limited to:

(1) Emergency services for victims of abuse and their families;

(2) Support programs that meet specific needs of victims of abuse and their families;

(3) Education, counseling, and supportive programs for the abuser; and

(4) Programs to aid in the prevention and elimination of domestic violence which shall include education and public awareness.

Sec. 6. The department shall provide the support services as provided in section 5 of this act to any person who seeks such services.

Sec. 7. The department shall provide emergency services which shall consist of up to seventy-two hours of crisis intervention services including:

(1) Constant access and intake to services;

(2) Immediate transportation from a victim's home or other location to a hospital or a place of safety;

(3) Immediate medical services or first aid;

(4) Emergency legal counseling and referral;

(5) Crisis counseling to provide support and assurance of safety;

(6) Emergency financial aid; and

(7) Safe living environments that will provide a supportive, nonthreatening shelter to victims, their families, and household members.

Sec. 8. The department shall, as soon as possible after initial contact with the victim, determine through diagnostic assessment which programs are needed and desired by the victim and family members. The department shall make appropriate referral and conduct appropriate followup. The department shall, to the extent possible, use private sources to provide the support services.

Sec. 9. The department shall, in addition to the emergency services, provide support services as needed to a victim of domestic abuse for up to thirty days. The support services shall be problem oriented and formulate a plan of action for the victim. Such services may include relocation, financial security, employment, advocacy, assertiveness training, substance abuse counseling, and alternatives to returning to the abuser. Also, the department shall provide services for children including day care, education, and counseling.

Sec. 10. The department shall provide services for children which may include:

(1) Emergency services which provide housing, food, clothing, and transportation to school;

(2) Counseling for trauma which occurs when children witness or experience family violence;

(3) Programs which provide for the appropriate educational needs of the individual child; and

(4) Services for child care in the necessary absence of the victim parent.

Sec. 11. The department shall provide complete resource information for victims and their families on legal, medical, financial, vocational, welfare, child care, housing, and other support services.

Sec. 12. The department shall develop a means of client feedback and collect statistical data to assist it in evaluating program effectiveness.

Sec. 13. The department shall provide such programs and services as it deems appropriate for the person who commits domestic abuse.

Sec. 14. The department shall develop, in cooperation with the Department of Education, a kindergarten through postsecondary educational curriculum relating to domestic violence.

Sec. 15. The department shall assist in developing community support systems for families to aid in the deterrence of all family crisis situations.

Sec. 16. The department shall provide a family program, especially for children, to prevent the generational continuation of abuse within the family.

Sec. 17. The delivery of all services provided for under sections 1 to 27 of this act shall be done in cooperation with existing public and private, state and local programs whenever possible to avoid duplication of services. Special effort shall be taken to coordinate programs with the Department of Labor, the Nebraska Commission on the Status of Women, the Department of Education, the Nebraska Division on Alcoholism, the Department of Health, the Department of Public Institutions, other appropriate agencies, community service agencies and private sources.

Sec. 18. Under sections 1 to 27 of this act, strict confidence shall be observed in all contact with victims of spouse abuse and their families. Any record, report, or files maintained by the department pursuant to sections 1 to 27 of this act shall be confidential, except that the department may release statistical information, while not revealing names. Violation of this section shall be a Class V misdemeanor.

Sec. 19. All programs under sections 1 to 27 of this act shall be separate and administered independent of any welfare assistance program.

Sec. 20. The department may construct, lease, purchase, purchase on contract, utilize vendor payment, and contract for services connected with the operation of sections 1 to 27 of this act as needs and interest demand.

Sec. 21. The department may accept gifts, grants, devises, and bequests of real and personal property from public or private sources to carry out the purposes of sections 1 to 27 of this act. The department may sell, lease, exchange, invest, or expend such gifts, grants, devises, and bequests or the proceeds, rents, profits, and income therefrom according to the terms and conditions thereof.

Sec. 22. The department shall adopt and promulgate such rules and regulations and perform all other acts as may be necessary or appropriate to carry out sections 1 to 27 of this act. Such rules and regulations shall include but not be limited to rules and regulations relating to fees charged, training of personnel, and administration of the program.

Sec. 23. The department shall determine the ability of the spouses or individuals to pay for services but shall not charge more than the actual cost. The department shall prepare and adopt a uniform fee schedule to be used. The scheduled fees may be reduced or waived by authorization of the department according to the rules of the department and as may be considered necessary to further the objective of sections 1 to 27 of this act. The use of facilities and services established by sections 1 to 27 of this act shall not be denied residents of Nebraska because of inability to pay scheduled fees. Any fees received under this section shall be deposited in the General Fund.

Sec. 24. Any victim of domestic abuse may file an application and affidavit in support of such abuse with any judge of a district court or a conciliation court. Upon the filing of such an application and affidavit in support thereof, the judge or court may issue a temporary restraining order without bond enjoining the adverse party from (1) imposing any restraint upon the person or liberty of the applicant; (2) threatening, assaulting, molesting, attacking, or otherwise disturbing the peace of the applicant; or (3) entering the family dwelling or the dwelling of the applicant upon a showing that physical or emotional harm would otherwise result.

