

AMENDMENTS TO LB 613

(Amendments to Final Reading copy)

1 1. Insert the following new sections:

2 "Sec. 5. (1) A person commits the offense of domestic
3 assault in the third degree if he or she:

4 (a) Intentionally and knowingly causes bodily injury to
5 his or her intimate partner; or

6 (b) Places, by physical menace, his or her intimate
7 partner in fear of imminent bodily injury.

8 (2) A person commits the offense of domestic assault in
9 the second degree if he or she intentionally and knowingly causes
10 bodily injury to his or her intimate partner with a dangerous
11 instrument.

12 (3) A person commits the offense of domestic assault in
13 the first degree if he or she intentionally and knowingly causes
14 serious bodily injury to his or her intimate partner.

15 (4) Violation of subsection (1) of this section is a
16 Class I misdemeanor, except that for any second or subsequent
17 violation of such subsection within twelve years after the date of
18 the current conviction, any person so offending against the same
19 intimate partner is guilty of a Class IV felony.

20 (5) Violation of subsection (2) of this section is a
21 Class IIIA felony, except that for any second or subsequent
22 violation of such subsection within twelve years after the date of
23 the current conviction, any person so offending against the same

1 intimate partner is guilty of a Class III felony.

2 (6) Violation of subsection (3) of this section is a
3 Class III felony, except that for any second or subsequent
4 violation under such subsection within twelve years after the date
5 of the current conviction, any person so offending against the same
6 intimate partner is guilty of a Class II felony.

7 (7) For purposes of this section, intimate partner means
8 a spouse; a former spouse; persons who have a child in common
9 whether or not they have been married or lived together at any
10 time; and persons who are or were involved in a dating
11 relationship. For purposes of this subsection, dating relationship
12 means frequent, intimate associations primarily characterized by
13 the expectation of affectional or sexual involvement, but does not
14 include a casual relationship or an ordinary association between
15 persons in a business or social context.

16 Sec. 6. Section 29-404.02, Reissue Revised Statutes of
17 Nebraska, is amended to read:

18 29-404.02. (1) Except as provided in section 42-928, a
19 peace officer may arrest a person without a warrant if the officer
20 has reasonable cause to believe that such person has committed:

21 ~~(1)~~ (a) A felony;

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

1 misdemeanor in the presence of the officer; or

2 ~~(3)~~ (c) One or more of the following acts to one or more
3 household members, whether or not committed in the presence of the
4 peace officer:

5 ~~(a)~~ (i) Attempting to cause or intentionally, and
6 knowingly, or ~~or recklessly~~ causing bodily injury with or without a
7 deadly weapon ~~or~~ dangerous instrument; or

8 ~~(b)~~ (ii) Threatening another in a menacing manner
9 Placing, by physical menace, another in fear of imminent bodily
10 injury; or

11 ~~(c)~~ (iii) Engaging in sexual contact or sexual
12 penetration without consent as defined in section 28-318.

13 (2) For purposes of this section:

14 (a) Household ~~or household~~ members shall include spouses
15 or former spouses, children, persons who are presently residing
16 together or who have resided together in the past, persons who have
17 a child in common whether or not they have been married or have
18 lived together at any time, and other persons related by
19 consanguinity or affinity, and persons who are presently involved
20 in a dating relationship with each other or who have been involved
21 in a dating relationship with each other; and

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

27 Sec. 7. (1) If a peace officer receives complaints under

1 section 5 of this act from two or more opposing persons, the
2 officer shall evaluate each complaint separately to determine who
3 was the predominant aggressor. If the officer determines that one
4 person was the predominant aggressor, the officer need not arrest
5 the other person believed to have committed an offense. In
6 determining whether a person is the predominant aggressor, the
7 officer shall consider, among other things:

- 8 (a) Prior complaints under section 5 of this act;
9 (b) The relative severity of the injuries inflicted on
10 each person;
11 (c) The likelihood of future injury to each person; and
12 (d) Whether one of the persons acted with a justified use
13 of force under sections 28-1406 to 28-1416.

14 (2) In addition to any other report required, a peace
15 officer who arrests two or more persons with respect to such a
16 complaint shall submit a detailed, written report setting forth the
17 grounds for arresting multiple parties.

18 Sec. 8. (1) Incident to an arrest under section 5 of
19 this act, a peace officer:

- 20 (a) Shall seize all weapons that are alleged to have been
21 involved or threatened to be used; and
22 (b) May seize any firearm and ammunition in the plain
23 view of the officer or that is discovered pursuant to a search
24 authorized or consented to by the person being searched or in
25 charge of the premises being searched, as necessary for the
26 protection of the officer or any other person.

27 (2) Weapons seized under this section shall be stored

1 according to the policies and procedures implemented by the seizing
2 law enforcement agency.

3 (3) Disposition of weapons under this section shall be
4 determined by court order.

5 Sec. 9. (1) When any person is found guilty of a crime
6 involving abuse as defined in section 42-903, the judge shall order
7 a presentence investigation to be completed and returned to the
8 court for consideration at the time of sentencing.

9 (2) At the time of sentencing, the court shall consider
10 the safety and protection of the victim of abuse and any member of
11 the victim's family or household when suspending a sentence or
12 granting probation.

13 (3) The court may order the convicted person to complete
14 a domestic abuse intervention program at the convicted person's
15 expense in addition to any other penalties.

16 Sec. 10. When a person is found guilty of a crime
17 involving abuse as defined in section 42-903, a court shall not
18 order house arrest for the person in the residence of the victim,
19 regardless of the ownership of the residence.

20 Sec. 11. On or before July 1, 2005, all law enforcement
21 agencies, prosecuting attorneys, and the Office of Probation
22 Administration shall develop, adopt, promulgate, and implement
23 written policies and procedures regarding crimes between intimate
24 partners as defined in section 5 of this act.

25 Sec. 12. Section 42-903, Reissue Revised Statutes of
26 Nebraska, is amended to read:

27 42-903. For purposes of the Protection from Domestic

1 Abuse Act, unless the context otherwise requires:

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

4 (a) Attempting to cause or intentionally, and knowingly,
5 ~~or recklessly~~ causing bodily injury with or without a ~~deadly weapon~~
6 dangerous instrument; or

7 (b) Placing, by physical menace, another person in fear
8 of imminent bodily injury; or

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

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

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

26 (4) Law enforcement agency means the police department or
27 town marshal in incorporated municipalities, ~~and~~ the office of the

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1 sheriff in unincorporated areas, and the Nebraska State Patrol.

2 Sec. 13. Original sections 29-404.02 and 42-903, Reissue
3 Revised Statutes of Nebraska, are repealed.".

4 2. On page 1, line 1, strike "court procedures" and
5 insert "domestic violence; to amend sections 29-404.02 and 42-903,
6 Reissue Revised Statutes of Nebraska"; and in line 3 after
7 "prescribed" insert "; to create the offense of domestic assault;
8 to change provisions relating to arrest and sentencing procedures;
9 to provide duties for law enforcement; to redefine terms; and to
10 repeal the original sections".

11 3. Insert underscoring in sections 1 to 4.