

Chapter 1
Protection From Violence
(Last Updated: April 2013)

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Chapter 1.A

Protection From Violence Protection from Domestic Abuse Act - General Provisions (Last Updated: April 2013)

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§ 42-901. Act, how cited

Sections 42-901 to 42-931 shall be known and may be cited as the Protection from Domestic Abuse Act.

§ 42-902. Legislative intent

The Legislature hereby finds and declares that there is a present and growing need to develop services which will lessen and reduce the trauma of domestic abuse. It is the intent of the Protection from Domestic Abuse Act to provide abused family and household members necessary services including shelter, counseling, social services, and limited medical care and legal assistance.

§ 42-903. Terms, defined

For purposes of the Protection from Domestic Abuse Act, unless the context otherwise requires:

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

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

(b) Placing, by means of credible threat, another person in fear of bodily injury. For purposes of this subdivision, credible threat means a verbal or written threat, including a threat performed through the use of an electronic communication device, or a threat implied by a pattern of conduct or a combination of verbal, written, or electronically communicated statements and conduct that is made by a person with 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 or the safety of his or her family. It is not necessary to prove that the person making the threat had the intent to actually carry out the threat. The present incarceration of the person making the threat shall not prevent the threat from being deemed a credible threat under this section; or

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

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

(3) Family or household members includes 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, other persons related by consanguinity or affinity, and persons who are presently involved in a dating relationship with each other or who have been involved in a dating relationship with each other. For purposes of this subdivision, dating relationship

means frequent, intimate associations primarily characterized by the expectation of affectional or sexual involvement, but does not include a casual relationship or an ordinary association between persons in a business or social context; and

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

§ 42-904. Department; programs and services; duties

The department shall establish and maintain comprehensive support services to aid victims of domestic abuse and to provide prevention and treatment programs to aid victims of domestic abuse, their families, and abusers.

§ 42-905. Comprehensive support services; enumerated

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;
- (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 petition and affidavit forms for persons who file a petition and affidavit for a protection order.

§ 42-906. Support services; to whom provided

The department shall provide the support services as provided in section 42-905 to any person who seeks such services.

§ 42-907. Emergency services; enumerated

The department shall provide emergency services which shall consist of up to seventy-two hours of crisis intervention services including:

- (1) Constant access and intake to services;
- (2) Immediate transportation from a victim's home or other location to a hospital or a place of safety;
- (3) Immediate medical services or first aid;

- (4) Emergency legal counseling and referral;
- (5) Crisis counseling to provide support and assurance of safety;
- (6) Emergency financial aid; and
- (7) Safe living environments that will provide a supportive, nonthreatening shelter to victims, their families, and household members.

§ 42-908. Department; victim; diagnostic assessment; referral; followup

The department shall, as soon as possible after initial contact with the victim, determine through diagnostic assessment which programs are needed and desired by the victim and family members. The department shall make appropriate referral and conduct appropriate followup. The department shall, to the extent possible, use private sources to provide the support services.

§ 42-909. Department; victim; provide support services; plan of action

The department shall, in addition to the emergency services, provide support services as needed to a victim of domestic abuse for up to thirty days. The support services shall be problem oriented and formulate a plan of action for the victim. Such services may include relocation, financial security, employment, advocacy, assertiveness training, substance abuse counseling, and alternatives to returning to the abuser. Also, the department shall provide services for children including day care, education, and counseling.

§ 42-910. Department; services for children; enumerated

The department shall provide services for children which may include:

- (1) Emergency services which provide housing, food, clothing, and transportation to school;
- (2) Counseling for trauma which occurs when children witness or experience family violence;
- (3) Programs which provide for the appropriate educational needs of the individual child; and
- (4) Services for child care in the necessary absence of the victim parent.

§ 42-911. Department; victims; provide resource information

The department shall provide complete resource information for victims and their families on legal, medical, financial, vocational, welfare, child care, housing, and other support services.

§ 42-912. Department; develop client feedback; collect statistical data

The department shall develop a means of client feedback and collect statistical data to assist it in evaluating program effectiveness.

§ 42-913. Department; person who commits domestic abuse; programs and services

The department shall provide such programs and services as it deems appropriate for the person who commits domestic abuse.

