

AMENDMENTS TO LB178

Introduced by Judiciary.

1 1. Strike the original sections and insert the following new
2 sections:

3 Section 1. Section 25-2740, Reissue Revised Statutes of Nebraska, is
4 amended to read:

5 25-2740 (1) For purposes of this section:

6 (a) Domestic relations matters means proceedings under sections
7 28-311.09 and 28-311.10 (including harassment protection orders and valid
8 foreign harassment protection orders), sections 4 and 5 of this act
9 (including sexual assault protection orders and valid foreign sexual
10 assault protection orders), the Conciliation Court Law and sections
11 42-347 to 42-381 (including dissolution, separation, annulment, custody,
12 and support), section 43-512.04 (including child support or medical
13 support), section 42-924 (including domestic protection orders), sections
14 43-1401 to 43-1418 (including paternity determinations and parental
15 support), and sections 43-1801 to 43-1803 (including grandparent
16 visitation); and

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

20 (2) Except as provided in subsection (3) of this section, in
21 domestic relations matters, a party shall file his or her petition or
22 complaint and all other court filings with the clerk of the district
23 court. The party shall state in the petition or complaint whether such
24 party requests that the proceeding be heard by a county court judge or by
25 a district court judge. If the party requests the case be heard by a
26 county court judge, the county court judge assigned to hear cases in the
27 county in which the matter is filed at the time of the hearing is deemed

1 appointed by the district court and the consent of the county court judge
2 is not required. Such proceeding is considered a district court
3 proceeding, even if heard by a county court judge, and an order or
4 judgment of the county court in a domestic relations matter has the force
5 and effect of a district court judgment. The testimony in a domestic
6 relations matter heard before a county court judge shall be preserved as
7 provided in section 25-2732.

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

13 Sec. 2. Section 28-101, Reissue Revised Statutes of Nebraska, is
14 amended to read:

15 28-101 Sections 28-101 to 28-1357, ~~28-1418.01, 28-1429.03,~~ and
16 28-1601 to 28-1603 and sections 4 and 5 of this act shall be known and
17 may be cited as the Nebraska Criminal Code.

18 Sec. 3. Section 28-311.04, Reissue Revised Statutes of Nebraska, is
19 amended to read:

20 28-311.04 (1) Except as provided in subsection (2) of this section,
21 any person convicted of violating section 28-311.03 is guilty of a Class
22 I misdemeanor.

23 (2) Any person convicted of violating section 28-311.03 is guilty of
24 a Class IIIA felony if:

25 (a) The person has a prior conviction under such section or a
26 substantially conforming criminal violation within the last seven years;

27 (b) The victim is under sixteen years of age;

28 (c) The person possessed a deadly weapon at any time during the
29 violation;

30 (d) The person was also in violation of section 28-311.09, 42-924,
31 or 42-925 or section 4 of this act, or in violation of a valid foreign

1 harassment protection order recognized pursuant to section 28-311.10 or a
2 valid foreign sexual assault protection order recognized pursuant to
3 section 5 of this act at any time during the violation; or

4 (e) The person has been convicted of any felony in this state or has
5 been convicted of a crime in another jurisdiction which, if committed in
6 this state, would constitute a felony and the victim or a family or
7 household member of the victim was also the victim of such previous
8 felony.

9 Sec. 4. (1) Any victim of a sexual assault offense may file a
10 petition and affidavit for a sexual assault protection order as provided
11 in subsection (3) of this section. Upon the filing of such a petition and
12 affidavit in support thereof, the court may issue a sexual assault
13 protection order without bond enjoining the respondent from (a) imposing
14 any restraint upon the person or liberty of the petitioner, (b)
15 harassing, threatening, assaulting, molesting, attacking, or otherwise
16 disturbing the peace of the petitioner, or (c) telephoning, contacting,
17 or otherwise communicating with the petitioner.

18 (2) The petition for a sexual assault protection order shall state
19 the events and dates of acts constituting the sexual assault offense.

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

23 (4) A petition for a sexual assault protection order may not be
24 withdrawn except upon order of the court. A sexual assault protection
25 order shall specify that it is effective for a period of one year unless
26 renewed pursuant to subsection (11) of this section or otherwise
27 dismissed or modified by the court. Any person who knowingly violates a
28 sexual assault protection order after service or notice as described in
29 subdivision (8)(b) of this section shall be guilty of a Class I
30 misdemeanor except that for any second violation of a sexual assault
31 protection order within a twelve-month period, or any third or subsequent

1 violation, whenever committed, such person shall be guilty of a Class IV
2 felony.

