

AMENDMENTS TO LB 310

(Amendments to Final Reading copy)

Introduced by McGill

1           1. Strike the original sections and insert the following  
2 sections:

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

5           28-311.09 (1) Any victim who has been harassed as  
6 defined by section 28-311.02 may file a petition and affidavit  
7 for a harassment protection order as provided in subsection  
8 (3) of this section. Upon the filing of such a petition and  
9 affidavit in support thereof, 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  
12 the 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  
21 be heard by the county court or the district court as provided in  
22 section 25-2740.

1           (4) A petition for a harassment protection order filed  
2 pursuant to subsection (1) of this section may not be withdrawn  
3 except upon order of the court. An order issued pursuant to  
4 subsection (1) of this section shall specify that it is effective  
5 for a period of one year unless otherwise dismissed or modified  
6 by the court. Any person who knowingly violates an order issued  
7 pursuant to subsection (1) of this section after service or notice  
8 as described in subdivision (8)(b) of this section shall be guilty  
9 of a Class II misdemeanor.

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

18           (b) A court may also assess costs associated with the  
19 filing of a petition for a harassment protection order or the  
20 issuance or service of a harassment protection order seeking only  
21 the relief ~~sought in the harassment protection order~~ provided by  
22 this section against the respondent.

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

1 shall adopt and promulgate the standard application and affidavit  
2 forms provided for in this section as well as the standard  
3 temporary and final harassment protection order forms and provide  
4 a copy of such forms to all clerks of the district courts in this  
5 state. These standard temporary and final harassment protection  
6 order forms shall be the only such forms used in this state.

7 (7) Any order issued under subsection (1) of this section  
8 may be issued ex parte without notice to the respondent if it  
9 reasonably appears from the specific facts shown by affidavit of  
10 the petitioner that irreparable harm, loss, or damage will result  
11 before the matter can be heard on notice. If the specific facts  
12 included in the affidavit (a) do not show that the petitioner will  
13 suffer irreparable harm, loss, or damage or (b) show that, for any  
14 other compelling reason, an ex parte order should not be issued,  
15 the court ~~ex judge~~ may forthwith cause notice of the application  
16 to be given to the adverse party respondent stating that he or she  
17 may show cause, not more than fourteen days after service, ~~upon him~~  
18 ~~ex her~~, why such order should not be entered. If such ex parte  
19 order is issued without notice to the respondent, the court shall  
20 forthwith cause notice of the petition and order and a form with  
21 which to request a show-cause hearing to be given the respondent  
22 stating that, upon service on the respondent, the order shall  
23 remain in effect for a period of one year unless the respondent  
24 shows cause why the order should not remain in effect for a period  
25 of one year. ~~The court shall also cause to be served upon the~~  
26 ~~respondent a form with which to request a show-cause hearing.~~ If  
27 the respondent wishes to appear and show cause why the order should

1 not remain in effect for a period of one year, he or she shall  
2 affix his or her current address, telephone number, and signature  
3 to the form and return it to the clerk of the district court  
4 within five days after service upon him or her. Upon receipt of  
5 the request for a show-cause hearing, the court shall immediately  
6 schedule a show-cause hearing to be held within thirty days after  
7 the receipt of the request for a show-cause hearing and shall  
8 notify the petitioner and respondent of the hearing date.

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

1 with one copy each of the order of dismissal or modification.

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

13 (9) A peace officer may, with or without a warrant,  
14 arrest a person if (a) the officer has probable cause to believe  
15 that the person has committed a violation of ~~an~~ a harassment  
16 protection order issued pursuant to this section or a violation  
17 of a valid foreign harassment protection order recognized pursuant  
18 to section 28-311.10 and (b) a petitioner under this section  
19 provides the peace officer with a copy of a harassment protection  
20 order or the peace officer determines that such an order exists  
21 after communicating with the local law enforcement agency or a  
22 person protected under a valid foreign harassment protection order  
23 recognized pursuant to section 28-311.10 provides the peace officer  
24 with a copy of a ~~valid foreign harassment protection~~ such order.