§ 42-914. Department; domestic violence; develop educational curriculum

The department shall develop, in cooperation with the State Department of Education, a kindergarten through postsecondary educational curriculum relating to domestic violence.

§ 42-915. Department; families; develop community support systems

The department shall assist in developing community support systems for families to aid in the deterrence of all family crisis situations.

§ 42-916. Department; family program; prevent generational continuation of abuse

The department shall provide a family program, especially for children, to prevent the generational continuation of abuse within the family.

§ 42-917. Delivery of services; cooperation; coordination of programs

The delivery of all services provided for under the Protection from Domestic Abuse Act shall be done in cooperation with existing public, private, state, and local programs whenever possible to avoid duplication of services. Special effort shall be taken to coordinate programs with the Department of Labor, the State Department of Education, the Department of Health and Human Services, and other appropriate agencies, community service agencies, and private sources.

§ 42-918. Contact with victims of spouse abuse and families; confidentiality; violation; penalty

Under the Protection from Domestic Abuse Act, strict confidence shall be observed in all contact with victims of spouse abuse and their families. Any record, report, or files maintained by the department pursuant to the act shall be confidential, except that the department may release statistical information, while not revealing names. Violation of this section shall be a Class V misdemeanor.

§ 42-919. Programs; administered independent of welfare assistance programs

All programs under the Protection from Domestic Abuse Act shall be separate and administered independent of any welfare assistance program.

§ 42-920. Department; contract for services

The department may construct, lease, purchase, purchase on contract, utilize vendor payment, and contract for services connected with the operation of the Protection from Domestic Abuse Act as needs and interest demand.

§ 42-921. Department; power to accept gifts, grants, devises, and bequests; use

The department may accept gifts, grants, devises, and bequests of real and personal property from public or private sources to carry out the purposes of the Protection from Domestic Abuse Act. The department may sell, lease, exchange, invest, or expend such gifts, grants, devises, and bequests or the proceeds, rents, profits, and income therefrom according to the terms and conditions thereof.

§ 42-922. Department; adopt rules and regulations

The department shall adopt and promulgate such rules and regulations and perform all other acts as may be necessary or appropriate to carry out the Protection from Domestic Abuse Act. Such rules and regulations shall include, but not be limited to, rules and regulations relating to fees charged, training of personnel, and administration of the program.

§ 42-923. Department; determine ability to pay for services; uniform fee schedule; reduced or waived; when

The department shall determine the ability of the spouses or individuals to pay for services but shall not charge more than the actual cost. The department shall prepare and adopt a uniform fee schedule to be used. The scheduled fees may be reduced or waived by authorization of the department according to the rules of the department and as may be considered necessary to further the objective of the Protection from Domestic Abuse Act. The use of facilities and services established by the act shall not be denied residents of Nebraska because of inability to pay scheduled fees. Any fees received under this section shall be deposited in the General Fund.

Chapter 1.B

Protection From Violence

Protection from Domestic Abuse Act – Protection Orders

(Last Updated: April 2013)

42-924 Protection order; when authorized; term; violation; penalty; construction of sections.

42-924.01 Protection order; filed, issued, and served without payment of costs; when.

42-924.02 Protection order; forms provided; State Court Administrator; duties.

42-924.03 Protection order granted to respondent; when.

42-925 Ex parte protection order; notice requirements.

42-926 Protection order; copies; distribution; sheriff; duties; dismissal or modification; clerk of court; duties.

§ 42-924. Protection order; when authorized; term; violation; penalty; construction of sections

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

- (a) Enjoining the respondent from imposing any restraint upon the petitioner or upon the liberty of the petitioner;
- (b) Enjoining the respondent from threatening, assaulting, molesting, attacking, or otherwise disturbing the peace of the petitioner;
- (c) Enjoining the respondent from telephoning, contacting, or otherwise communicating with the petitioner;
- (d) Removing and excluding the respondent from the residence of the petitioner, regardless of the ownership of the residence;
- (e) Ordering the respondent to stay away from any place specified by the court;
- (f) Awarding the petitioner temporary custody of any minor children not to exceed ninety days;
- (g) Enjoining the respondent from possessing or purchasing a firearm as defined in section 28-1201; or
- (h) Ordering such other relief deemed necessary to provide for the safety and welfare of the petitioner and any designated family or household member.

