

LEGISLATIVE BILL 330

Approved by the Governor May 9, 1989

Introduced by Pirsch, 10; Bernard-Stevens, 42

AN ACT relating to domestic matters; to amend sections 29-404.02, 29-422, 42-357, 42-901, 42-903, 42-905, 42-924 to 42-926, and 43-532, Reissue Revised Statutes of Nebraska, 1943; to change provisions relating to arrests; to define and redefine terms; to provide an additional support service; to change provisions relating to protection orders as prescribed; to change penalties; to excuse certain costs as prescribed; to provide for construction of certain sections; to harmonize provisions; and to repeal the original sections.

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

Section 1. That section 29-404.02, Reissue Revised Statutes of Nebraska, 1943, be amended to read as follows:

29-404.02. A Except as provided in section 10 of this act, a peace officer may arrest a person without a warrant if the officer has reasonable cause to believe that such person has committed:

(1) A felony; or

(2) A misdemeanor, and the officer has reasonable cause to believe that such person either (a) will not be apprehended unless immediately arrested, ; (b) may cause injury to himself or herself or others or damage to property unless immediately arrested, ; (c) may destroy or conceal evidence of the commission of such misdemeanor, ; or (d) has committed a misdemeanor in the presence of the officer; or

(3) One or more of the following acts to one or more household members:

(a) Attempting to cause or intentionally, knowingly, or recklessly causing bodily injury with or without a deadly weapon; or

(b) Threatening another in a menacing manner.

For purposes of this section, household members shall include spouses or former spouses, children, persons who are presently residing together or who have resided together in the past, persons who have a child in common whether or not they have been married or have lived together at any time, and other persons

related by consanguinity or affinity.

Sec. 2. That section 29-422, Reissue Revised Statutes of Nebraska, 1943, be amended to read as follows:

29-422. It is hereby declared to be the policy of the State of Nebraska to issue citations in lieu of arrest or continued custody to the maximum extent consistent with the effective enforcement of the law and the protection of the public. In furtherance of that policy, except as provided in sections 10 and 11 of this act, any peace officer shall be authorized to issue a citation in lieu of arrest or continued custody for any offense which is a traffic infraction, any other infraction, or a misdemeanor and for any violation of a city or village ordinance. Such authorization shall be carried out in the manner specified in sections 29-422 to 29-429, 39-6,105, 39-6,107, 39-6,108, and 39-6,112.

Sec. 3. That section 42-357, Reissue Revised Statutes of Nebraska, 1943, be amended to read as follows:

42-357. The court may order either party to pay to the clerk a sum of money for the temporary support and maintenance of the other party and minor children if any are affected by the action and to enable such party to prosecute or defend the action. The court may make such order after service of process and claim for temporary allowances is made in the petition or by motion by the petitioner or by the respondent in a responsive pleading; but no such order shall be entered before three days after notice of hearing has been served on the other party or notice waived. During the pendency of any proceeding under sections 42-347 to 42-379 after the petition is filed, upon application of either party and if the accompanying affidavit of the party or his or her agent shows to the court that the party is entitled thereto, the court may issue ex parte orders (1) restraining any person from transferring, encumbering, hypothecating, concealing, or in any way disposing of real or personal property except in the usual course of business or for the necessities of life, and the party against whom such order is directed shall upon order of the court account for all unusual expenditures made after such order is served upon him or her, (2) enjoining any party from molesting or disturbing the peace of the other party or any minor children affected by the action, and (3) determining the temporary custody of any minor children of the marriage, except that no restraining order enjoining any party from molesting or disturbing the peace of any minor

child shall issue unless, at the same time, the court determines that the party requesting such order shall have temporary custody of such minor child. Ex parte orders issued pursuant to subdivision (1) of this section shall remain in force for no more than ten days or until a hearing is held thereon, whichever is earlier. After motion, notice to the party, and hearing, the court may order either party excluded from the premises occupied by the other upon a showing that physical or emotional harm would otherwise result. Any restraining order issued excluding either party from the premises occupied by the other shall specifically set forth the location of the premises and shall be served upon the adverse party by the sheriff in the manner prescribed for serving a summons, and a return thereof shall be filed in district court. Any person who knowingly violates such an order after service shall be guilty of a Class ~~III~~A II misdemeanor. In the event a restraining order enjoining any party from molesting or disturbing the peace of any minor children is issued, upon application and affidavit setting out the reason therefor, the court shall schedule a hearing within seventy-two hours to determine whether the order regarding the minor children shall remain in force. Section 25-1064 shall not apply to the issuance of ex parte orders pursuant to this section, except that in the absence from the county of the district court judge, any judge of the county court may grant a temporary ex parte order in accordance with this section.

