LB289
2017

LEGISLATIVE BILL 289

Approved by the Governor May 22, 2017

Introduced by Pansing Brooks, 28; Brasch, 16; Linehan, 39; Morfeld, 46; Scheer, 19; Walz, 15; Watermeier, 1; Wishart, 27; Blood, 3; McCollister, 20; McDonnell, 5; Albrecht, 17; Hilkemann, 4; Wayne, 13; Brewer, 43; Kolterman, 24; Hansen, 26.

A BILL FOR AN ACT relating to law; to amend sections 25-2740, 28-101, 28-311.04, 28-358.01, 28-802, 28-830, 28-831, 28-1206, 29-404.02, 29-422, 42-903, 42-924, 42-925, 43-254, 43-283.01, 43-292.02, 43-1303, 43-1411.01, 43-1609, 43-1611, and 43-2933, Reissue Revised Statutes of Nebraska; to provide for sexual assault protection orders; to define and redefine terms; to change provisions relating to court procedures, penalties for stalking, possession of a deadly weapon by a prohibited person, domestic violence protection orders, and certain arrests; to change provisions relating to pandering, human trafficking, labor trafficking, and sex trafficking; to prohibit solicitation of a trafficking victim; to change and provide penalties; to provide a procedure to renew a protection order; to change provisions relating to paternity of a child conceived as a result of sexual assault; to harmonize provisions; and to repeal the original sections.

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

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

25-2740 (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), sections 4 and 5 of this act (including sexual assault protection orders and valid foreign sexual assault 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.

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

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

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

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

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

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

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

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

(d) The person was also in violation of section 28-311.09, 42-924, or 42-925 or section 4 of this act, or in violation of a valid foreign harassment protection order recognized pursuant to section 28-311.10 or a valid foreign

Appendix G.

LB289
2017

sexual assault protection order recognized pursuant to section 5 of this act at any time during the violation; or

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

Sec. 4. (1) Any victim of a sexual assault offense may file a petition and affidavit for a sexual assault 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 sexual assault 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 sexual assault protection order shall state the events and dates of acts constituting the sexual assault offense.

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

(5)(a) Fees to cover costs associated with the filing of a petition for issuance or renewal of a sexual assault protection order or the issuance or service of a sexual assault 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 sexual assault protection order was sought in bad faith.

(b) A court may also assess costs associated with the filing of a petition for issuance or renewal of a sexual assault protection order or the issuance or service of a sexual assault 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 issuance and renewal of a sexual assault 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 sexual assault protection order forms and provide a copy of such forms to all clerks of the district courts in this state. Such standard temporary and final sexual assault protection order forms shall be the only forms used in this state.

(7) A sexual assault protection order may be issued or renewed 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 or renewed, the court 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 or renewed 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 or renewal of any sexual assault 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 sexual assault 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

LB289
2017

the sexual assault protection order upon the respondent and file its return thereon with the clerk of the court which issued the sexual assault protection order within fourteen days of the issuance of the initial or renewed sexual assault protection order. If any sexual assault 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 sexual assault 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 shall, 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 sexual assault protection order issued pursuant to this section or a violation of a valid foreign sexual assault protection order recognized pursuant to section 5 of this act and (b) a petitioner under this section provides the peace officer with a copy of such order or the peace officer determines that such an order exists after communicating with the local law enforcement agency.

(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 sexual assault 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 sexual assault offense.

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

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

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

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

Sec. 5. (1) A valid foreign sexual assault protection order or an order similar to a sexual assault protection order issued by a court of another state, territory, possession, or tribe 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 sexual assault protection order issued by a court of another state, territory, possession, or tribe shall be valid if:

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

(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 sexual assault protection 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 sexual assault protection order; and (ii) the issuing court made specific findings of sexual assault offenses against both the petitioner and respondent and determined that each party was entitled to such an order.

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

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

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

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

LB289
2017

other concerned persons.

