

LEGISLATURE OF NEBRASKA

ONE HUNDRED SECOND LEGISLATURE

SECOND SESSION

LEGISLATIVE BILL 1056

Introduced by Pirsch, 4.

Read first time January 18, 2012

Committee: Judiciary

A BILL

1 FOR AN ACT relating to protection orders; to amend sections
2 28-311.09, 42-924, 42-925, and 42-926, Reissue Revised
3 Statutes of Nebraska; to change provisions relating to
4 harassment and domestic abuse protection orders; and to
5 repeal the original sections.
6 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21 pursuant to subsection (1) of this section may not be withdrawn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 against the
16 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 stating that he or she may show cause, not more
13 than fourteen days after service upon him or her, why such order
14 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 to be given the respondent stating that, upon
17 service on the respondent, the order shall remain in effect for a
18 period of one year unless the respondent shows cause why the order
19 should not remain in effect for a period of one year. The court shall
20 also cause to be served upon the respondent a form with which to
21 request a show-cause hearing. If the respondent wishes to appear and
22 show cause why the order should not remain in effect for a period of
23 one year, he or she shall affix his or her current address, telephone
24 number, and signature to the form and return it to the clerk of the
25 district court within five days after service upon him or her. Upon

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

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

25 (b) If the respondent is present at a hearing convened

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

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

22 (10) A peace officer making an arrest pursuant to
23 subsection (9) of this section shall take such person into custody
24 and take such person before a judge of the county court or the court
25 which issued the harassment protection order within a reasonable

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

6 Sec. 2. Section 42-924, Reissue Revised Statutes of
7 Nebraska, is amended to read:

8 42-924 (1) Any victim of domestic abuse may file a
9 petition and affidavit for a protection order as provided in
10 subsection (2) of this section. Upon the filing of such a petition
11 and affidavit in support thereof, the judge or court may issue a
12 protection order without bond granting the following relief:

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

15 (b) Enjoining the respondent from threatening,
16 assaulting, molesting, attacking, or otherwise disturbing the peace
17 of the petitioner;

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

20 (d) Removing and excluding the respondent from the
21 residence of the petitioner, regardless of the ownership of the
22 residence;

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

25 (f) Awarding the petitioner temporary custody of any

1 minor children not to exceed ninety days; or

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

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

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

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

25 ~~(4)-(5)~~ If there is any conflict between sections 42-924

1 to 42-926 and any other provision of law, sections 42-924 to 42-926
2 shall govern.

3 Sec. 3. Section 42-925, Reissue Revised Statutes of
4 Nebraska, is amended to read:

5 42-925 (1) An order issued under subsection (1) of
6 section 42-924 may be issued ex parte to the respondent if it
7 reasonably appears from the specific facts included in the affidavit
8 that the petitioner will be in immediate danger of abuse before the
9 matter can be heard on notice. If an order is issued ex parte, such
10 order is a temporary order and the court shall immediately schedule
11 an evidentiary hearing to be held within thirty days after service of
12 such order. The , and the court shall cause notice of the hearing to
13 be given to the petitioner and the respondent. If the respondent
14 appears at the hearing and shows cause why such order should not
15 remain in effect, the court shall rescind the temporary order. If the
16 respondent does not so appear and show cause, the temporary order
17 shall be affirmed and shall be deemed the final protection order. If
18 the respondent has been properly served with the ex parte order and
19 fails to appear at the hearing required under this subsection, the
20 temporary order shall be affirmed and the service of the ex parte
21 order shall be notice of the final protection order for purposes of
22 prosecution under subsection (4) of section 42-924.

23 (2) If an order under subsection (1) of section 42-924 is
24 not issued ex parte, the court shall immediately schedule an
25 evidentiary hearing to be held within fourteen days after the filing

1 of the petition, and the court shall cause notice of the hearing to
2 be given to the petitioner and the respondent. If the respondent does
3 not appear at the hearing and show cause why such order should not be
4 issued, the court shall issue ~~such a final protection order~~.

5 (3) The court may by rule or order refer or assign all
6 matters regarding orders issued under subsection (1) of section
7 42-924 to a referee for findings and recommendations.

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

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

19 Sec. 4. Section 42-926, Reissue Revised Statutes of
20 Nebraska, is amended to read:

21 42-926 (1) Upon the issuance of ~~any a temporary or final~~
22 protection order under section 42-925, the clerk of the court shall
23 forthwith provide the petitioner, without charge, with two certified
24 copies of such order. The clerk of the court shall also forthwith
25 provide the local police department or local law enforcement agency

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

15 (2) If the respondent was present at a hearing convened
16 pursuant to section 42-925 and the protection order was not dismissed
17 or modified, the respondent shall be deemed to have notice by the
18 court at such hearing that the protection order will be granted and
19 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. 5. Original sections 28-311.09, 42-924, 42-925, and
23 42-926, Reissue Revised Statutes of Nebraska, are repealed.