Sec. 4. That section 42-901, Reissue Revised Statutes of Nebraska, 1943, be amended to read as follows:

42-901. Sections 42-901 to 42-927 and sections 10 to 13 of this act shall be known and may be cited as the Protection from Domestic Abuse Act.

Sec. 5. That section 42-903, Reissue Revised Statutes of Nebraska, 1943, be amended to read as follows:

42-903. As used ~~in~~ For purposes of the Protection from Domestic Abuse Act, unless the context otherwise requires:

(1) Abuse shall mean the occurrence of one or more of the following acts between household members:

(a) Attempting to cause or intentionally, knowingly, or recklessly causing bodily injury ~~or serious bodily injury~~ with or without a deadly weapon; or

(b) Placing, by physical menace, another in fear of imminent ~~serious~~ bodily injury;

(2) Department shall mean the Department of Social Services;

(3) Family or household members shall include spouses or former spouses, children, persons who are presently residing together or who have resided together in the past, persons who have a child in common whether or not they have been married or have lived together at any time, and other persons related by consanguinity or affinity; and

(4) Law enforcement agency shall mean the police department or town marshal in incorporated municipalities and the office of the sheriff in unincorporated areas.

Sec. 6. That section 42-905, Reissue Revised Statutes of Nebraska, 1943, be amended to read as follows:

42-905. The comprehensive support services shall include, but not be limited to:

(1) Emergency services for victims of abuse and their families;

(2) Support programs that meet specific needs of victims of abuse and their families;

(3) Education, counseling, and supportive programs for the abuser; and

(4) Programs to aid in the prevention and elimination of domestic violence which shall include education and public awareness; and

(5) Assistance in completing the standard application and affidavit forms for persons who file an application and affidavit for a protection order.

Sec. 7. That section 42-924, Reissue Revised Statutes of Nebraska, 1943, be amended to read as follows:

42-924. (1) Any victim of domestic abuse may file an application and affidavit for a ~~temporary restraining protection~~ order by making a showing of such abuse with any judge of a district court or a conciliation court. Upon the filing of such an application and affidavit in support thereof, the judge or court may issue a ~~temporary restraining protection~~ order without bond enjoining the adverse party from ~~(1)~~ (a) imposing any restraint upon the person or liberty of the applicant or ~~(2)~~ (b) threatening, assaulting, molesting, attacking, or otherwise disturbing the peace of the applicant.

(2) Application for a protection order providing for removal of the adverse party from the premises occupied by the victim of domestic abuse shall require notice and hearing. Such hearing shall be

scheduled within seventy-two hours of the issuance as soon as possible after entry of the temporary restraining protection order but in no event later than fourteen days after entry of the protection order. The court may order either party excluded from the premises occupied by the other upon a showing that physical or emotional harm would otherwise result. Any such restraining order issued shall specifically set forth the location of the premises and shall be personally served, in the manner prescribed for serving a summons, and a return thereof shall be filed in district court.

(3) An application made pursuant to subsection (1) or (2) of this section may not be withdrawn except upon order of the court. An order issued pursuant to subsection (1) or (2) of this section shall specify that it is effective for a period of one year unless otherwise modified by the court. Any person who knowingly violates such an order issued pursuant to subsection (1) or (2) of this section after service shall be guilty of a Class II misdemeanor.

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

Sec. 8. That section 42-925, Reissue Revised Statutes of Nebraska, 1943, be amended to read as follows:

42-925. Any order issued under subsection (1) or (2) of section 42-924 may be issued ex parte, if the circumstances of the case demand it, or without notice to the adverse party if it reasonably appears from the specific facts shown by affidavit of the applicant that irreparable harm, loss, or damage will result before the matter can be heard on notice. In the alternative, the court or judge may cause immediate notice of the application to be given to the adverse party, stating that he or she may show cause, not less more than five fourteen days after service upon him or her, why such order should not be entered, but no temporary restraining order shall be granted without notice to the adverse party unless it reasonably appears from the specific facts shown by affidavit of the applicant that irreparable harm, loss, or damage will result before the matter can be heard on notice. If such order is issued without notice to the adverse party, the court shall cause immediate notice of the application and order to be given the adverse party, stating that he or she may show cause, not less than five days after service upon him or her, why such order should not remain in effect. If the judge of the district court and the judge of the

conciliation court are absent from the county, any judge of the county court may issue a temporary ex parte order in accordance with this section.

