

LEGISLATIVE BILL 299

Approved by the Governor April 12, 1993

Introduced by Robak, 22; Pirsch, 10; Schimek, 27; Pedersen, 39

AN ACT relating to stalking; to amend sections 28-311.02 to 28-311.04, 42-903, and 42-924, Revised Statutes Supplement, 1992; to state intent; to change and eliminate definitions; to change provisions relating to the offense of stalking; to provide a penalty; to harmonize provisions; to repeal the original sections; and to declare an emergency.

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

Section 1. That section 28-311.02, Revised Statutes Supplement, 1992, be amended to read as follows:

28-311.02. (1) It is the intent of the Legislature to enact laws dealing with stalking offenses which will protect victims from being intentionally terrified, threatened, or intimidated by individuals who intentionally follow, detain, stalk, or harass them or impose any restraint on their personal liberty and which will not prohibit constitutionally protected activities.

(2) For purposes of sections 28-311.02 to 28-311.05:

(a) ~~Harass~~ ~~(1) Harassment~~ shall mean to engage in a knowing and willful course of conduct directed at a specific person which seriously alarms, annoys, or harasses terrifies, threatens, or intimidates the person and which serves no legitimate purpose; and ~~The course of conduct must be such conduct as would cause a reasonable person to suffer substantial emotional distress and must actually cause substantial emotional distress to the person;~~

(b) ~~(2)~~ Course of conduct shall mean a pattern of conduct composed of a series of acts over a period of time, however short, evidencing a continuity of purpose, including a series of acts of following, detaining, restraining the personal liberty of, or stalking the person or telephoning the person. ~~Constitutionally protected activity shall not be included within the meaning of course of conduct; and~~

~~(3) Credible threat shall mean a threat made with the intent and the apparent ability to carry out the threat so as to cause the person who is the target of the threat to reasonably fear for his or her safety. The threat must be against the life of, or a threat to cause great bodily injury to, a person.~~

Sec. 2. That section 28-311.03, Revised Statutes Supplement, 1992, be amended to read as follows:

28-311.03. Any person who willfully; and maliciously; ~~and repeatedly follows or~~ harasses another person with the intent to terrify, threaten, or intimidate ~~and who makes a credible threat with the intent to place the person in reasonable fear of death or serious bodily~~

~~injury commits the offense of stalking, if there is in effect prohibiting such behavior against the person (1) a temporary restraining order pursuant to section 42-357, (2) a protection order pursuant to section 42-924, (3) an injunction pursuant to sections 25-1062 to 25-1080, or (4) a no contact order as a condition of bail pursuant to sections 29-901 to 29-910 in a pending matter. Any person convicted of violating this section shall be guilty of a Class I misdemeanor:~~

Sec. 3. That section 28-311.04, Revised Statutes Supplement, 1992, be amended to read as follows:

28-311.04. Any person convicted of violating section 28-311.03 shall be guilty of a Class I misdemeanor, except that any person convicted of violating such section who has a prior conviction under such section within the last seven years for acts committed ~~A person subsequently convicted within seven years of a conviction under section 28-311.03~~ against the same victim shall be guilty of a Class IV felony.

Sec. 4. That section 42-903, Revised Statutes Supplement, 1992, be amended to read as follows:

42-903. 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 with or without a deadly weapon; or

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

(2) Course of conduct shall mean a pattern of conduct composed of a series of acts over a period of time, however short, evidencing a continuity of purpose, including a series of acts of following, detaining, restraining the personal liberty of, or stalking the person or telephoning the person;

~~(3) Credible threat shall mean a threat made with the intent and the apparent ability to carry out the threat so as to cause the person who is the target of the threat to reasonably fear for his or her safety. The threat must be against the life of, or a threat to cause great bodily injury to, a person;~~

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

~~(4) (5) 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;~~

~~(6) Harassment~~ (5) Harass shall mean to engage in a knowing and willful course of conduct directed at a specific person which seriously alarms, annoys, or harasses terrifies, threatens, or intimidates the person and which serves no legitimate purpose; and ~~The course of conduct must be such conduct as would cause a reasonable person to~~

~~suffer substantial emotional distress and must actually cause substantial emotional distress to the person; and~~

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

Sec. 5. That section 42-924, Revised Statutes Supplement, 1992, be amended to read as follows:

42-924. (1) Any victim of domestic abuse or any victim who has been willfully; and maliciously, ~~and repeatedly followed or harassed by another person and that person has also made a credible threat with the intent to place the victim in reasonable fear of death or serious bodily injury~~ a person who had the intent to terrify, threaten, or intimidate the victim as prohibited by section 28-311.03 may file an application and affidavit for a protection order by making a showing of such conduct 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 protection order without bond enjoining the adverse party from (a) imposing any restraint upon the person or liberty of the applicant or (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 as soon as possible after entry of the 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 order issued shall specifically set forth the location of the premises and shall be personally served, 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. Except as provided in ~~sections 28-311.03 and~~ section 28-311.04, any person who knowingly violates 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. 6. That original sections 28-311.02 to 28-311.04, 42-903, and 42-924, Revised Statutes Supplement, 1992, are repealed.

Sec. 7. Since an emergency exists, this act shall be in full force and take effect, from and after its passage and approval, according to law.