3 (5)(a) Fees to cover costs associated with the filing of a petition
4 for issuance or renewal of a sexual assault protection order or the
5 issuance or service of a sexual assault protection order seeking only the
6 relief provided by this section shall not be charged, except that a court
7 may assess such fees and costs if the court finds, by clear and
8 convincing evidence, that the statements contained in the petition were
9 false and that the sexual assault protection order was sought in bad
10 faith.

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

15 (6) The clerk of the district court shall make available standard
16 application and affidavit forms for issuance and renewal of a sexual
17 assault protection order with instructions for completion to be used by a
18 petitioner. The clerk and his or her employees shall not provide
19 assistance in completing the forms. The State Court Administrator shall
20 adopt and promulgate the standard application and affidavit forms
21 provided for in this section as well as the standard temporary and final
22 sexual assault protection order forms and provide a copy of such forms to
23 all clerks of the district courts in this state. Such standard temporary
24 and final sexual assault protection order forms shall be the only forms
25 used in this state.

26 (7) A sexual assault protection order may be issued or renewed ex
27 parte without notice to the respondent if it reasonably appears from the
28 specific facts shown by affidavit of the petitioner that irreparable
29 harm, loss, or damage will result before the matter can be heard on
30 notice. If the specific facts included in the affidavit (a) do not show
31 that the petitioner will suffer irreparable harm, loss, or damage or (b)

1 show that, for any other compelling reason, an ex parte order should not
2 be issued or renewed, the court may forthwith cause notice of the
3 application to be given to the respondent stating that he or she may show
4 cause, not more than fourteen days after service, why such order should
5 not be entered. If such ex parte order is issued or renewed without
6 notice to the respondent, the court shall forthwith cause notice of the
7 petition and order and a form with which to request a show-cause hearing
8 to be given the respondent stating that, upon service on the respondent,
9 the order shall remain in effect for a period of one year unless the
10 respondent shows cause why the order should not remain in effect for a
11 period of one year. If the respondent wishes to appear and show cause why
12 the order should not remain in effect for a period of one year, he or she
13 shall affix his or her current address, telephone number, and signature
14 to the form and return it to the clerk of the district court within five
15 days after service upon him or her. Upon receipt of the request for a
16 show-cause hearing, the court shall immediately schedule a show-cause
17 hearing to be held within thirty days after the receipt of the request
18 for a show-cause hearing and shall notify the petitioner and respondent
19 of the hearing date.

20 (8)(a) Upon the issuance or renewal of any sexual assault protection
21 order, the clerk of the court shall forthwith provide the petitioner,
22 without charge, with two certified copies of such order. The clerk of the
23 court shall also forthwith provide the local police department or local
24 law enforcement agency and the local sheriff's office, without charge,
25 with one copy each of such order and one copy each of the sheriff's
26 return thereon. The clerk of the court shall also forthwith provide a
27 copy of the sexual assault protection order to the sheriff's office in
28 the county where the respondent may be personally served together with
29 instructions for service. Upon receipt of the order and instructions for
30 service, such sheriff's office shall forthwith serve the sexual assault
31 protection order upon the respondent and file its return thereon with the

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

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

18 (9) A peace officer shall, with or without a warrant, arrest a
19 person if (a) the officer has probable cause to believe that the person
20 has committed a violation of a sexual assault protection order issued
21 pursuant to this section or a violation of a valid foreign sexual assault
22 protection order recognized pursuant to section 5 of this act and (b) a
23 petitioner under this section provides the peace officer with a copy of
24 such order or the peace officer determines that such an order exists
25 after communicating with the local law enforcement agency.

26 (10) A peace officer making an arrest pursuant to subsection (9) of
27 this section shall take such person into custody and take such person
28 before the county court or the court which issued the sexual assault
29 protection order within a reasonable time. At such time the court shall
30 establish the conditions of such person's release from custody, including
31 the determination of bond or recognizance, as the case may be. The court

1 shall issue an order directing that such person shall have no contact
2 with the alleged victim of the sexual assault offense.

3 (11) An order issued under subsection (1) of this section may be
4 renewed annually. To request renewal of the order, the petitioner shall
5 file a petition for renewal and affidavit in support thereof at least
6 forty-five days prior to the date the order is set to expire. The
7 petition for renewal shall state the reasons a renewal is sought and
8 shall be filed with the clerk of the district court, and the proceeding
9 thereon may be heard by the county court or the district court as
10 provided in section 25-2740. A petition for renewal will otherwise be
11 governed in accordance with the procedures set forth in subsections (4)
12 through (10) of this section.

13 (12) For purposes of this section, sexual assault offense means:

14 (a) Conduct amounting to sexual assault under section 28-319 or
15 28-320 or sexual assault of a child under section 28-319.01 or 28-320.01
16 or an attempt to commit any of such offenses; or

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

20 Sec. 5. (1) A valid foreign sexual assault protection order or
21 order similar to a sexual assault protection order issued by a court of
22 another state, territory, possession, or tribe shall be accorded full
23 faith and credit by the courts of this state and enforced as if it were
24 issued in this state.

