

LEGISLATURE OF NEBRASKA  
ONE HUNDRED SECOND LEGISLATURE  
SECOND SESSION  
**LEGISLATIVE BILL 310**

Final Reading

(Second)

Introduced by McGill, 26.

Read first time January 12, 2011

Committee: Judiciary

A BILL

1 FOR AN ACT relating to court procedure; to amend sections 28-311.09,  
2 42-903, 42-924, 42-925, and 42-926, Reissue Revised  
3 Statutes of Nebraska; to change provisions relating to  
4 harassment protection orders and domestic abuse  
5 protection orders, petitions, definitions, and penalties;  
6 to harmonize provisions; and to repeal the original  
7 sections.

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

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

3                   28-311.09 (1) Any victim who has been harassed as defined  
4 by section 28-311.02 may file a petition and affidavit for a  
5 harassment protection order as provided in subsection (3) of this  
6 section. Upon the filing of such a petition and affidavit in support  
7 thereof, the ~~judge or~~ court may issue a harassment protection order  
8 without bond enjoining the respondent from (a) imposing any restraint  
9 upon the person or liberty of the petitioner, (b) harassing,  
10 threatening, assaulting, molesting, attacking, or otherwise  
11 disturbing the peace of the petitioner, or (c) telephoning,  
12 contacting, or otherwise communicating with the petitioner.

13                   (2) The petition for a harassment protection order shall  
14 state the events and dates of acts constituting the alleged  
15 harassment.

16                   (3) A petition for a harassment protection order shall be  
17 filed with the clerk of the district court, and the proceeding may be  
18 heard by the county court or the district court as provided in  
19 section 25-2740.

20                   (4) A petition for a harassment protection order filed  
21 pursuant to subsection (1) of this section may not be withdrawn  
22 except upon order of the court. An order issued pursuant to  
23 subsection (1) of this section shall specify that it is effective for  
24 a period of one year unless otherwise dismissed or modified by the  
25 court. Any person who knowingly violates an order issued pursuant to

1 subsection (1) of this section after service or notice as described  
2 in subdivision (8)(b) of this section shall be guilty of a Class II  
3 misdemeanor.

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

12 (b) A court may also assess costs associated with the  
13 filing of a petition for a harassment protection order or the  
14 issuance or service of a harassment protection order seeking only the  
15 relief ~~sought in the harassment protection order~~ provided by this  
16 section against the respondent.

17 (6) The clerk of the district court shall make available  
18 standard application and affidavit forms for a harassment protection  
19 order with instructions for completion to be used by a petitioner.  
20 The clerk and his or her employees shall not provide assistance in  
21 completing the forms. The State Court Administrator shall adopt and  
22 promulgate the standard application and affidavit forms provided for  
23 in this section as well as the standard temporary and final  
24 harassment protection order forms and provide a copy of such forms to  
25 all clerks of the district courts in this state. These standard

1 temporary and final harassment protection order forms shall be the  
2 only such forms used in this state.

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

1 court within five days after service upon him or her. Upon receipt of  
2 the request for a show-cause hearing, the court shall immediately  
3 schedule a show-cause hearing to be held within thirty days after the  
4 receipt of the request for a show-cause hearing and shall notify the  
5 petitioner and respondent of the hearing date.

6 ~~(8)~~ (8)(a) Upon the issuance of any harassment protection  
7 order, ~~under this section,~~ the clerk of the court shall forthwith  
8 provide the petitioner, without charge, with two certified copies of  
9 such order. The clerk of the court shall also forthwith provide the  
10 local police department or local law enforcement agency and the local  
11 sheriff's office, without charge, with one copy each of such order  
12 and one copy each of the sheriff's return thereon. The clerk of the  
13 court shall also forthwith provide a copy of the harassment  
14 protection order to the sheriff's office in the county where the  
15 respondent may be personally served together with instructions for  
16 service. Upon receipt of the order and instructions for service, such  
17 sheriff's office shall forthwith serve the harassment protection  
18 order upon the respondent and file its return thereon with the clerk  
19 of the court which issued the harassment protection order within  
20 fourteen days of the issuance of the harassment protection order. If  
21 any harassment protection order is dismissed or modified by the  
22 court, the clerk of the court shall forthwith provide the local  
23 police department or local law enforcement agency and the local  
24 sheriff's office, without charge, with one copy each of the order of  
25 dismissal or modification.

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

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

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

1 which issued the harassment protection order within a reasonable  
2 time. At such time the court shall establish the conditions of such  
3 person's release from custody, including the determination of bond or  
4 recognizance, as the case may be. The court shall issue an order  
5 directing that such person shall have no contact with the alleged  
6 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 of  
20 conduct or a combination of verbal, written, or electronically  
21 communicated statements and conduct that is made by a person with the  
22 apparent ability to carry out the threat so as to cause the person  
23 who is the target of the threat to reasonably fear for his or her  
24 safety or the safety of his or her family. It is not necessary to  
25 prove that the person making the threat had the intent to actually

1 carry out the threat. The present incarceration of the person making  
2 the threat shall not prevent the threat from being deemed a credible  
3 threat under this section; or

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

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

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

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

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

25 42-924 (1) Any victim of domestic abuse may file a

1 petition and affidavit for a protection order as provided in  
2 subsection (2) of this section. Upon the filing of such a petition  
3 and affidavit in support thereof, the ~~judge or~~ court may issue a  
4 protection order without bond granting the following relief:

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

7 (b) Enjoining the respondent from threatening,  
8 assaulting, molesting, attacking, or otherwise disturbing the peace  
9 of the petitioner;

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

12 (d) Removing and excluding the respondent from the  
13 residence of the petitioner, regardless of the ownership of the  
14 residence;

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

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

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

21 ~~(g)-(h)~~ (h) Ordering such other relief deemed necessary to  
22 provide for the safety and welfare of the petitioner and any  
23 designated family or household member.