Sec. 9. That section 42-926, Reissue Revised Statutes of Nebraska, 1943, be amended to read as follows:

42-926. Upon the issuance of any temporary restraining protection order under section 42-925, the clerk of the court shall forthwith provide the applicant, without charge, with two certified copies of such order. The clerk of the court shall also forthwith provide the local police department or local law enforcement agency and the local sheriff's office, without charge, with one copy each of such order and one copy each of the sheriff's return thereon. The clerk of the court shall also forthwith provide a copy of the protection order to the sheriff's office in the county where the adverse party may be personally served together with instructions for service. Upon receipt of the order and instructions for service, such sheriff's office shall forthwith serve the protection order upon the adverse party and file its return thereon with the clerk of the court which issued the protection order within fourteen days of the issuance of the protection order. If any protection order is dismissed or modified by the court, the clerk of the court shall forthwith provide the local police department or local law enforcement agency and the local sheriff's office, without charge, with one copy each of the order of dismissal or modification.

Sec. 10. A peace officer shall with or without a warrant arrest a person if (1) the officer has probable cause to believe that the person has committed a violation of an order issued pursuant to section 42-924 or 42-925 or a violation of an order excluding a person from certain premises issued pursuant to section 42-357 and (2) an applicant under section 42-924 or 42-925 or an applicant for an order excluding a person from certain premises issued pursuant to section 42-357 provides the peace officer with a copy of a protection order or an order excluding a person from certain premises issued under such sections or the peace officer determines that such an order exists after communicating with the local law enforcement agency.

Sec. 11. A peace officer making an arrest pursuant to section 10 of this act shall take such person into custody and take such person before a judge of the county court or the court which issued the protection order. At such time the court shall

establish the conditions of such person's release from custody, including the determination of bond or recognizance, as the case may be. The court shall issue an order directing that such person shall have no contact with the alleged victim of the abuse or violation.

Sec. 12. If an applicant files an affidavit with his or her application and affidavit for a protection order stating that he or she does not have the funds available to pay the cost of filing and service, the application and affidavit for a protection order shall be filed and served without payment of costs. If an application and affidavit for a protection order are filed and served without payment of costs, the court shall determine at the hearing if the applicant is able to pay such costs. In determining whether the applicant is able to pay such costs, the income and financial status of the alleged abuser shall not be considered. If the court finds that the applicant is able to pay such costs, the court may order the applicant or alleged abuser to pay the costs of filing and service. If there is any conflict between this section and sections 25-2301 to 25-2310, this section shall govern.

Sec. 13. The clerk of the district court shall make available standard application and affidavit forms for a protection order and waiver of costs pursuant to section 12 of this act with instructions for completion to be used by an applicant. The clerk and his or her employees shall not provide assistance in completing the forms. The department shall adopt and promulgate the standard application and affidavit forms provided for in this section and provide a copy of such forms to all clerks of the district courts in this state.

Sec. 14. That section 43-532, Reissue Revised Statutes of Nebraska, 1943, be amended to read as follows:

43-532. (1) The Legislature finds and declares that children develop their unique potential in relation to a caring social unit, usually the family, and other nurturing environments, especially the schools and the community. The Legislature further finds that the state shall declare a family policy to guide the actions of state government in dealing with problems and crises involving children and families.

(2) When children and families require assistance from a department, agency, institution, committee, or commission of state government, every

reasonable effort shall be made to provide such assistance in the least intrusive and least restrictive method consistent with the needs of the child and to deliver such assistance as close to the home community of the child or family requiring assistance as possible. The policy set forth in this subsection shall be (a) interpreted in conjunction with all relevant laws, rules, and regulations of the state and shall apply to all children and families who have need of services or who, by their circumstances or actions, have violated the laws, rules, or regulations of the state and are found to be in need of treatment or rehabilitation and (b) implemented through the cooperative efforts of state, county, and municipal governments, legislative, judicial, and executive branches of government, and other public and private resources.

(3) The family policy objectives prescribed in sections 43-532 to 43-534 shall not be construed to mean that a child shall be left in the home when it is clearly shown that continued residence in the home places the child at greater risk than removal from the home does.

Sec. 15. That original sections 29-404.02, 29-422, 42-357, 42-901, 42-903, 42-905, 42-924 to 42-926, and 43-532, Reissue Revised Statutes of Nebraska, 1943, are repealed.