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

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

(4) Any person who knowingly violates an a protection order issued pursuant to subsection (1) of this section or section 42-931 after service or notice as described in subsection (2) of section 42-926 shall be guilty of a Class I misdemeanor, except that any person convicted of violating such order who has a prior conviction for violating a protection order shall be guilty of a Class IV felony.

(5) 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.

§ 42-924.01. Protection order; filed, issued, and served without payment of costs; when

Fees to cover costs associated with the filing of a petition for a protection order or the issuance or service of a protection order seeking only the relief provided by the Protection from Domestic Abuse Act shall not be charged, except that a court may assess such fees and costs if the court finds, by clear and convincing evidence, that the statements contained in the petition were false and that the protection order was sought in bad faith.

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

§ 42-924.02. Protection order; forms provided; State Court Administrator; duties

The clerk of the district court shall make available standard petition and affidavit forms for all types of protection orders provided by law with instructions for completion to be used by a petitioner. The clerk and his or her employees shall not provide assistance in completing the forms. The State Court Administrator shall adopt and promulgate the standard petition and affidavit forms provided for in this section as well as the standard temporary and final protection order forms and provide a copy of such forms to all clerks of the district courts in this state. These standard temporary and final protection order forms shall be the only such forms used in this state.

§ 42-924.03. Protection order granted to respondent; when

A court shall only grant a respondent a protection order if (1) the respondent files a cross or counter petition seeking a protection order and (2) the issuing court makes specific findings of domestic or family abuse against the respondent and determines that the respondent is entitled to a protection order.

§ 42-925. Ex parte protection order; duration; notice requirements; hearing; notice; referral to referee; notice regarding firearm or ammunition

(1) An order issued under subsection (1) of section 42-924 may be issued ex parte to the respondent if it reasonably appears from the specific facts included in the affidavit that the petitioner will be in immediate danger of abuse before the matter can be heard on notice. If an order is issued ex parte, such order is a temporary order and the court shall forthwith cause notice of the petition and order to be given to the respondent. The court shall also cause a form to request a show-cause hearing to be served upon the respondent. If the respondent wishes to appear and show cause why the order should not remain in effect, he or she shall affix his or her current address, telephone number, and signature to the form and return it to the clerk of the district court within five days after service upon him or her. Upon receipt of the request for a show-cause hearing, the request of the

petitioner, or upon the court's own motion, the court shall immediately schedule a show-cause hearing to be held within thirty days after the receipt of the request for a show-cause hearing and shall notify the petitioner and respondent of the hearing date. If the respondent appears at the hearing and shows cause why such order should not remain in effect, the court shall rescind the temporary order. If the respondent does not so appear and show cause, the temporary order shall be affirmed and shall be deemed the final protection order. If the respondent has been properly served with the ex parte order and fails to appear at the hearing, the temporary order shall be affirmed and the service of the ex parte order shall be notice of the final protection order for purposes of prosecution under subsection (4) of section 42-924.

(2) If an order under subsection (1) of section 42-924 is not issued ex parte, the court shall immediately schedule an evidentiary hearing to be held within fourteen days after the filing of the petition, and the court shall cause notice of the hearing to be given to the petitioner and the respondent. If the respondent does not appear at the hearing and show cause why such order should not be issued, the court shall issue a final protection order.

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

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

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

§ 42-926. Protection order; copies; distribution; sheriff; duties; dismissal or modification; clerk of court; duties

(1) Upon the issuance of a temporary or final protection order under section 42-925, the clerk of the court shall forthwith provide the petitioner, 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 respondent 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 respondent 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. If the respondent has notice as described in subsection (2) of this section, further service under this subsection is unnecessary.

(2) If the respondent was present at a hearing convened pursuant to section 42-925 and the protection order was not dismissed, the respondent shall be deemed to have notice by the court at such hearing that the protection order will be granted and remain in effect and further service of notice described in subsection (1) of this section is not required for purposes of prosecution under subsection (4) of section 42-924.