Sec. 25. Any order issued under section 24 of this act may be issued ex parte, if the circumstances of the case demand it, or the court or judge may cause immediate notice of the application to be given to the adverse party, that he or she may show cause, not less than five days after service upon him or her, why such order should not be entered, but no temporary restraining order shall be granted without notice to the adverse party unless it reasonably appears from the specific facts shown by affidavit of the applicant that irreparable harm, loss, or damage will result before the matter can be heard on notice. If such order is issued without notice to the adverse party, the court shall cause immediate notice of the application to be given the adverse party, that he or she may show cause, not less than five days after service upon him or her, why such order should not remain in effect.

Sec. 26. Upon the issuance of any temporary restraining order under section 25 of this act, the clerk of the court shall provide the applicant, without charge, with two certified copies of such order.

Sec. 27. All law enforcement agencies in the state shall provide officers employed by them with an education and training program designed to inform the officers of the problems of domestic abuse, procedures to deal with such problems, the provisions of sections 1 to 27 of this act, and the services and facilities available to abused family and household members.

Section 28. That section 29-2219, Reissue Revised Statutes of Nebraska, 1943, be amended to read as follows:

29-2219. (1) A municipal court may suspend sentence, place a defendant on probation and determine the conditions and period of probation, which period shall not exceed, in the case of any defendant convicted of an offense less than a felony, two years.

(2) Except as provided in subsection (5) of this section, the The conditions of probation, as referred to in subsection (1) of this section, shall be such as the court shall in its discretion prescribe. Such probationary conditions may include, among other conditions, any or several of the following: That the probationer shall: (a) Indulge in no unlawful, disorderly, injurious, or vicious habits; (b) avoid places or persons of disreputable or harmful character; (c) report to the probation officer as directed by the court or probation officer; (d) permit the probation officer to visit him in a reasonable manner at his place of abode or elsewhere; (e) answer any reasonable inquiries on the part of the probation officer concerning his conduct or condition; (f) work faithfully at suitable employment; (g) remain or reside within a specified place or locality; (h) abstain from the use of alcoholic beverages if the use of the same contributed to his offense; (i) pay in one or several sums a fine imposed at the time of being placed on probation; (j) make reparation or restitution to the aggrieved parties for actual damage or losses caused by his offense; and (k) support his wife or children.

(3) The court or a magistrate thereof may (a) modify the conditions and the period of probation referred to in subsections (1) and (2) of this section, (b) in case of the violation of such probationary conditions, upon motion and showing by affidavit of the prosecuting attorney, issue a warrant for the arrest of

the probationer, (c) at any time discharge the probationer, and (d) in case of the violation of such probationary conditions, impose any penalty which it might have imposed before placing the defendant on probation; Provided, if committed, he be committed to an institution authorized by law to receive commitments.

(4) If a probationer without permission disappears, or departs from the jurisdiction of the court, the time during which he keeps his whereabouts hidden or remains away from the jurisdiction of the court may be added to the original period of probation provided for by subsection (1) of this section.

(5) In all cases in which the offender is guilty of assault or battery and the victim is the offender's spouse, a condition of probation shall be mandatory counseling as provided by sections 1 to 27 of this act.

Sec. 29. That section 29-2262, Reissue Revised Statutes of Nebraska, 1943, be amended to read as follows:

29-2262. (1) When a court sentences an offender to probation, it shall attach such reasonable conditions as it deems necessary or likely to insure that the offender will lead a law-abiding life.

(2) The court, as a condition of its sentence, may require the offender:

(a) To refrain from unlawful conduct;

(b) To be confined periodically in the county jail or to return to custody after specified hours, but not to exceed ninety days;

(c) To meet his family responsibilities;

(d) To devote himself to a specific employment or occupation;

(e) To undergo medical or psychiatric treatment and to enter and remain in a specified institution for that purpose;

(f) To pursue a prescribed secular course of study or vocational training;

(g) To attend or reside in a facility established for the instruction, recreation or residence of persons on probation;

(h) To refrain from frequenting unlawful or disreputable places or consorting with disreputable persons;

(i) To have in his possession no firearm or other dangerous weapon unless granted written permission;

(j) To make restitution of the fruits of his crime or to make such reparation as the court determines to be appropriate for the loss or damage caused thereby;

(k) To remain within the jurisdiction of the court and to notify the court or the probation officer of any change in his address or his employment;

(l) To report as directed to the court or a probation officer and to permit the officer to visit his home;

(m) To pay a fine in one or more payments, as ordered;

(n) To pay for blood, urine, or breath alcohol tests, psychological evaluations, and rehabilitative services required in the identification, evaluation, and treatment of offenders if such offender has the financial ability to pay for such services; or

(o) To satisfy any other conditions reasonably related to the rehabilitation of the offender.

(3) In all cases in which the offender is guilty of assault or battery and the victim is the offender's spouse, a condition of probation shall be mandatory counseling as provided by sections 1 to 27 of this act.

Sec. 30. This act shall become operative on July 1, 1978.

Sec. 31. That original sections 29-2219 and 29-2262, Reissue Revised Statutes of Nebraska, 1943, are repealed.

Sec. 32. Since an emergency exists, this act shall be in full force and take effect, from and after its passage and approval, according to law.