25 (10) A peace officer making an arrest pursuant to  
26 subsection (9) of this section shall take such person into custody  
27 and take such person before a judge of the county court or

1 the court which issued the harassment protection order within  
2 a reasonable time. At such time the court shall establish the  
3 conditions of such person's release from custody, including the  
4 determination of bond or recognizance, as the case may be. The  
5 court shall issue an order directing that such person shall have no  
6 contact with the alleged victim of the harassment.

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

9 42-903 For purposes of the Protection from Domestic Abuse  
10 Act, unless the context otherwise requires:

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

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

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

1 deemed a credible threat under this section; or

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

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

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

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

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

24 42-924 (1) Any victim of domestic abuse may file a  
25 petition and affidavit for a protection order as provided in  
26 subsection (2) of this section. Upon the filing of such a petition  
27 and affidavit in support thereof, the ~~judge or~~ court may issue a

1 protection order without bond granting the following relief:

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

4 (b) Enjoining the respondent from threatening,  
5 assaulting, molesting, attacking, or otherwise disturbing the peace  
6 of the petitioner;

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

9 (d) Removing and excluding the respondent from the  
10 residence of the petitioner, regardless of the ownership of the  
11 residence;

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

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

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

18 ~~(g)~~ (h) Ordering such other relief deemed necessary to  
19 provide for the safety and welfare of the petitioner and any  
20 designated family or household member.

21 (2) Petitions for protection orders shall be filed with  
22 the clerk of the district court, and the proceeding may be heard  
23 by the county court or the district court as provided in section  
24 25-2740.

25 (3) A petition filed pursuant to subsection (1) of this  
26 section may not be withdrawn except upon order of the court. An  
27 order issued pursuant to subsection (1) of this section shall

1 specify that it is effective for a period of one year and, if  
2 the order grants temporary custody, the number of days of custody  
3 granted to the petitioner unless otherwise modified by the court.

4 (4) Any person who knowingly violates ~~an~~ a protection  
5 order issued pursuant to subsection (1) of this section or section  
6 42-931 after service or notice as described in subsection (2)  
7 of section 42-926 shall be guilty of a Class ~~II~~ I misdemeanor,  
8 except that ~~(a)~~ any person convicted of violating such order who  
9 has a prior conviction for violating a protection order shall be  
10 guilty of a Class ~~I~~ misdemeanor and ~~(b)~~ any person convicted of  
11 violating such order who has a prior conviction for violating the  
12 same protection order or a protection order granted to the same  
13 petitioner shall be guilty of a Class IV felony.

14 ~~(4)~~ (5) If there is any conflict between sections 42-924  
15 to 42-926 and any other provision of law, sections 42-924 to 42-926  
16 shall govern.

17 Sec. 4. Section 42-925, Reissue Revised Statutes of  
18 Nebraska, is amended to read:

19 42-925 (1) An order issued under subsection (1) of  
20 section 42-924 may be issued ex parte to the respondent if  
21 it reasonably appears from the specific facts included in the  
22 affidavit that the petitioner will be in immediate danger of abuse  
23 before the matter can be heard on notice. If an order is issued  
24 ex parte, such order is a temporary order and the court shall  
25 ~~immediately schedule an evidentiary hearing to be held within~~  
26 ~~thirty days after service of such order,~~ and the court shall  
27 ~~cause notice of the hearing to be given to the petitioner and the~~