Chapter 1.C

Protection From Violence

Protection from Domestic Abuse Act – Protection Order Enforcement

(Last Updated: April 2013)

42-927 Law enforcement agencies; education and training programs.

42-928 Protection order; restraining order; violation; arrest, when.

42-929 Arrest; peace officer; duties; conditions of release.

42-930 Law enforcement agency; Nebraska Commission on Law Enforcement and Criminal Justice; duties.

§ 42-927. Law enforcement agencies; education and training programs

All law enforcement agencies in the state shall provide officers employed by them with an education and training program designed to inform the officers of the problems of domestic abuse, procedures to deal with such problems, the Protection from Domestic Abuse Act, and the services and facilities available to abused family and household members.

§ 42-928. Protection order; restraining order; violation; arrest, when

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, a violation of section 42-925, a violation of an order excluding a person from certain premises issued pursuant to section 42-357, or a violation of a valid foreign protection order recognized pursuant to section 42-931 and (2) a petitioner under section 42-924 or 42-925, an applicant for an order excluding a person from certain premises issued pursuant to section 42-357, or a person protected under a valid foreign protection order recognized pursuant to section 42-931 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.

§ 42-929. Arrest; peace officer; duties; conditions of release

A peace officer making an arrest pursuant to section 42-928 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.

§ 42-930. Law enforcement agency; Nebraska Commission on Law Enforcement and Criminal Justice; duties

(1) By January 1, 1998, each law enforcement agency shall develop a system for recording incidents of domestic abuse within its jurisdiction. All incidents of domestic abuse, whether or not an arrest was made, shall be documented with a written incident report form that includes a domestic abuse identifier.

(2) By January 1, 1998, the Nebraska Commission on Law Enforcement and Criminal Justice shall develop or shall approve a monthly reporting process. Each law enforcement agency shall compile and submit a monthly report to the commission on the number of domestic abuse incidents recorded within its jurisdiction.

(3) The commission shall submit a report annually to the Governor, the Legislature, and the public indicating the total number of incidents of domestic abuse reported by each reporting agency. The report submitted to the Legislature shall be submitted electronically.

Chapter 1.D

Protection From Violence

Uniform Interstate Enforcement of Domestic Violence Protection Orders Act

(Last Updated: April 2013)

42-932 Act, how cited.

42-933 Terms, defined.

42-934 Judicial enforcement of order.

42-935 Nonjudicial enforcement of order.

42-936 Registration of order.

42-937 Immunity.

42-938 Other remedies.

42-939 Uniformity of application and construction.

42-940 Applicability of act.

42-932 Act, how cited.

Sections 42-932 to 42-940 shall be known and may be cited as the Uniform Interstate Enforcement of Domestic Violence Protection Orders Act.

42-933 Terms, defined.

For purposes of the Uniform Interstate Enforcement of Domestic Violence Protection Orders Act:

- (1) Foreign protection order means a protection order issued by a tribunal of another state;
- (2) Issuing state means the state whose tribunal issues a protection order;
- (3) Mutual foreign protection order means a foreign protection order that includes provisions in favor of both the protected individual seeking enforcement of the order and the respondent;
- (4) Protected individual means an individual protected by a protection order;
- (5) Protection order means an injunction or other temporary or final order, issued by a tribunal under the domestic violence, family violence, or antistalking laws, broadly construed, of the issuing state, to prevent an individual from engaging in violent or threatening acts against, harassment of, contact or communication with, or physical proximity to, another individual;
- (6) Respondent means the individual against whom enforcement of a protection order is sought;
- (7) State means a state of the United States, the District of Columbia, Puerto Rico, the United States Virgin Islands, or any territory or insular possession subject to the jurisdiction of the United States. The term includes an Indian tribe or band that has jurisdiction to issue protection orders; and
- (8) Tribunal means a court, agency, or other entity authorized by law to issue or modify a protection order.

42-934 Judicial enforcement of order.

