

LEGISLATURE OF NEBRASKA
ONE HUNDRED EIGHTH LEGISLATURE
FIRST SESSION

LEGISLATIVE BILL 759

Introduced by DeBoer, 10.

Read first time January 18, 2023

Committee: Judiciary

- 1 A BILL FOR AN ACT relating to protection orders; to amend section 42-901,
- 2 Reissue Revised Statutes of Nebraska, and sections 28-311.09,
- 3 28-311.11, and 42-924.02, Revised Statutes Cumulative Supplement,
- 4 2022; to provide for notification of pending expiration of a
- 5 protection order; to provide duties for the Nebraska State Patrol
- 6 and the State Court Administrator; to harmonize provisions; and to
- 7 repeal the original sections.
- 8 Be it enacted by the people of the State of Nebraska,

1 Section 1. Section 28-311.09, Revised Statutes Cumulative
2 Supplement, 2022, is amended to read:

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

14 (2) The petition for a harassment protection order shall state the
15 events and dates or approximate dates of acts constituting the alleged
16 harassment, including the most recent and most severe incident or
17 incidents.

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

21 (4) A petition for a harassment protection order filed pursuant to
22 subsection (1) of this section may not be withdrawn except upon order of
23 the court. An order issued pursuant to subsection (1) of this section
24 shall specify that it is effective for a period of one year unless
25 otherwise dismissed or modified by the court. Any person, except the
26 petitioner, who knowingly violates an order issued pursuant to subsection
27 (1) of this section after service or notice as described in subdivision
28 (9)(b) of this section shall be guilty of a Class II misdemeanor.

29 (5)(a) Fees to cover costs associated with the filing of a petition
30 for a harassment protection order or the issuance or service of a
31 harassment protection order seeking only the relief provided by this

1 section shall not be charged, except that a court may assess such fees
2 and costs if the court finds, by clear and convincing evidence, that the
3 statements contained in the petition were false and that the harassment
4 protection order was sought in bad faith.

5 (b) A court may also assess costs associated with the filing of a
6 petition for a harassment protection order or the issuance or service of
7 a harassment protection order seeking only the relief provided by this
8 section against the respondent.

9 (6) The clerk of the district court shall make available standard
10 application and affidavit forms for a harassment protection order with
11 instructions for completion to be used by a petitioner. Affidavit forms
12 shall request all relevant information, including, but not limited to: A
13 description of the incidents that are the basis for the application for a
14 harassment protection order, including the most severe incident, and the
15 date or approximate date of such incidents. The forms shall include an
16 option for the petitioner to indicate if the petitioner would like to
17 receive notification of the pending expiration of the harassment
18 protection order and, if so, the method or methods by which the
19 petitioner wishes to receive such notification, including by mail or by
20 electronic means. The clerk and his or her employees shall not provide
21 assistance in completing the forms. The State Court Administrator shall
22 adopt and promulgate the standard application and affidavit forms
23 provided for in this section as well as the standard temporary ex parte
24 and final harassment protection order forms and provide a copy of such
25 forms to all clerks of the district courts in this state. These standard
26 temporary ex parte and final harassment protection order forms shall be
27 the only such forms used in this state.

28 (7) Any order issued under subsection (1) of this section may be
29 issued ex parte without notice to the respondent if it reasonably appears
30 from the specific facts shown by affidavit of the petitioner that
31 irreparable harm, loss, or damage will result before the matter can be

