

LEGISLATURE OF NEBRASKA

ONE HUNDRED SECOND LEGISLATURE

FIRST SESSION

LEGISLATIVE BILL 310

Introduced by McGill, 26.

Read first time January 12, 2011

Committee: Judiciary

A BILL

1 FOR AN ACT relating to domestic violence; to amend sections
2 28-311.09, 42-903, 42-924, and 42-924.01, Reissue Revised
3 Statutes of Nebraska; to change provisions relating to
4 protection order petitions, definitions, and penalties;
5 to provide for appointment of counsel for certain
6 protection order hearings; 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. If a hearing is held, the court may appoint an
attorney for an indigent petitioner if the respondent is represented
by an attorney. The appointment shall be for the hearing only. If an
attorney is appointed, the court shall continue the hearing no later
than one week. If an ex parte order is issued, the order shall stay
in effect until the date of the continued hearing. For purposes of
this subsection, indigent has the same meaning as in section 29-3901.

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2 pursuant to subsection (1) of this section may not be withdrawn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 for
5 a period of one year unless otherwise modified by the court. Any
6 person who knowingly violates an order issued pursuant to subsection
7 (1) of this section after service shall be guilty of a Class II
8 misdemeanor.

9 (5)(a) Fees to cover costs associated with the filing of
10 a petition for a harassment protection order or the issuance or
11 service of a harassment protection order seeking only the relief
12 provided by this section shall not be charged, except that a court
13 may assess such fees and costs if the court finds, by clear and
14 convincing evidence, that the statements contained in the petition
15 were false and that the harassment protection order was sought in bad
16 faith. A request by a petitioner to dismiss a harassment protection
order or the denial of a harassment protection order by the court
shall not be considered bad faith without additional evidence
presented to the court.

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

25 (6) The clerk of the district court shall make available

1 standard application and affidavit forms for a harassment protection
2 order with instructions for completion to be used by a petitioner.
3 The clerk and his or her employees shall not provide assistance in
4 completing the forms. The State Court Administrator shall adopt and
5 promulgate the standard application and affidavit forms provided for
6 in this section as well as the standard temporary and final
7 harassment protection order forms and provide a copy of such forms to
8 all clerks of the district courts in this state. These standard
9 temporary and final harassment protection order forms shall be the
10 only such forms used in this state.

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

1 respondent, the order shall remain in effect for a period of one year
2 unless the respondent shows cause why the order should not remain in
3 effect for a period of one year. ~~The court shall also cause to be~~
4 ~~served upon the respondent a form with which to request a show cause~~
5 ~~hearing.~~ If the respondent wishes to appear and show cause why the
6 order should not remain in effect for a period of one year, he or she
7 shall affix his or her current address, telephone number, and
8 signature to the form and return it to the clerk of the district
9 court within five days after service upon him or her. Upon receipt of
10 the request for a show-cause hearing, the court shall immediately
11 schedule a show-cause hearing to be held within thirty days after the
12 receipt of the request for a show-cause hearing and shall notify the
13 petitioner and respondent of the hearing date.

14 (8) Upon the issuance of any harassment protection order,
15 ~~under this section,~~ the clerk of the court shall forthwith provide
16 the petitioner, without charge, with two certified copies of such
17 order. The clerk of the court shall also forthwith provide the local
18 police department or local law enforcement agency and the local
19 sheriff's office, without charge, with one copy each of such order
20 and one copy each of the sheriff's return thereon. The clerk of the
21 court shall also forthwith provide a copy of the harassment
22 protection order to the sheriff's office in the county where the
23 respondent may be personally served together with instructions for
24 service. Upon receipt of the order and instructions for service, such
25 sheriff's office shall forthwith serve the harassment protection

1 order upon the respondent and file its return thereon with the clerk
2 of the court which issued the harassment protection order within
3 fourteen days of the issuance of the harassment protection order. If
4 any harassment protection order is dismissed or modified by the
5 court, the clerk of the court shall forthwith provide the local
6 police department or local law enforcement agency and the local
7 sheriff's office, without charge, with one copy each of the order of
8 dismissal or modification.

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

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

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

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

7 42-903 For purposes of the Protection from Domestic Abuse
8 Act, unless the context otherwise requires:

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

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

13 (b) Placing, by ~~physical menace, means of credible threat~~
14 another person in fear of ~~imminent~~ bodily injury; or

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

17 (2) Department means the Department of Health and Human
18 Services;

19 (3) Family or household members includes spouses or
20 former spouses, children, persons who are presently residing together
21 or who have resided together in the past, persons who have a child in
22 common whether or not they have been married or have lived together
23 at any time, other persons related by consanguinity or affinity, and
24 persons who are presently involved in a dating relationship with each
25 other or who have been involved in a dating relationship with each

1 other. For purposes of this subdivision, dating relationship means
2 frequent, intimate associations primarily characterized by the
3 expectation of affectional or sexual involvement, but does not
4 include a casual relationship or an ordinary association between
5 persons in a business or social context; and

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

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

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

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

18 (b) Enjoining the respondent from threatening,
19 assaulting, molesting, attacking, or otherwise disturbing the peace
20 of the petitioner;

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

23 (d) Removing and excluding the respondent from the
24 residence of the petitioner, regardless of the ownership of the
25 residence;

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

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

1 I ~~misdemeanor~~, except that ~~(a)~~ any person convicted of violating such
2 order who has a prior conviction for violating a protection order
3 shall be guilty of a Class I ~~misdemeanor~~ and ~~(b)~~ any person convicted
4 of violating such order who has a prior conviction for violating the
5 same protection order or a protection order granted to the same
6 petitioner shall be guilty of a Class IV felony. IV felony.

7 (4) If there is any conflict between sections 42-924 to
8 42-926 and any other provision of law, sections 42-924 to 42-926
9 shall govern.

10 Sec. 4. Section 42-924.01, Reissue Revised Statutes of
11 Nebraska, is amended to read:

12 42-924.01 Fees to cover costs associated with the filing
13 of a petition for a protection order or the issuance or service of a
14 protection order seeking only the relief provided by the Protection
15 from Domestic Abuse Act shall not be charged, except that a court may
16 assess such fees and costs if the court finds, by clear and
17 convincing evidence, that the statements contained in the petition
18 were false and that the protection order was sought in bad faith. A
19 request by a petitioner to dismiss a protection order or the denial
20 of a protection order by the court shall not be considered bad faith
21 without additional evidence presented to the court.

22 At the final hearing, a court may assess costs associated
23 with the filing of a petition for a protection order or the issuance
24 or service of a protection order seeking only the relief provided by
25 the Protection from Domestic Abuse Act against the respondent.

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1 Sec. 5. Original sections 28-311.09, 42-903, 42-924, and
2 42-924.01, Reissue Revised Statutes of Nebraska, are repealed.