(2) Isolation does not include (a) medical isolation prescribed by a licensed physician caring for the vulnerable adult or senior adult, (b) action taken in compliance with a harassment protection order issued pursuant to section 28-311.09, a valid foreign harassment protection order recognized pursuant to section 28-311.10, a sexual assault protection order issued pursuant to section 4 of this act, a valid foreign sexual assault protection order recognized pursuant to section 5 of this act, an order issued pursuant to section 42-924, an ex parte order issued pursuant to section 42-925, an order excluding a person from certain premises issued pursuant to section 42-357, or a valid foreign protection order recognized pursuant to section 42-931, or (c) action authorized by an administrator of a nursing home pursuant to section 71-6021.

Sec. 7. Section 28-802, Reissue Revised Statutes of Nebraska, is amended to read:

28-802 (1) A person commits pandering if such person:

(a) Entices another person to become a prostitute; ~~or~~

(b) Procures or harbors therein an inmate for a house of prostitution or for any place where prostitution is practiced or allowed; ~~or~~

(c) Inveigles, entices, persuades, encourages, or procures any person to come into or leave this state for the purpose of prostitution or debauchery; or

(d) Receives or gives or agrees to receive or give any money or other thing of value for procuring or attempting to procure any person to become a prostitute or commit an act of prostitution or come into this state or leave this state for the purpose of prostitution or debauchery.

(2) Pandering is a Class II ~~III~~ felony ~~for a first offense, unless the person being enticed, procured, harbored, or otherwise persuaded to become a prostitute is under the age of eighteen years, in which case pandering is a Class II felony for a first offense. Pandering is a Class II felony for a second or subsequent offense~~.

Sec. 8. Section 28-830, Reissue Revised Statutes of Nebraska, is amended to read:

28-830 For purposes of sections 28-830 and 28-831, the following definitions apply:

(1) Actor means a person who solicits, procures, or supervises the services or labor of another person;

(2) Commercial sexual activity means any sex act on account of which anything of value is given, promised to, or received by any person;

(3) Debt bondage means inducing another person to provide:

(a) Commercial sexual activity in payment toward or satisfaction of a real or purported debt; or

(b) Labor or services in payment toward or satisfaction of a real or purported debt if:

(i) The reasonable value of the labor or services is not applied toward the liquidation of the debt; or

(ii) The length of the labor or services is not limited and the nature of the labor or services is not defined;

(4) Financial harm means theft by extortion as described by section 28-513;

(5) Forced labor or services means labor or services that are performed or provided by another person and are obtained or maintained through:

(a) Inflicting or threatening to inflict serious personal injury, as defined by section 28-318, on another person;

(b) Physically restraining or threatening to physically restrain the other person;

(c) Abusing or threatening to abuse the legal process against another person to cause arrest or deportation for violation of federal immigration law;

(d) Controlling or threatening to control another person's access to a controlled substance listed in Schedule I, II or III of section 28-405;

(e) Exploiting another person's substantial functional impairment as defined in section 28-368 or substantial mental impairment as defined in section 28-369;

(f) Knowingly destroying, concealing, removing, confiscating, or possessing any actual or purported passport or other immigration document or any other actual or purported government identification document of the other person; or

(g) Causing or threatening to cause financial harm to another person, including debt bondage;

(6) Labor or services means work or activity of economic or financial value;

(7) Labor trafficking means knowingly recruiting, enticing, harboring, transporting, providing, or obtaining by any means or attempting to recruit, entice, harbor, transport, provide, or obtain by any means a person eighteen years of age or older intending or knowing that the person will be subjected to forced labor or services;

(8) Labor trafficking of a minor means knowingly recruiting, enticing, harboring, transporting, providing, or obtaining by any means or attempting to recruit, entice, harbor, transport, provide, or obtain by any means a minor intending or knowing that the minor will be subjected to forced labor or services;

(9) Maintain means, in relation to labor or services, to secure continued performance thereof, regardless of any initial agreement by the other person to perform such type of service;

LB289
2017

(10) Minor means a person younger than eighteen years of age;

~~(11) Obtain means, in relation to labor or services, to secure performance thereof;~~

~~(12) Services means an ongoing relationship between the actor and another person in which the person performs activities under the supervision of or for the benefit of the actor. Commercial sexual activity and sexually explicit performances are forms of services under this section. Nothing in this subdivision shall be construed to legalize prostitution;~~