- (a) A person authorized by the law of this state to seek enforcement of a protection order may seek enforcement of a valid foreign protection order in a tribunal of this state. The tribunal shall enforce the terms of the order, including terms that provide relief that a tribunal of this state would lack power to provide but for this section. The tribunal shall enforce the order, whether the order was obtained by independent action or in another proceeding, if it is an order issued in response to a complaint, petition, or motion filed by

or on behalf of an individual seeking protection. In a proceeding to enforce a foreign protection order, the tribunal shall follow the procedures of this state for the enforcement of protection orders.

(b) A tribunal of this state may not enforce a foreign protection order issued by a tribunal of a state that does not recognize the standing of a protected individual to seek enforcement of the order.

(c) A tribunal of this state shall enforce the provisions of a valid foreign protection order which govern child custody, parenting time, visitation, or other access, if the order was issued in accordance with the applicable federal and state jurisdictional requirements governing the issuance of orders relating to child custody, parenting time, visitation, or other access in the issuing state.

(d) A foreign protection order is valid if it:

(1) identifies the protected individual and the respondent;

(2) is currently in effect;

(3) was issued by a tribunal that had jurisdiction over the parties and subject matter under the law of the issuing state; and

(4) was issued after the respondent was given reasonable notice and had an opportunity to be heard before the tribunal issued the order or, in the case of an order ex parte, the respondent was given notice and has had or will have an opportunity to be heard within a reasonable time after the order was issued, in a manner consistent with the rights of the respondent to due process.

(e) A foreign protection order valid on its face is prima facie evidence of its validity.

(f) Absence of any of the criteria for validity of a foreign protection order is an affirmative defense in an action seeking enforcement of the order.

(g) A tribunal of this state may enforce provisions of a mutual foreign protection order which favor a respondent only if:

(1) the respondent filed a written pleading seeking a protection order from the tribunal of the issuing state; and

(2) the tribunal of the issuing state made specific findings in favor of the respondent.

42-935 Nonjudicial enforcement of order.

(a) A law enforcement officer of this state, upon determining that there is probable cause to believe that a valid foreign protection order exists and that the order has been violated, shall enforce the order as if it were the order of a tribunal of this state. Presentation of a protection order that identifies both the protected individual and the respondent and, on its face, is currently in effect constitutes probable cause to believe that a valid foreign protection order exists. For purposes of this section, the protection order may be inscribed on a tangible medium or may have been stored in an electronic or other medium if it is retrievable in perceivable form. Presentation of a certified copy of a protection order is not required for enforcement.

(b) If a foreign protection order is not presented, a law enforcement officer of this state may consider other information in determining whether there is probable cause to believe that a valid foreign protection order exists.

(c) If a law enforcement officer of this state determines that an otherwise valid foreign protection order cannot be enforced because the respondent has not been notified or served with the order, the officer shall inform the respondent of the order, make a reasonable effort to serve the order upon the respondent, and allow the respondent a reasonable opportunity to comply with the order before enforcing the order.

(d) Registration or filing of an order in this state is not required for the enforcement of a valid foreign protection order pursuant to the Uniform Interstate Enforcement of Domestic Violence Protection Orders Act.

42-936 Registration of order.

(a) Any individual may register a foreign protection order in this state. To register a foreign protection order, an individual shall:

(1) present a certified copy of the order to the Nebraska State Patrol for the registration of such orders; or

(2) present a certified copy of the order to another agency designated by the state and request that the order be registered with the Nebraska State Patrol.

(b) Upon receipt of a foreign protection order, the agency responsible for the registration of such orders shall register the order in accordance with this section. After the order is registered, the responsible agency shall furnish to the individual registering the order a certified copy of the registered order.

(c) The agency responsible for the registration of foreign protection orders shall register an order upon presentation of a copy of a protection order which has been certified by the issuing state. A registered foreign protection order that is inaccurate or is not currently in effect shall be corrected or removed from the registry in accordance with the law of this state.

(d) An individual registering a foreign protection order shall file an affidavit by the protected individual stating that, to the best of the protected individual's knowledge, the order is currently in effect.

(e) A foreign protection order registered under the Uniform Interstate Enforcement of Domestic Violence Protection Orders Act may be entered in any existing state or federal registry of protection orders, in accordance with applicable law.

(f) A fee shall not be charged for the registration of a foreign protection order.