1 heard on notice. If the specific facts included in the affidavit (a) do
2 not show that the petitioner will suffer irreparable harm, loss, or
3 damage or (b) show that, for any other compelling reason, an ex parte
4 order should not be issued, the court may forthwith cause notice of the
5 application to be given to the respondent stating that he or she may show
6 cause, not more than fourteen days after service, why such order should
7 not be entered. Any notice provided to the respondent shall include
8 notification that a court may treat a petition for a harassment
9 protection order as a petition for a sexual assault protection order or a
10 domestic abuse protection order if it appears from the facts that such
11 other protection order is more appropriate and that the respondent shall
12 have an opportunity to show cause as to why such protection order should
13 not be entered. If such ex parte order is issued without notice to the
14 respondent, the court shall forthwith cause notice of the petition and
15 order and a form with which to request a show-cause hearing to be given
16 the respondent stating that, upon service on the respondent, the order
17 shall remain in effect for a period of one year unless the respondent
18 shows cause why the order should not remain in effect for a period of one
19 year. If the respondent wishes to appear and show cause why the order
20 should not remain in effect for a period of one year, he or she shall
21 affix his or her current address, telephone number, and signature to the
22 form and return it to the clerk of the district court within ten business
23 days after service upon him or her. Upon receipt of a timely request for
24 a show-cause hearing, the court shall immediately schedule a show-cause
25 hearing to be held within thirty days after the receipt of the request
26 for a show-cause hearing and shall notify the petitioner and respondent
27 of the hearing date. If a petition is dismissed without a hearing, it
28 shall be dismissed without prejudice. The petition and affidavit shall be
29 deemed to have been offered into evidence at any show-cause hearing. The
30 petition and affidavit shall be admitted into evidence unless
31 specifically excluded by the court.

1 (8) A court may treat a petition for a harassment protection order
2 as a petition for a sexual assault protection order or a domestic abuse
3 protection order if it appears from the facts in the petition, affidavit,
4 and evidence presented at a show-cause hearing that such other protection
5 order is more appropriate and if:

6 (a) The court makes specific findings that such other order is more
7 appropriate; or

8 (b) The petitioner has requested the court to so treat the petition.

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

28 (b) If the respondent is present at a hearing convened pursuant to
29 this section and the harassment protection order is not dismissed, such
30 respondent shall be deemed to have notice by the court at such hearing
31 that the harassment protection order will be granted and remain in effect

1 and further service of such notice described in this subsection shall not
2 be required for purposes of prosecution under this section.

3 (c) A temporary ex parte harassment protection order shall be
4 affirmed and deemed the final protection order and service of the
5 temporary ex parte order shall be notice of the final protection order if
6 the respondent has been properly served with the ex parte order and:

7 (i) The respondent fails to request a show-cause hearing within ten
8 business days after service upon him or her and no hearing was requested
9 by the petitioner or upon the court's own motion;

10 (ii) The respondent has been properly served with notice of any
11 hearing requested by the respondent or petitioner or upon the court's own
12 motion and the respondent fails to appear at such hearing; or

13 (iii) The respondent has been properly served with notice of any
14 hearing requested by the respondent, the petitioner, or upon the court's
15 own motion and the protection order was not dismissed at the hearing.

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

27 (11) A peace officer making an arrest pursuant to subsection (10) of
28 this section shall take such person into custody and take such person
29 before the county court or the court which issued the harassment
30 protection order within a reasonable time. At such time the court shall
31 establish the conditions of such person's release from custody, including

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

4 (12) When provided by the petitioner, the court shall make
5 confidential numeric victim identification information, including social
6 security numbers and dates of birth, available to appropriate criminal
7 justice agencies engaged in protection order enforcement efforts. Such
8 agencies shall maintain the confidentiality of this information except
9 for entry into state and federal databases for protection order
10 enforcement.

11 (13) No later than forty-five days before the expiration of a
12 harassment protection order, the Nebraska State Patrol shall notify the
13 petitioner of the pending expiration of the order, if the petitioner has
14 requested such notification. Such notification shall be given using the
15 method or methods selected by the petitioner in the application for a
16 protection order.