(11) ~~(13)~~ Sex trafficking means knowingly recruiting, enticing, harboring, transporting, providing, soliciting, or obtaining by any means or knowingly attempting to recruit, entice, harbor, transport, provide, solicit, or obtain by any means a person eighteen years of age or older for the purpose of having such person engage without consent, as defined in section 28-318, in commercial sexual activity, sexually explicit performance, or the production of pornography or to cause or attempt to cause a person eighteen years of age or older to engage without consent, as defined in section 28-318, in commercial sexual activity, sexually explicit performance, or the production of pornography;

(12) ~~(14)~~ Sex trafficking of a minor means knowingly recruiting, enticing, harboring, transporting, providing, soliciting, or obtaining by any means or knowingly attempting to recruit, entice, harbor, transport, provide, solicit, or obtain by any means a minor for the purpose of having such minor engage in commercial sexual activity, sexually explicit performance, or the production of pornography or to cause or attempt to cause a minor to engage in commercial sexual activity, sexually explicit performance, or the production of pornography;

(13) ~~(15)~~ Sexually-explicit performance means a live or public play, dance, show, or other exhibition intended to arouse or gratify sexual desire or to appeal to prurient interests; and

(14) ~~(16)~~ Trafficking victim means a person subjected to any act or acts prohibited by section 28-831.

Sec. 9. Section 28-831, Reissue Revised Statutes of Nebraska, is amended to read:

28-831 (1) Any person who engages in labor trafficking of a minor or sex trafficking of a minor is guilty of a Class IB ~~II felony if the actor uses overt force or the threat of force or the trafficking victim has not yet attained the age of sixteen years. Any person who otherwise engages in labor trafficking of a minor or sex trafficking of a minor is guilty of a Class IIA~~ felony.

(2) Any person who engages in labor trafficking or sex trafficking ~~by inflicting or threatening to inflict serious personal injury, as defined in section 28-318, on another person or physically restrains or threatens to physically restrain another person is guilty of a Class IIA felony. Any person who otherwise engages in labor trafficking or sex trafficking~~ is guilty of a Class II ~~III~~ felony.

(3) Any person, other than a trafficking victim, who knowingly benefits from or participates in a venture which has, as part of the venture, an act that is in violation of this section is guilty of a Class IIA ~~IIIA~~ felony.

(4) It is not a defense in a prosecution under this section (a) that consent was given by the minor victim, (b) that the defendant believed that the minor victim gave consent, or (c) that the defendant believed that the minor victim was an adult.

Sec. 10. Section 28-1206, Reissue Revised Statutes of Nebraska, is amended to read:

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

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

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

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

(iii) Is ~~, or who is~~ the subject of a current and validly issued domestic violence protection order, harassment protection order, or sexual assault protection order and is knowingly violating such order; or

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

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

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

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

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

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

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

LB289
2017

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

Sec. 11. Section 29-404.02, Reissue Revised Statutes of Nebraska, is amended to read:

29-404.02 (1) Except as provided in section 42-928 and section 4 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:

(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 includes ~~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.

Sec. 12. Section 29-422, Reissue Revised Statutes of Nebraska, is amended to read:

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

LB289
2017

public. In furtherance of that policy, except as provided in sections 42-928 and 42-929 and section 4 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 and 60-684 to 60-686.

Sec. 13. Section 42-903, Reissue Revised Statutes of Nebraska, is amended to read:

42-903 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 family or 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.

Sec. 14. Section 42-924, Reissue Revised Statutes of Nebraska, is amended to read:

42-924 (1) Any victim of domestic abuse may file a petition and affidavit for a protection order as provided in subsections ~~subsection~~ (2) and (3) 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. A petition for a protection order may not be withdrawn except upon order of the court.

(3)(a) A protection ~~(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.

(b) Any victim of domestic abuse may file a petition and affidavit to renew a protection order. Such petition and affidavit for renewal shall be filed on or after thirty days before the expiration of the previous protection order. Such renewed order shall specify that it is effective for a period of one year to commence on the first day following the expiration of the previous order and, if the court 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 a protection order issued pursuant

LB289
2017

to ~~subsection (1) of~~ this section or section 42-931 after service or notice a~~s~~ 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.