1 ~~respondent.~~ forthwith cause notice of the petition and order to  
2 be given to the respondent. The court shall also cause a form to  
3 request a show-cause hearing to be served upon the respondent. If  
4 the respondent wishes to appear and show cause why the order should  
5 not remain in effect, he or she shall affix his or her current  
6 address, telephone number, and signature to the form and return it  
7 to the clerk of the district court within five days after service  
8 upon him or her. Upon receipt of the request for a show-cause  
9 hearing, the request of the petitioner, or upon the court's own  
10 motion, the court shall immediately schedule a show-cause hearing  
11 to be held within thirty days after the receipt of the request for  
12 a show-cause hearing and shall notify the petitioner and respondent  
13 of the hearing date. If the respondent appears at the hearing and  
14 shows cause why such order should not remain in effect, the court  
15 shall rescind the temporary order. If the respondent does not so  
16 appear and show cause, the temporary order shall be affirmed and  
17 shall be deemed the final protection order. If the respondent has  
18 been properly served with the ex parte order and fails to appear at  
19 the hearing, the temporary order shall be affirmed and the service  
20 of the ex parte order shall be notice of the final protection order  
21 for purposes of prosecution under subsection (4) of section 42-924.

22 (2) If an order under subsection (1) of section 42-924  
23 is not issued ex parte, the court shall immediately schedule an  
24 evidentiary hearing to be held within fourteen days after the  
25 filing of the petition, and the court shall cause notice of the  
26 hearing to be given to the petitioner and the respondent. If the  
27 respondent does not appear at the hearing and show cause why such

1 order should not be issued, the court shall issue ~~such~~ a final  
2 protection order.

3 (3) The court may by rule or order refer or assign all  
4 matters regarding orders issued under subsection (1) of section  
5 42-924 to a referee for findings and recommendations.

6 (4) An order issued under subsection (1) of section  
7 42-924 shall remain in effect for a period of one year from the  
8 date of issuance, unless ~~vacated~~ dismissed or modified by the court  
9 prior to such date. If the order grants temporary custody, such  
10 custody shall not exceed the number of days specified by the court  
11 unless the respondent shows cause why the order should not remain  
12 in effect.

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

18 Sec. 5. Section 42-926, Reissue Revised Statutes of  
19 Nebraska, is amended to read:

20 42-926 (1) Upon the issuance of ~~any~~ a temporary or final  
21 protection order under section 42-925, the clerk of the court  
22 shall forthwith provide the petitioner, without charge, with two  
23 certified copies of such order. The clerk of the court shall  
24 also forthwith provide the local police department or local law  
25 enforcement agency and the local sheriff's office, without charge,  
26 with one copy each of such order and one copy each of the sheriff's  
27 return thereon. The clerk of the court shall also forthwith provide

1 a copy of the protection order to the sheriff's office in the  
2 county where the respondent may be personally served together  
3 with instructions for service. Upon receipt of the order and  
4 instructions for service, such sheriff's office shall forthwith  
5 serve the protection order upon the respondent and file its return  
6 thereon with the clerk of the court which issued the protection  
7 order within fourteen days of the issuance of the protection  
8 order. If any protection order is dismissed or modified by the  
9 court, the clerk of the court shall forthwith provide the local  
10 police department or local law enforcement agency and the local  
11 sheriff's office, without charge, with one copy each of the order  
12 of dismissal or modification. If the respondent has notice as  
13 described in subsection (2) of this section, further service under  
14 this subsection is unnecessary.

15 (2) If the respondent was present at a hearing convened  
16 pursuant to section 42-925 and the protection order was not  
17 dismissed, the respondent shall be deemed to have notice by the  
18 court at such hearing that the protection order will be granted  
19 and remain in effect and further service of notice described in  
20 subsection (1) of this section is not required for purposes of  
21 prosecution under subsection (4) of section 42-924.

22 Sec. 6. Original sections 28-311.09, 42-903, 42-924,  
23 42-925, and 42-926, Reissue Revised Statutes of Nebraska, are  
24 repealed.

25 2. On page 1, strike beginning with "domestic" in  
26 line 1 through line 5 and insert "court procedure; to amend  
27 sections 28-311.09, 42-903, 42-924, and 42-925, Reissue Revised

1 Statutes of Nebraska; to change provisions relating to harassment  
2 protection orders and domestic abuse protection orders, petitions,  
3 definitions, and penalties; to harmonize provisions; and to repeal  
4 the original sections."