17 Sec. 2. Section 28-311.11, Revised Statutes Cumulative Supplement,
18 2022, is amended to read:

19 28-311.11 (1) Any victim of a sexual assault offense may file a
20 petition and affidavit for a sexual assault protection order as provided
21 in subsection (3) of this section. Upon the filing of such a petition and
22 affidavit in support thereof, the court may issue a sexual assault
23 protection order without bond enjoining the respondent from (a) imposing
24 any restraint upon the person or liberty of the petitioner, (b)
25 harassing, threatening, assaulting, molesting, attacking, or otherwise
26 disturbing the peace of the petitioner, or (c) telephoning, contacting,
27 or otherwise communicating with the petitioner. The sexual assault
28 protection order shall specify to whom relief under this section was
29 granted.

30 (2) The petition for a sexual assault protection order shall state
31 the events and dates or approximate dates of acts constituting the sexual

1 assault offense, including the most recent and most severe incident or
2 incidents.

3 (3) A petition for a sexual assault protection order shall be filed
4 with the clerk of the district court and the proceeding may be heard by
5 the county court or the district court as provided in section 25-2740.

6 (4) A petition for a sexual assault protection order may not be
7 withdrawn except upon order of the court. A sexual assault protection
8 order shall specify that it is effective for a period of one year unless
9 renewed pursuant to subsection (12) of this section or otherwise
10 dismissed or modified by the court. Any person, except the petitioner,
11 who knowingly violates a sexual assault protection order after service or
12 notice as described in subdivision (9)(b) of this section shall be guilty
13 of a Class I misdemeanor, except that any person convicted of violating
14 such order who has a prior conviction for violating a sexual assault
15 protection order shall be guilty of a Class IV felony.

16 (5)(a) Fees to cover costs associated with the filing of a petition
17 for issuance or renewal of a sexual assault protection order or the
18 issuance or service of a sexual assault protection order seeking only the
19 relief provided by this section shall not be charged, except that a court
20 may assess such fees and costs if the court finds, by clear and
21 convincing evidence, that the statements contained in the petition were
22 false and that the sexual assault protection order was sought in bad
23 faith.

24 (b) A court may also assess costs associated with the filing of a
25 petition for issuance or renewal of a sexual assault protection order or
26 the issuance or service of a sexual assault protection order seeking only
27 the relief provided by this section against the respondent.

28 (6) The clerk of the district court shall make available standard
29 application and affidavit forms for issuance and renewal of a sexual
30 assault protection order with instructions for completion to be used by a
31 petitioner. Affidavit forms shall request all relevant information,

1 including, but not limited to: A description of the most recent incident
2 that was the basis for the application for a sexual assault protection
3 order and the date or approximate date of the incident and, if there was
4 more than one incident, the most severe incident and the date or
5 approximate date of such incident. The forms shall include an option for
6 the petitioner to indicate if the petitioner would like to receive
7 notification of the pending expiration of the sexual assault protection
8 order and, if so, the method or methods by which the petitioner wishes to
9 receive such notification, including by mail or by electronic means. The
10 clerk and his or her employees shall not provide assistance in completing
11 the forms. The State Court Administrator shall adopt and promulgate the
12 standard application and affidavit forms provided for in this section as
13 well as the standard temporary ex parte and final sexual assault
14 protection order forms and provide a copy of such forms to all clerks of
15 the district courts in this state. Such standard temporary ex parte and
16 final sexual assault protection order forms shall be the only forms used
17 in this state.

18 (7) A sexual assault protection order may be issued or renewed ex
19 parte without notice to the respondent if it reasonably appears from the
20 specific facts shown by affidavit of the petitioner that irreparable
21 harm, loss, or damage will result before the matter can be heard on
22 notice. If a sexual assault protection order is not issued ex parte, the
23 court shall immediately schedule an evidentiary hearing to be held within
24 fourteen days after the filing of the petition, and the court shall cause
25 notice of the application to be given to the respondent stating that he
26 or she may show cause why such order should not be entered. Any notice
27 provided to the respondent shall include notification that a court may
28 treat a petition for a sexual assault protection order as a petition for
29 a harassment protection order or a domestic abuse protection order if it
30 appears from the facts that such other protection order is more
31 appropriate and that the respondent shall have an opportunity to show