Sec. 15. Section 42-925, Reissue Revised Statutes of Nebraska, is amended to read:

42-925 (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 the ~~a~~ period provided in subsection (3) of section 42-924 ~~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.

Sec. 16. Section 43-254, Reissue Revised Statutes of Nebraska, is amended to read:

43-254 Pending the adjudication of any case, and subject to subdivision (5) of section 43-251.01, if it appears that the need for placement or further detention exists, the juvenile may be (1) placed or detained a reasonable period of time on order of the court in the temporary custody of either the person having charge of the juvenile or some other suitable person, (2) kept in some suitable place provided by the city or county authorities, (3) placed in any proper and accredited charitable institution, (4) placed in a state institution, except any adult correctional facility, when proper facilities are available and the only local facility is a city or county jail, at the expense of the committing county on a per diem basis as determined from time to time by the head of the particular institution, (5) placed in the temporary care and custody of the Department of Health and Human Services when it does not appe~~ar~~ that there is any need for secure detention, except that beginning October 1, 2013, no juvenile alleged to be a juvenile described in subdivision (1), (2), (3)(b), or (4) of section 43-247 shall be placed in the care and custody or under the supervision of the Department of Health and Human Services, or (6) beginning October 1, 2013, offered supervision options as determined pursuant to section 43-260.01, through the Office of Probation Administration as ordered by the court and agreed to in writing by the parties, if the juvenile is alleged to be a juvenile described in subdivision (1), (2), (3)(b), or (4) of section 43-247 and it does not appear that there is any need for secure detention. The court may assess the cost of such placement or detention in whole or in part to the parent of the juvenile as provided in section 43-290.

If a juvenile has been removed from his or her parent, guardian, or custodian pursuant to subdivision (2) of section 43-248, the court may enter an order continuing detention or placement upon a written determination that continuation of the juvenile in his or her home would be contrary to the health, safety, or welfare of such juvenile and that reasonable efforts were made to preserve and reunify the family if required under ~~subsections (1) through (4) of~~ section 43-283.01.

LB289
2017

Sec. 17. Section 43-283.01, Reissue Revised Statutes of Nebraska, is amended to read:

43-283.01 (1) In determining whether reasonable efforts have been made to preserve and reunify the family and in making such reasonable efforts, the juvenile's health and safety are the paramount concern.

(2) Except as provided in subsections (4) and (5) ~~subsection (4)~~ of this section, reasonable efforts shall be made to preserve and reunify families prior to the placement of a juvenile in foster care to prevent or eliminate the need for removing the juvenile from the juvenile's home and to make it possible for a juvenile to safely return to the juvenile's home.

(3) If continuation of reasonable efforts to preserve and reunify the family is determined to be inconsistent with the permanency plan determined for the juvenile in accordance with a permanency hearing under section 43-1312, efforts shall be made to place the juvenile in a timely manner in accordance with the permanency plan and to complete whatever steps are necessary to finalize the permanent placement of the juvenile.

(4) Reasonable efforts to preserve and reunify the family are not required if a court of competent jurisdiction has determined that:

(a) The parent of the juvenile has subjected the juvenile or another minor child to aggravated circumstances, including, but not limited to, abandonment, torture, chronic abuse, or sexual abuse;

(b) The parent of the juvenile has (i) committed first or second degree murder to another child of the parent, (ii) committed voluntary manslaughter to another child of the parent, (iii) aided or abetted, attempted, conspired, or solicited to commit murder, or aided or abetted voluntary manslaughter of the juvenile or another child of the parent, (iv) committed a felony assault which results in serious bodily injury to the juvenile or another minor child of the parent, or (v) been convicted of felony sexual assault of the other parent of the juvenile under section 28-319.01 or 28-320.01 or a comparable crime in another state; or

(c) The parental rights of the parent to a sibling of the juvenile have been terminated involuntarily.

(5) Except as otherwise provided in the Nebraska Indian Child Welfare Act, if the family includes a child who was conceived by the victim of a sexual assault and a biological parent is convicted of the crime under section 28-319 or 28-320 or a law in another jurisdiction similar to either section 28-319 or 28-320, the convicted biological parent of such child shall not be considered a part of the child's family for purposes of requiring reasonable efforts to preserve and reunify the family.