25 (2) A foreign sexual assault protection order issued by a court of
26 another state, territory, possession, or tribe shall be valid if:

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

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

1 (c) The sexual assault protection order from another jurisdiction
2 has not been rendered against both the petitioner and the respondent,
3 unless: (i) The respondent filed a cross or counter petition, complaint,
4 or other written pleading seeking such a sexual assault protection order;
5 and (ii) the issuing court made specific findings of sexual assault
6 offenses against both the petitioner and respondent and determined that
7 each party was entitled to such an order.

8 (3) There is a presumption of the validity of the foreign protection
9 order when the order appears authentic on its face.

10 (4) A peace officer may rely upon a copy of any putative valid
11 foreign sexual assault protection order which has been provided to the
12 peace officer by any source.

13 Sec. 6. Section 28-358.01, Reissue Revised Statutes of Nebraska, is
14 amended to read:

15 28-358.01 (1) Isolation means intentional acts (a) committed for the
16 purpose of preventing, and which do prevent, a vulnerable adult or senior
17 adult from having contact with family, friends, or concerned persons, (b)
18 committed to prevent a vulnerable adult or senior adult from receiving
19 his or her mail or telephone calls, (c) of physical or chemical restraint
20 of a vulnerable adult or senior adult committed for purposes of
21 preventing contact with visitors, family, friends, or other concerned
22 persons, or (d) which restrict, place, or confine a vulnerable adult or
23 senior adult in a restricted area for purposes of social deprivation or
24 preventing contact with family, friends, visitors, or other concerned
25 persons.

26 (2) Isolation does not include (a) medical isolation prescribed by a
27 licensed physician caring for the vulnerable adult or senior adult, (b)
28 action taken in compliance with a harassment protection order issued
29 pursuant to section 28-311.09, a valid foreign harassment protection
30 order recognized pursuant to section 28-311.10, a sexual assault
31 protection order issued pursuant to section 4 of this act, a valid

1 foreign sexual assault protection order recognized pursuant to section 5
2 of this act, an order issued pursuant to section 42-924, an ex parte
3 order issued pursuant to section 42-925, an order excluding a person from
4 certain premises issued pursuant to section 42-357, or a valid foreign
5 protection order recognized pursuant to section 42-931, or (c) action
6 authorized by an administrator of a nursing home pursuant to section
7 71-6021.

8 Sec. 7. Section 28-1206, Reissue Revised Statutes of Nebraska, is
9 amended to read:

10 28-1206 (1) A person commits the offense of possession of a deadly
11 weapon by a prohibited person if he or she:

12 (a) Possesses ~~Any person who possesses~~ a firearm, a knife, or brass
13 or iron knuckles and he or she:

14 (i) Has ~~who has~~ previously been convicted of a felony;

15 (ii) Is ~~, who is~~ a fugitive from justice;

16 (iii) Is ~~, or who is~~ the subject of a current and validly issued
17 domestic violence protection order,

18 harassment protection order, or sexual assault protection order and is
19 knowingly violating such order; or

20 (b) Possesses ~~, or (b) any person who possesses~~ a firearm or brass
21 or iron knuckles and he or she ~~who~~ has been convicted within the past
22 seven years of a misdemeanor crime of domestic violence, ~~commits the~~
23 ~~offense of possession of a deadly weapon by a prohibited person.~~

24 (2) The felony conviction may have been had in any court in the
25 United States, the several states, territories, or possessions, or the
26 District of Columbia.

27 (3)(a) Possession of a deadly weapon which is not a firearm by a
28 prohibited person is a Class III felony.

29 (b) Possession of a deadly weapon which is a firearm by a prohibited
30 person is a Class ID felony for a first offense and a Class IB felony for
31 a second or subsequent offense.

1 (4)(a) ~~(4)(a)(i)~~ For purposes of this section, misdemeanor crime of
2 domestic violence means a crime that:

3 ~~(i) Is (A)(I) A crime that is~~ classified as a misdemeanor under the
4 laws of the United States or the District of Columbia or the laws of any
5 state, territory, possession, or tribe;

6 ~~(ii) Has (II) A crime that has,~~ as an element, the use or attempted
7 use of physical force or the threatened use of a deadly weapon; and

8 ~~(iii) Is (III) A crime that is~~ committed by another against his or
9 her spouse, his or her former spouse, a person with whom he or she has a
10 child in common whether or not they have been married or lived together
11 at any time, or a person with whom he or she is or was involved in a
12 dating relationship as defined in section 28-323. ~~;~~ ~~or~~