42-937 Immunity.

This state or a local governmental agency, or a law enforcement officer, prosecuting attorney, clerk of the court, or any state or local governmental official acting in an official capacity, is immune from civil and criminal liability for conduct arising out of the registration or enforcement of a foreign protection order or the detention or arrest of an alleged violator of a foreign protection order if the conduct was done in good faith in an effort to comply with the Uniform Interstate Enforcement of Domestic Violence Protection Orders Act.

42-938 Other remedies.

A protected individual who pursues remedies under the Uniform Interstate Enforcement of Domestic Violence Protection Orders Act is not precluded from pursuing other legal or equitable remedies against the respondent.

42-939 Uniformity of application and construction.

In applying and construing the Uniform Interstate Enforcement of Domestic Violence Protection Orders Act, consideration shall be given to the need to promote uniformity of the law with respect to its subject matter among states that enact it.

42-940 Applicability of act.

The Uniform Interstate Enforcement of Domestic Violence Protection Orders Act applies to protection orders issued before January 1, 2004, and to continuing actions for enforcement of foreign protection orders commenced before January 1, 2004. A request for enforcement of a foreign protection order made on or after January 1, 2004, for violations of a foreign protection order occurring before January 1, 2004, is governed by the Uniform Interstate Enforcement of Domestic Violence Protection Orders Act.

Chapter 1.E

Protection From Violence

Arrest Provisions

(Last Updated: April 2013)

29-404.01 Arrest without warrant; supplemental provisions.

29-404.02 Arrest without warrant; when.

29-404.03 Arrest without warrant; reasonable cause; conditions.

29-828 Search for weapons; when authorized.

29-422 Citation in lieu of arrest; legislative intent.

29-404.01 Arrest without warrant; supplemental provisions.

The provisions of sections 29-404.01 to 29-404.03 shall be supplemental and in addition to any other laws relating to the subject of arrest.

29-404.02 Arrest without warrant; when.

(1) Except as provided in section 42-928, a peace officer may arrest a person without a warrant if the officer has reasonable cause to believe that such person has committed:

(a) A felony;

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

(c) One or more of the following acts to one or more household members, whether or not committed in the presence of the peace officer:

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

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

(iii) Engaging in sexual contact or sexual penetration without consent as defined in section 28-318.

(2) For purposes of this section:

(a) 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, other persons related by consanguinity or affinity, and persons who are presently involved in a dating relationship with each other or who have been involved in a dating relationship with each other; and

(b) Dating relationship means frequent, intimate associations primarily characterized by the expectation of affectional or sexual involvement, but does not include a casual relationship or an ordinary association between persons in a business or social context.

29-404.03 Arrest without warrant; reasonable cause; conditions.

In determining whether reasonable cause exists to justify an arrest, a law enforcement officer may take into account all facts and circumstances, including those based upon any expert knowledge or experience which the officer in fact possessed, which a prudent officer would judge relevant to the likelihood that a crime has been committed and that the person to be arrested has committed it, and for such purpose the officer may rely on information he receives from any informant whom it is reasonable under the circumstances to credit, whether or not at the time of making the arrest the officer knows the informant's identity.

29-828 Search for weapons; when authorized.

Where the circumstances reasonably indicate to an officer of the law that a search of an individual for weapons is indicated in order to protect the life of such officer such search for weapons may lawfully be made.

29-422 Citation in lieu of arrest; legislative intent.

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 42-928 and 42-929, 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 and 60-684 to 60-686.

See Also:

Chapter 1.C Neb. Rev. Stat. §42-928

Chapter 1.C Neb. Rev. Stat. §42-929

Chapter 1.E Neb. Rev. Stat. §28-311.09

Chapter 1.E Neb. Rev. Stat. §28-311.10

Chapter 1.F

Protection From Violence Harassment Protection Orders

(Last Updated: April 2013)

28-311.02 Stalking and harassment; legislative intent; terms, defined.

28-311.09 Harassment protection order; procedure; costs; enforcement.

28-311.10 Foreign harassment protection order; enforcement.