(6) ~~(5)~~ If reasonable efforts to preserve and reunify the family are not required because of a court determination made under subsection (4) of this section, a permanency hearing, as provided in section 43-1312, shall be held for the juvenile within thirty days after the determination, reasonable efforts shall be made to place the juvenile in a timely manner in accordance with the permanency plan, and whatever steps are necessary to finalize the permanent placement of the juvenile shall be made.

(7) ~~(6)~~ Reasonable efforts to place a juvenile for adoption or with a guardian may be made concurrently with reasonable efforts to preserve and reunify the family, but priority shall be given to preserving and reunifying the family as provided in this section.

Sec. 18. Section 43-292.02, Reissue Revised Statutes of Nebraska, is amended to read:

43-292.02 (1) A petition shall be filed on behalf of the state to terminate the parental rights of the juvenile's parents or, if such a petition has been filed by another party, the state shall join as a party to the petition, and the state shall concurrently identify, recruit, process, and approve a qualified family for an adoption of the juvenile, if:

(a) A juvenile has been in foster care under the responsibility of the state for fifteen or more months of the most recent twenty-two months; or

(b) A court of competent jurisdiction has determined the juvenile to be an abandoned infant or has made a determination that the parent has committed murder of another child of the parent, committed voluntary manslaughter of another child of the parent, aided or abetted, attempted, conspired, or solicited to commit murder, or aided or abetted voluntary manslaughter of the juvenile or another child of the parent, or committed a felony assault that has resulted in serious bodily injury to the juvenile or another minor child of the parent. For purposes of this subdivision, infant means a child eighteen months of age or younger.

(2) A petition shall not be filed on behalf of the state to terminate the parental rights of the juvenile's parents or, if such a petition has been filed by another party, the state shall not join as a party to the petition if the sole factual basis for the petition is that (a) the parent or parents of the juvenile are financially unable to provide health care for the juvenile or (b) the parent or parents of the juvenile are incarcerated. The fact that a qualified family for an adoption of the juvenile has been identified, recruited, processed, and approved shall have no bearing on whether parental rights shall be terminated.

(3) The petition is not required to be filed on behalf of the state or if a petition is filed the state shall not be required to join in a petition to terminate parental rights or to concurrently find a qualified family to adopt the juvenile under this section if:

(a) The child is being cared for by a relative;

(b) The Department of Health and Human Services has documented in the case

LB289
2017

plan or permanency plan, which shall be available for court review, a compelling reason for determining that filing such a petition would not be in the best interests of the juvenile; or

(c) The family of the juvenile has not had a reasonable opportunity to avail themselves of the services deemed necessary in the case plan or permanency plan approved by the court if reasonable efforts to preserve and reunify the family are required under section 43-283.01.

(4) Except as otherwise provided in the Nebraska Indian Child Welfare Act, if a child is conceived by the victim of a sexual assault, a petition for termination of parental rights of the perpetrator shall be granted if such termination is in the best interests of the child and (a) the perpetrator has been convicted of or pled guilty or nolo contendere to sexual assault of the child's birth parent under section 28-319 or 28-320 or a law in another jurisdiction similar to either section 28-319 or 28-320 or (b) the perpetrator has fathered the child or given birth to the child as a result of such sexual assault.

Sec. 19. Section 43-1303, Reissue Revised Statutes of Nebraska, is amended to read:

43-1303 (1) The office shall maintain the statewide register of all foster care placements occurring within the state, and there shall be a weekly report made to the registry of all foster care placements by the Department of Health and Human Services, any child-placing agency, or any court in a form as developed by the office in consultation with representatives of entities required to make such reports. For each child entering and leaving foster care, such report shall consist of identifying information, placement information, the plan or permanency plan developed by the person or court in charge of the child pursuant to section 43-1312, and information on whether any such child was a person immune from criminal prosecution under subsection (5) of section 28-801 or was considered a trafficking victim as defined in ~~subdivision (16) of~~ section 28-830. The department, the Office of Probation Administration, and every court and child-placing agency shall report any foster care placement within three working days. The report shall contain the following information:

(a) Child identification information, including name, date of birth, gender, race, religion, and ethnicity;

(b) Identification information for parents and stepparents, including name, address, and status of parental rights;

(c) Placement information, including initial placement date, current placement date, and the name and address of the foster care placement;

(d) Court status information, including which court has jurisdiction, initial custody date, court hearing date, and results of the court hearing;

(e) Agency or other entity having custody of the child; and

(f) Case worker, probation officer, or person providing direct case management or supervision functions.