13 ~~(b) For purposes of this section, misdemeanor crime of domestic~~
14 violence also includes the following offenses, if committed by a person
15 against his or her spouse, his or her former spouse, a person with whom
16 he or she is or was involved in a dating relationship as defined in
17 section 28-323, or a person with whom he or she has a child in common
18 whether or not they have been married or lived together at any time:

19 ~~(i) (B)(I) Assault in the third degree under section 28-310;~~ ~~τ~~

20 ~~(ii) Stalking~~ ~~stalking~~ under subsection (1) of section 28-311.04; ~~τ~~

21 ~~(iii) False~~ ~~false~~ imprisonment in the second degree under section
22 28-315; ~~τ~~

23 ~~(iv) First~~ ~~or first~~ offense domestic assault in the third degree
24 under subsection (1) of section 28-323; ~~or~~

25 ~~(v) Any~~ ~~any~~ attempt or conspiracy to commit ~~any~~ ~~one~~ of ~~such~~ these
26 offenses. ~~;~~ ~~and~~

27 ~~(II) The crime is committed by another against his or her spouse,~~
28 ~~his or her former spouse, a person with whom he or she has a child in~~
29 ~~common whether or not they have been married or lived together at any~~
30 ~~time, or a person with whom he or she is or was involved in a dating~~
31 ~~relationship as defined in section 28-323.~~

1 (c) ~~(ii)~~ A person shall not be considered to have been convicted of
2 a misdemeanor crime of domestic violence unless:

3 (i) ~~(A)~~ The person was represented by counsel in the case or
4 knowingly and intelligently waived the right to counsel in the case; and

5 (ii) ~~(B)~~ In the case of a prosecution for a misdemeanor crime of
6 domestic violence for which a person was entitled to a jury trial in the
7 jurisdiction in which the case was tried, either:

8 (A) ~~(I)~~ The case was tried to a jury; or

9 (B) ~~(II)~~ The person knowingly and intelligently waived the right to
10 have the case tried to a jury.

11 (5) ~~(b)~~ For purposes of this section:

12 (a) Domestic ~~, subject of a current and validly issued domestic~~
13 violence protection order means a protection order ~~pertains to a current~~
14 court order that was validly issued pursuant to section 28-311.09 or
15 42-924;

16 (b) Harassment protection order means a protection order issued
17 pursuant to section 28-311.09 or that meets or exceeds the criteria set
18 forth in section 28-311.10 regarding protection orders issued by a court
19 in any other state or a territory, possession, or tribe; ~~and -~~

20 (c) Sexual assault protection order means a protection order issued
21 pursuant to section 4 of this act or that meets or exceeds the criteria
22 set forth in section 5 of this act regarding protection orders issued by
23 a court in any other state or a territory, possession, or tribe.

24 Sec. 8. Section 29-404.02, Reissue Revised Statutes of Nebraska, is
25 amended to read:

26 29-404.02 (1) Except as provided in section 42-928 and section 4 of
27 this act, a peace officer may arrest a person without a warrant if the
28 officer has reasonable cause to believe that such person has committed:

29 (a) A felony;

30 (b) A misdemeanor, and the officer has reasonable cause to believe
31 that such person either (i) will not be apprehended unless immediately

1 arrested, (ii) may cause injury to himself or herself or others or damage
2 to property unless immediately arrested, (iii) may destroy or conceal
3 evidence of the commission of such misdemeanor, or (iv) has committed a
4 misdemeanor in the presence of the officer; or

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

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

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

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

13 (2) For purposes of this section:

14 (a) Household members includes ~~shall include~~ spouses or former
15 spouses, children, persons who are presently residing together or who
16 have resided together in the past, persons who have a child in common
17 whether or not they have been married or have lived together at any time,
18 other persons related by consanguinity or affinity, and persons who are
19 presently involved in a dating relationship with each other or who have
20 been involved in a dating relationship with each other; and

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

25 Sec. 9. Section 29-422, Reissue Revised Statutes of Nebraska, is
26 amended to read:

27 29-422 It is hereby declared to be the policy of the State of
28 Nebraska to issue citations in lieu of arrest or continued custody to the
29 maximum extent consistent with the effective enforcement of the law and
30 the protection of the public. In furtherance of that policy, except as
31 provided in sections 42-928 and 42-929 and section 4 of this act, any

1 peace officer shall be authorized to issue a citation in lieu of arrest
2 or continued custody for any offense which is a traffic infraction, any
3 other infraction, or a misdemeanor and for any violation of a city or
4 village ordinance. Such authorization shall be carried out in the manner
5 specified in sections 29-422 to 29-429 and 60-684 to 60-686.

6 Sec. 10. Original sections 25-2740, 28-101, 28-311.04, 28-358.01,
7 28-1206, 29-404.02, and 29-422, Reissue Revised Statutes of Nebraska, are
8 repealed.