

ONE HUNDRED FIFTH LEGISLATURE - FIRST SESSION - 2017
COMMITTEE STATEMENT
LB178

Hearing Date: Thursday February 23, 2017
Committee On: Judiciary
Introducer: Bolz
One Liner: Provide for sexual assault protection order

Roll Call Vote - Final Committee Action:
Advanced to General File with amendment(s)

Vote Results:

Aye: 8 Senators Baker, Chambers, Ebke, Halloran, Hansen, Krist, Morfeld,
Pansing Brooks

Nay:

Absent:

Present Not Voting:

Verbal Testimony:

Proponents:

Senator Kate Bolz
Stephanie Huddle

Laura Melcher
Lauren Ward
Madalyn McKeone
Anne Boatright
Corey O'Brien

Representing:

Introducer
Nebraska Coalition to End Sexual Assault & Domestic
Violence
self
Creighton University VIP Center
self
Methodist Health System
Nebraska Attorney General's Office

Opponents:

Representing:

Neutral:

Spike Eickholt

Representing:

Nebraska Criminal Defense Attorneys Association

Summary of purpose and/or changes:

LB 178 alters the Nebraska Civil and Criminal Codes to expand assault orders to create the category of sexual assault protection orders.

Section 1- Adds valid foreign and domestic sexual assault protection orders to the definition of "Domestic relations matters" for purposes of the Civil Code.

Section 2- Adds valid foreign and domestic sexual assault protection orders to the Nebraska Criminal Code.

Section 3- Makes the offense of "stalking" while subject of a valid foreign or domestic sexual assault protection order a Class IIIA felony.

Section 4- Defines the procedure and purpose for sexual assault protection orders.

1) Individuals may petition the court through a "petition and affidavit" for a sexual assault protection order to prohibit the subject of the order from: restraint of; harassment and all associated threats to; or contact or communication with; the individual seeking the order.

2) Petition shall include the acts necessitating the order, and the dates on which they occurred.

3) Petition shall be filed with the clerk of the district court and heard by either county or district court.

4) Petitions may not be withdrawn without a court order. Orders shall last two years unless renewed or altered by the court.

Intentional violation of an order is: a Class I misdemeanor for a first offense; a Class IV felony for any second or subsequent offense in a twenty-four month period; or a Class IV felony for any third offense regardless of time-frame.

5) Fees shall not be charged for the filing or issuance of a sexual assault protection order. A court may charge fees for an intentionally false petition, as proven by a "clear and convincing" evidence standard or may charge the subject of the order.

6) State Court Administrator shall create standard forms for the petition and affidavit as well as forms for temporary and final sexual assault protection order forms. These will be the only accepted forms of the order in the state. Copies of all forms, as well as instructions for completion, shall be provided to, and made available by, clerks of the district court. District court employees are not allowed to assist with the completion of a petition or affidavit.

7) Outlines the situations in which the court may hold a hearing to issue or renew an order without both parties being present ("ex parte"). It further outlines how the subject of an order may challenge the issuance (even without being present at hearing) and pursue a "show-cause" hearing to challenge the issuance.

8) Upon issuance of the order, copies shall be provided to the individual seeking the order, to local law enforcement, and the sheriff's office for purpose of service. The court will also provide law enforcement with copies of any order dismissed or altered by the court. In all cases, the copies will be provided without charge.

If the subject of the order is present at the hearing where the order is issued, they are deemed "served" with notice and the sheriff's office shall not be required to serve notice of the order. If the subject of an "ex parte" order fails to show at their cause hearing, the initial notice of the "ex parte" order shall serve as notice of the final order.

9) Peace officers shall arrest the subject of a sexual assault protection order if the officer has probable cause to believe the order has been violated and the officer is aware of the existence of the order.

10) Officers making an arrest for a violation of an order shall take the subject into custody and a court will, within a reasonable time, establish conditions of the subject's release and issue an order directing zero contact with the victim of the sexual assault.

11) Lays out the procedure for renewing a sexual assault protection order. An order may only be renewed every two years.

12) Defines "sexual assault offense".

Section 5- Defines "valid foreign sexual assault protection order" and recognizes such an orders validity in the state of Nebraska.

Section 6- Exempts valid foreign and domestic sexual assault protection orders from the definition of "isolation" for the purpose of dealing with vulnerable adults or seniors.

Explanation of amendments:

AM 523 would change the duration of a sexual assault protection order from two years to one year in harmonization with the length of existing protection orders.

Laura Ebke, Chairperson