(2)(a) The Foster Care Review Office shall designate a local board to conduct foster care file audit case reviews for each case of children in foster care placement.

(b) The office may adopt and promulgate rules and regulations for the following:

(i) Establishment of training programs for local board members which shall include an initial training program and periodic inservice training programs;

(ii) Development of procedures for local boards;

(iii) Establishment of a central record-keeping facility for all local board files, including foster care file audit case reviews;

(iv) Accumulation of data and the making of annual reports on children in foster care placements. Such reports shall include, but not be limited to, (A) personal data on length of time in foster care, (B) number of placements, (C) frequency and results of foster care file audit case reviews and court review hearings, (D) number of children supervised by the foster care programs in the state annually, (E) trend data impacting foster care, services, and placements, (F) analysis of the data, and (G) recommendations for improving the foster care system in Nebraska;

(v) Accumulation of data and the making of quarterly reports regarding the children in foster care placements;

(vi) To the extent not prohibited by section 43-1310, evaluation of the judicial and administrative data collected on foster care and the dissemination of such data to the judiciary, public and private agencies, the department, and members of the public; and

(vii) Manner in which the office shall determine the appropriateness of requesting a court review hearing as provided for in section 43-1313.

(3) A local board shall send a written report to the office for each foster care file audit case review conducted by the local board. A court shall send a written report to the office for each foster care review hearing conducted by the court.

(4) The office shall report and make recommendations to the Legislature, the department, the Office of Probation Administration, the courts, local boards, and county welfare offices. Such reports and recommendations shall include, but not be limited to, the annual judicial and administrative data collected on foster care pursuant to subsections (2) and (3) of this section and the annual evaluation of such data. The report and recommendations submitted to the Legislature shall be submitted electronically. In addition, the Foster Care Review Office shall provide copies of such reports and recommendations to each court having the authority to make foster care placements. The executive director of the office shall also provide, at a time

LB289
2017

specified by the Health and Human Services Committee of the Legislature, regular electronic updates regarding child welfare data and information at least quarterly, and a fourth-quarter report which shall be the annual report. The executive director shall include issues, policy concerns, and problems which have come to the office and the executive director from analysis of the data. The executive director shall recommend alternatives to the identified problems and related needs of the office and the foster care system to the committee. The Health and Human Services Committee shall coordinate and prioritize data and information requests submitted to the office by members of the Legislature. The annual report of the office shall be completed by December 1 each year and shall be submitted electronically to the committee.

(5) The executive director of the office or his or her designees from the office may visit and observe foster care facilities in order to ascertain whether the individual physical, psychological, and sociological needs of each foster child are being met.

(6) At the request of any state agency, the executive director of the office or his or her designees from the office may conduct a case file review process and data analysis regarding any state ward or ward of the court whether placed in-home or out-of-home at the time of the case file review.

Sec. 20. Section 43-1411.01, Reissue Revised Statutes of Nebraska, is amended to read:

43-1411.01 (1) An action for paternity or parental support under sections 43-1401 to 43-1418 may be initiated by filing a complaint with the clerk of the district court as provided in section 25-2740. Such proceeding may be heard by the county court or the district court as provided in section 25-2740. A paternity determination under sections 43-1411 to 43-1418 may also be decided in a county court or separate juvenile court if the county court or separate juvenile court already has jurisdiction over the child whose paternity is to be determined.

(2) Whenever termination of parental rights is placed in issue in any case arising under sections 43-1401 to 43-1418, the Nebraska Juvenile Code and the Parenting Act shall apply to such proceedings.