1 cause as to why such protection order should not be entered. If such ex
2 parte order is issued or renewed without notice to the respondent, the
3 court shall forthwith cause notice of the petition and order and a form
4 with which to request a show-cause hearing to be given the respondent
5 stating that, upon service on the respondent, the order shall remain in
6 effect for a period of one year unless the respondent shows cause why the
7 order should not remain in effect for a period of one year. If the
8 respondent wishes to appear and show cause why the order should not
9 remain in effect for a period of one year, he or she shall affix his or
10 her current address, telephone number, and signature to the form and
11 return it to the clerk of the district court within ten business days
12 after service upon him or her. Upon receipt of a timely request for a
13 show-cause hearing, the court shall immediately schedule a show-cause
14 hearing to be held within thirty days after the receipt of the request
15 for a show-cause hearing and shall notify the petitioner and respondent
16 of the hearing date. The petition and affidavit shall be deemed to have
17 been offered into evidence at any show-cause hearing. The petition and
18 affidavit shall be admitted into evidence unless specifically excluded by
19 the court.

20 (8) A court may treat a petition for a sexual assault protection
21 order as a petition for a harassment protection order or a domestic abuse
22 protection order if it appears from the facts in the petition, affidavit,
23 and evidence presented at a show-cause hearing that such other protection
24 order is more appropriate and if:

25 (a) The court makes specific findings that such other order is more
26 appropriate; or

27 (b) The petitioner has requested the court to so treat the petition.

28 (9)(a) Upon the issuance or renewal of any temporary ex parte or
29 final sexual assault protection order, the clerk of the court shall
30 forthwith provide the petitioner, without charge, with two certified
31 copies of such order. The clerk of the court shall also forthwith provide

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

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

22 (c) A temporary ex parte sexual assault protection order shall be
23 affirmed and deemed the final protection order and service of the
24 temporary ex parte order shall be notice of the final protection order if
25 the respondent has been properly served with the ex parte order and:

26 (i) The respondent fails to request a show-cause hearing within ten
27 business days after service upon him or her and no hearing was requested
28 by the petitioner or upon the court's own motion;

29 (ii) The respondent has been properly served with notice of any
30 hearing requested by the respondent or petitioner or upon the court's own
31 motion and the respondent fails to appear at such hearing; or

1 (iii) The respondent has been properly served with notice of any
2 hearing requested by the respondent, the petitioner, or upon the court's
3 own motion and the protection order was not dismissed at the hearing.

4 (10) A peace officer shall, with or without a warrant, arrest a
5 person if (a) the officer has probable cause to believe that the person
6 has committed a violation of a sexual assault protection order issued
7 pursuant to this section or a violation of a valid foreign sexual assault
8 protection order recognized pursuant to section 28-311.12 and (b) a
9 petitioner under this section provides the peace officer with a copy of
10 such order or the peace officer determines that such an order exists
11 after communicating with the local law enforcement agency.

12 (11) A peace officer making an arrest pursuant to subsection (10) of
13 this section shall take such person into custody and take such person
14 before the county court or the court which issued the sexual assault
15 protection order within a reasonable time. At such time the court shall
16 establish the conditions of such person's release from custody, including
17 the determination of bond or recognizance, as the case may be. The court
18 shall issue an order directing that such person shall have no contact
19 with the alleged victim of the sexual assault offense.

20 (12)(a) An order issued under subsection (1) of this section may be
21 renewed annually. To request renewal of the order, the petitioner shall
22 file a petition for renewal and affidavit in support thereof at any time
23 within forty-five days prior to the date the order is set to expire,
24 including the date the order expires.

25 (b) A sexual assault protection order may be renewed on the basis of
26 the petitioner's affidavit stating that there has been no material change
27 in relevant circumstances since entry of the order and stating the reason
28 for the requested renewal if:

29 (i) The petitioner seeks no modification of the order; and

30 (ii)(A) The respondent has been properly served with notice of the
31 petition for renewal and notice of hearing and fails to appear at the

1 hearing; or

2 (B) The respondent indicates that he or she does not contest the
3 renewal.