24 (2) Petitions for protection orders shall be filed with  
25 the clerk of the district court, and the proceeding may be heard by

1 the county court or the district court as provided in section  
2 25-2740.

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

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

19 ~~(4)-(5)~~ If there is any conflict between sections 42-924  
20 to 42-926 and any other provision of law, sections 42-924 to 42-926  
21 shall govern.

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

24 42-925 (1) An order issued under subsection (1) of  
25 section 42-924 may be issued ex parte to the respondent if it

1 reasonably appears from the specific facts included in the affidavit  
2 that the petitioner will be in immediate danger of abuse before the  
3 matter can be heard on notice. If an order is issued ex parte, such  
4 order is a temporary order and the court shall immediately schedule  
5 an evidentiary hearing to be held within thirty days after service of  
6 such order, and the court shall cause notice of the hearing to be  
7 given to the petitioner and the respondent. forthwith cause notice of  
8 the petition and order to be given to the respondent. The court shall  
9 also cause a form to request a show-cause hearing to be served upon  
10 the respondent. If the respondent wishes to appear and show cause why  
11 the order should not remain in effect, he or she shall affix his or  
12 her current address, telephone number, and signature to the form and  
13 return it to the clerk of the district court within five days after  
14 service upon him or her. Upon receipt of the request for a show-cause  
15 hearing, the request of the petitioner, or upon the court's own  
16 motion, the court shall immediately schedule a show-cause hearing to  
17 be held within thirty days after the receipt of the request for a  
18 show-cause hearing and shall notify the petitioner and respondent of  
19 the hearing date. If the respondent appears at the hearing and shows  
20 cause why such order should not remain in effect, the court shall  
21 rescind the temporary order. If the respondent does not so appear and  
22 show cause, the temporary order shall be affirmed and shall be deemed  
23 the final protection order. If the respondent has been properly  
24 served with the ex parte order and fails to appear at the hearing,  
25 the temporary order shall be affirmed and the service of the ex parte

1 order shall be notice of the final protection order for purposes of  
2 prosecution under subsection (4) of section 42-924.

3 (2) If an order under subsection (1) of section 42-924 is  
4 not issued ex parte, the court shall immediately schedule an  
5 evidentiary hearing to be held within fourteen days after the filing  
6 of the petition, and the court shall cause notice of the hearing to  
7 be given to the petitioner and the respondent. If the respondent does  
8 not appear at the hearing and show cause why such order should not be  
9 issued, the court shall issue ~~such a final protection order.~~

10 (3) The court may by rule or order refer or assign all  
11 matters regarding orders issued under subsection (1) of section  
12 42-924 to a referee for findings and recommendations.

13 (4) An order issued under subsection (1) of section  
14 42-924 shall remain in effect for a period of one year from the date  
15 of issuance, unless ~~vacated~~ dismissed or modified by the court prior  
16 to such date. If the order grants temporary custody, such custody  
17 shall not exceed the number of days specified by the court unless the  
18 respondent shows cause why the order should not remain in effect.

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

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

1           42-926 (1) Upon the issuance of ~~any~~ a temporary or final  
2 protection order under section 42-925, the clerk of the court shall  
3 forthwith provide the petitioner, without charge, with two certified  
4 copies of such order. The clerk of the court shall also forthwith  
5 provide the local police department or local law enforcement agency  
6 and the local sheriff's office, without charge, with one copy each of  
7 such order and one copy each of the sheriff's return thereon. The  
8 clerk of the court shall also forthwith provide a copy of the  
9 protection order to the sheriff's office in the county where the  
10 respondent may be personally served together with instructions for  
11 service. Upon receipt of the order and instructions for service, such  
12 sheriff's office shall forthwith serve the protection order upon the  
13 respondent and file its return thereon with the clerk of the court  
14 which issued the protection order within fourteen days of the  
15 issuance of the protection order. If any protection order is  
16 dismissed or modified by the court, the clerk of the court shall  
17 forthwith provide the local police department or local law  
18 enforcement agency and the local sheriff's office, without charge,  
19 with one copy each of the order of dismissal or modification. If the  
20 respondent has notice as described in subsection (2) of this section,  
21 further service under this subsection is unnecessary.

22           (2) If the respondent was present at a hearing convened  
23 pursuant to section 42-925 and the protection order was not  
24 dismissed, the respondent shall be deemed to have notice by the court  
25 at such hearing that the protection order will be granted and remain

1 in effect and further service of notice described in subsection (1)  
2 of this section is not required for purposes of prosecution under  
3 subsection (4) of section 42-924.

4           Sec. 6. Original sections 28-311.09, 42-903, 42-924,  
5 42-925, and 42-926, Reissue Revised Statutes of Nebraska, are  
6 repealed.