§ 28-311.02. Stalking and harassment; legislative intent; terms, defined

(1) It is the intent of the Legislature to enact laws dealing with stalking offenses which will protect victims from being willfully harassed, 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, 28-311.09, and 28-311.10:

(a) Harass means to engage in a knowing and willful course of conduct directed at a specific person which seriously terrifies, threatens, or intimidates the person and which serves no legitimate purpose;

(b) Course of conduct means 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, contacting, or otherwise communicating with the person;

(c) Family or household member means a spouse or former spouse of the victim, children of the victim, a person presently residing with the victim or who has resided with the victim in the past, a person who had a child in common with the victim, other persons related to the victim by consanguinity or affinity, or any person presently involved in a dating relationship with the victim or who has been involved in a dating relationship with the victim. For purposes of this subdivision, dating relationship means frequent, intimate associations primarily characterized by the expectation of affectional or sexual involvement but does not include a casual relationship or an ordinary association between persons in a business or social context; and

(d) Substantially conforming criminal violation means a guilty plea, a nolo contendere plea, or a conviction for a violation of any federal law or law of another state or any county, city, or village ordinance of this state or another state substantially similar to section 28-311.03. Substantially conforming is a question of law to be determined by the court.

§ 28-311.09. Harassment protection order; procedure; costs; enforcement

(1) Any victim who has been harassed as defined by section 28-311.02 may file a petition and affidavit for a harassment protection order as provided in subsection (3) of this section. Upon the filing of such a petition and affidavit in support thereof, the court may issue a harassment protection order without bond enjoining the respondent from (a) imposing any restraint upon the person or liberty of the petitioner, (b) harassing, threatening, assaulting, molesting, attacking, or otherwise disturbing the peace of the petitioner, or (c) telephoning, contacting, or otherwise communicating with the petitioner.

- (2) The petition for a harassment protection order shall state the events and dates of acts constituting the alleged harassment.
- (3) A petition for a harassment protection order shall be filed with the clerk of the district court, and the proceeding may be heard by the county court or the district court as provided in section 25-2740.
- (4) A petition for a harassment protection order filed pursuant to subsection (1) of this section may not be withdrawn except upon order of the court. An order issued pursuant to subsection (1) of this section shall specify that it is effective for a period of one year unless otherwise dismissed or modified by the court. Any person who knowingly violates an order issued pursuant to subsection (1) of this section after service or notice as described in subdivision (8)(b) of this section shall be guilty of a Class II misdemeanor.
- (5) (a) Fees to cover costs associated with the filing of a petition for a harassment protection order or the issuance or service of a harassment protection order seeking only the relief provided by this section shall not be charged, except that a court may assess such fees and costs if the court finds, by clear and convincing evidence, that the statements contained in the petition were false and that the harassment protection order was sought in bad faith.
- (b) A court may also assess costs associated with the filing of a petition for a harassment protection order or the issuance or service of a harassment protection order seeking only the relief provided by this section against the respondent.
- (6) The clerk of the district court shall make available standard application and affidavit forms for a harassment protection order with instructions for completion to be used by a petitioner. The clerk and his or her employees shall not provide assistance in completing the forms. The State Court Administrator shall adopt and promulgate the standard application and affidavit forms provided for in this section as well as the standard temporary and final harassment protection order forms and provide a copy of such forms to all clerks of the district courts in this state. These standard temporary and final harassment protection order forms shall be the only such forms used in this state.
- (7) Any order issued under subsection (1) of this section may be issued ex parte without notice to the respondent if it reasonably appears from the specific facts shown by affidavit of the petitioner that irreparable harm, loss, or damage will result before the matter can be heard on notice. If the specific facts included in the affidavit (a) do not show that the petitioner will suffer irreparable harm, loss, or damage or (b) show that, for any other compelling reason, an ex parte order should not be issued, the court or may forthwith cause notice of the application to be given to the respondent stating that he or she may show cause, not more than fourteen days after service, why such order should not be entered. If such ex parte order is issued without notice to the respondent, the court shall forthwith cause notice of the petition and order and a form with which to request a show-cause hearing to be given the respondent stating that, upon service on the respondent, the order shall remain in effect for a period of one year unless the respondent

shows cause why the order should not remain in effect for a period of one year. If the respondent wishes to appear and show cause why the order should not remain in effect for a period of one year, he or she shall affix his or her current address, telephone number, and signature to the form and return it to the clerk of the district court within five days after service upon him or her. Upon receipt of the request for a show-cause hearing, the court shall immediately schedule a show-cause hearing to be held within thirty days after the receipt of the request for a show-cause hearing and shall notify the petitioner and respondent of the hearing date.