4 (c) The petition for renewal shall state the reasons a renewal is
5 sought and shall be filed with the clerk of the district court, and the
6 proceeding thereon may be heard by the county court or the district court
7 as provided in section 25-2740. A petition for renewal will otherwise be
8 governed in accordance with the procedures set forth in subsections (4)
9 through (11) of this section. The renewed order shall specify that it is
10 effective for one year commencing on the first calendar day after
11 expiration of the previous order or on the calendar day the court grants
12 the renewal if such day is subsequent to the first calendar day after
13 expiration of the previous order.

14 (13) When provided by the petitioner, the court shall make
15 confidential numeric victim identification information, including social
16 security numbers and dates of birth, available to appropriate criminal
17 justice agencies engaged in protection order enforcement efforts. Such
18 agencies shall maintain the confidentiality of this information, except
19 for entry into state and federal databases for protection order
20 enforcement.

21 (14) No later than forty-five days before the expiration of a sexual
22 assault protection order, the Nebraska State Patrol shall notify the
23 petitioner of the pending expiration of the order, if the petitioner has
24 requested such notification. Such notification shall be given using the
25 method or methods selected by the petitioner in the application for a
26 protection order.

27 (15) ~~(14)~~ For purposes of this section, sexual assault offense
28 means:

29 (a) Conduct amounting to sexual assault under section 28-319 or
30 28-320, sexual abuse by a school employee under section 28-316.01, sexual
31 assault of a child under section 28-319.01 or 28-320.01, or an attempt to

1 commit any of such offenses; or

2 (b) Subjecting or attempting to subject another person to sexual
3 contact or sexual penetration without his or her consent, as such terms
4 are defined in section 28-318.

5 Sec. 3. Section 42-901, Reissue Revised Statutes of Nebraska, is
6 amended to read:

7 42-901 Sections 42-901 to 42-931 and section 5 of this act shall be
8 known and may be cited as the Protection from Domestic Abuse Act.

9 Sec. 4. Section 42-924.02, Revised Statutes Cumulative Supplement,
10 2022, is amended to read:

11 42-924.02 The clerk of the district court shall make available
12 standard petition and affidavit forms for all types of protection orders
13 provided by law with instructions for completion to be used by a
14 petitioner. Affidavit forms shall request all relevant information,
15 including, but not limited to: A description of the most recent incident
16 that was the basis for the application for a protection order and the
17 date or approximate date of the incident and, if there was more than one
18 incident, the most severe incident and the date or approximate date of
19 such incident. The forms shall include an option for the petitioner to
20 indicate if the petitioner would like to receive notification of the
21 pending expiration of the protection order and, if so, the method or
22 methods by which the petitioner wishes to receive such notification,
23 including by mail or by electronic means. The clerk and his or her
24 employees shall not provide assistance in completing the forms. The State
25 Court Administrator shall adopt and promulgate the standard petition and
26 affidavit forms provided for in this section as well as the standard
27 temporary ex parte and final protection order forms and provide a copy of
28 such forms to all clerks of the district courts in this state. These
29 standard temporary ex parte and final protection order forms shall be the
30 only such forms used in this state.

31 Sec. 5. No later than forty-five days before the expiration of a

1 domestic violence protection order issued under section 42-924 or 42-925,
2 the Nebraska State Patrol shall notify the petitioner of the pending
3 expiration of the order, if the petitioner has requested such
4 notification. Such notification shall be given using the method or
5 methods selected by the petitioner in the application for a protection
6 order.

7 Sec. 6. Original section 42-901, Reissue Revised Statutes of
8 Nebraska, and sections 28-311.09, 28-311.11, and 42-924.02, Revised
9 Statutes Cumulative Supplement, 2022, are repealed.