(3) The court may stay the paternity action if there is a pending criminal allegation of sexual assault under section 28-319 or 28-320 or a law in another jurisdiction similar to either section 28-319 or 28-320 against the alleged father with regard to the conception of the child.

Sec. 21. Section 43-1609, Reissue Revised Statutes of Nebraska, is amended to read:

43-1609 (1) Child support referees shall be appointed when necessary by the district courts, separate juvenile courts, and county courts to meet the requirements of federal law relating to expediting the establishment, modification, enforcement, and collection of child, spousal, or medical support and protection orders issued under ~~subsection (1) of~~ section 42-924.

(2) Child support referees shall be appointed by order of the district court, separate juvenile court, or county court. The Supreme Court shall appoint child support referees to serve more than one judicial district if the Supreme Court determines it is necessary.

(3) To be qualified for appointment as a child support referee, a person shall be an attorney in good standing admitted to the practice of law in the State of Nebraska and shall meet any other requirements imposed by the Supreme Court. A child support referee shall be sworn or affirmed to well and faithfully hear and examine the cause and to make a just and true report according to the best of his or her understanding. The oath or affirmation may be administered by a district, county, or separate juvenile court judge. A child support referee may be removed at any time by the appointing court.

(4) The Supreme Court may contract with an attorney to perform the duties of a referee for a specific case or for a specific amount of time or may direct a judge of the county court to perform such duties.

Sec. 22. Section 43-1611, Reissue Revised Statutes of Nebraska, is amended to read:

43-1611 A district court, separate juvenile court, or county court may by rule or order refer or assign any and all matters regarding the establishment, modification, enforcement, and collection of child, spousal, or medical support, paternity matters, and protection orders issued under ~~subsection (1) of~~ section 42-924 to a child support referee for findings and recommendations.

Sec. 23. Section 43-2933, Reissue Revised Statutes of Nebraska, is amended to read:

43-2933 (1)(a) No person shall be granted custody of, or unsupervised parenting time, visitation, or other access with, a child if the person is required to be registered as a sex offender under the Sex Offender Registration Act for an offense that would make it contrary to the best interests of the child for such access or for an offense in which the victim was a minor or if the person has been convicted under section 28-311, 28-319.01, 28-320, 28-320.01, or 28-320.02, unless the court finds that there is no significant risk to the child and states its reasons in writing or on the record.

(b) No person shall be granted custody of, or unsupervised parenting time, visitation, or other access with, a child if anyone residing in the person's household is required to register as a sex offender under the Sex Offender Registration Act as a result of a felony conviction in which the victim was a minor or for an offense that would make it contrary to the best interests of the child for such access unless the court finds that there is no significant risk to the child and states its reasons in writing or on the record.

(c) The fact that a child is permitted unsupervised contact with a person

LB289
2017

who is required, as a result of a felony conviction in which the victim was a minor, to be registered as a sex offender under the Sex Offender Registration Act shall be prima facie evidence that the child is at significant risk. When making a determination regarding significant risk to the child, the prima facie evidence shall constitute a presumption affecting the burden of producing evidence. However, this presumption shall not apply if there are factors mitigating against its application, including whether the other party seeking custody, parenting time, visitation, or other access is also required, as the result of a felony conviction in which the victim was a minor, to register as a sex offender under the Sex Offender Registration Act.

(2) Except as otherwise provided in the Nebraska Indian Child Welfare Act, no ~~No~~ person shall be granted custody, parenting time, visitation, or other access with a child if the person has been convicted under section 28-319 or 28-320 or a law in another jurisdiction similar to either section 28-319 or 28-320 and the child was conceived as a result of that violation unless the custodial parent or guardian, as defined in section 43-245, consents.

(3) A change in circumstances relating to subsection (1) or (2) of this section is sufficient grounds for modification of a previous order.

Sec. 24. Original sections 25-2740, 28-101, 28-311.04, 28-358.01, 28-802, 28-830, 28-831, 28-1206, 29-404.02, 29-422, 42-903, 42-924, 42-925, 43-254, 43-283.01, 43-292.02, 43-1303, 43-1411.01, 43-1609, 43-1611, and 43-2933, Reissue Revised Statutes of Nebraska, are repealed.