(8) (a) Upon the issuance of any harassment protection order, the clerk of the court shall forthwith provide the petitioner, 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 harassment protection order to the sheriff's office in the county where the respondent 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 harassment protection order upon the respondent and file its return thereon with the clerk of the court which issued the harassment protection order within fourteen days of the issuance of the harassment protection order. If any harassment 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.

(b) If the respondent is present at a hearing convened pursuant to this section and the harassment protection order is not dismissed, such respondent shall be deemed to have notice by the court at such hearing that the protection order will be granted and remain in effect and further service of such notice described in this subsection shall not be required for purposes of prosecution under this section. If the respondent has been properly served with the ex parte order and fails to appear at the hearing, the temporary order shall be deemed to be granted and remain in effect and the service of the ex parte order will serve as notice required under this section.

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

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

§ 28-311.10. Foreign harassment protection order; enforcement

(1) A valid foreign harassment protection order or order similar to a harassment protection order issued by a court of another state, tribe, or territory shall be accorded full faith and credit by the courts of this state and enforced as if it were issued in this state.

(2) A foreign harassment order issued by a court of another state, tribe, or territory shall be valid if:

(a) The issuing court had jurisdiction over the parties and matter under the law of such state, tribe, or territory;

(b) The respondent was given reasonable notice and an opportunity to be heard sufficient to protect the respondent's right to due process before the order was issued; and

(c) The harassment order from another jurisdiction has not been rendered against both the petitioner and the respondent, unless: (i) The respondent filed a cross or counter petition, complaint, or other written pleading seeking such a harassment order; and (ii) the issuing court made specific findings of harassment against both the petitioner and respondent and determined that each party was entitled to such an order. There is a presumption of the validity of the foreign protection order when the order appears authentic on its face.

(3) A peace officer may rely upon a copy of any putative valid foreign harassment protection order which has been provided to the peace officer by any source.

Chapter 1.G

Protection From Violence Jurisdiction

(Last Updated: April 2013)

25-2740 Domestic relations matters; district, county, and separate juvenile courts; jurisdiction; procedure.

§25-2740. Domestic relations matters; district, county, and separate juvenile courts; jurisdiction; procedure

(1) For purposes of this section:

(a) Domestic relations matters means proceedings under sections 28-311.09 and 28-311.10 (including harassment protection orders and valid foreign harassment protection orders), the Conciliation Court Law and sections 42-347 to 42-381 (including dissolution, separation, annulment, custody, and support), section 43-512.04 (including child support or medical support), section 42-924 (including domestic protection orders), sections 43-1401 to 43-1418 (including paternity determinations and parental support), and sections 43-1801 to 43-1803 (including grandparent visitation); and

(b) Paternity or custody determinations means proceedings to establish the paternity of a child under sections 43-1411 to 43-1418 or proceedings to determine custody of a child under section 42-364.

(2) Except as provided in subsection (3) of this section, in domestic relations matters, a party shall file his or her petition or complaint and all other court filings with the clerk of the district court. The party shall state in the petition or complaint whether such party requests that the proceeding be heard by a county court judge or by a district court judge. If the party requests the case be heard by a county court judge, the county court judge assigned to hear cases in the county in which the matter is filed at the time of the hearing is deemed appointed by the district court and the consent of the county court judge is not required. Such proceeding is considered a district court proceeding, even if heard by a county court judge, and an order or judgment of the county court in a domestic relations matter has the force and effect of a district court judgment. The testimony in a domestic relations matter heard before a county court judge shall be preserved as provided in section 25-2732.

(3) In addition to the jurisdiction provided for paternity or custody determinations under subsection (2) of this section, a county court or separate juvenile court which already has jurisdiction over the child whose paternity or custody is to be determined has jurisdiction over such paternity or custody determination.