

LEGISLATURE OF NEBRASKA
ONE HUNDRED THIRD LEGISLATURE
SECOND SESSION

LEGISLATIVE BILL 707

Introduced by Conrad, 46.

Read first time January 08, 2014

Committee:

A BILL

1 FOR AN ACT relating to crimes and offenses; to amend sections
2 28-311.02, 28-311.03, and 28-311.04, Reissue Revised
3 Statutes of Nebraska, sections 27-413, 28-311.09, 28-323,
4 28-1206, and 29-4103, Revised Statutes Cumulative
5 Supplement, 2012, and section 28-101, Revised Statutes
6 Supplement, 2013; to redefine the offense of sexual
7 assault under the Nebraska Evidence Rules; to change
8 provisions and penalties relating to stalking and
9 domestic assault; to create the offense of harassment; to
10 change and provide penalties; to establish where certain
11 offenses occur when use of an electronic communication
12 device is involved; to harmonize provisions; and to
13 repeal the original sections.

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

1 Section 1. Section 27-413, Revised Statutes Cumulative
2 Supplement, 2012, is amended to read:

3 27-413 For purposes of sections 27-414 and 27-415,
4 offense of sexual assault means ~~sexual assault under section 28-319~~
5 ~~or 28-320, sexual assault of a child under section 28-319.01 or~~
6 ~~28-320.01, sexual assault by use of an electronic communication~~
7 ~~device under section 28-320.02, sexual abuse of an inmate or parolee~~
8 ~~under sections 28-322.01 to 28-322.03, and sexual abuse of a~~
9 ~~protected individual under section 28-322.04.~~ conduct prohibited by
10 the laws of this state or any other state or federal law involving:
11 (1) Sexual contact or sexual penetration, as those terms are defined
12 in section 28-318, without the victim's consent or where the victim
13 was physically, mentally, or legally incapable of giving consent or
14 (2) any act prohibited by section 28-320.02.

15 Sec. 2. Section 28-101, Revised Statutes Supplement,
16 2013, is amended to read:

17 28-101 Sections 28-101 to 28-1356 and sections 7 and 9 of
18 this act shall be known and may be cited as the Nebraska Criminal
19 Code.

20 Sec. 3. Section 28-311.02, Reissue Revised Statutes of
21 Nebraska, is amended to read:

22 28-311.02 (1) It is the intent of the Legislature to
23 enact laws dealing with stalking offenses which will protect victims
24 from being willfully harassed, intentionally terrified, threatened,
25 or intimidated by individuals who intentionally follow, detain,

1 stalk, or harass them or impose any restraint on their personal
2 liberty and which will not prohibit constitutionally protected
3 activities.

4 (2) For purposes of sections 28-311.02 to 28-311.05,
5 28-311.09, and 28-311.10:

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

10 ~~(b)-(a) Course of conduct means a pattern of conduct~~
11 ~~composed of a series of two or more acts over a period of time,~~
12 ~~however short, evidencing a continuity of purpose, including, but not~~
13 ~~limited to, a series of acts of following, detaining, restraining the~~
14 ~~personal liberty of, harassing, or stalking the person or~~
15 ~~telephoning, contacting, or otherwise communicating with the person;~~

16 ~~(c)-(b) Family or household member means a spouse or~~
17 ~~former spouse of the victim, children of the victim, a person~~
18 ~~presently residing with the victim or who has resided with the victim~~
19 ~~in the past, a person who had a child in common with the victim,~~
20 ~~other persons related to the victim by consanguinity or affinity, or~~
21 ~~any person presently involved in a dating relationship with the~~
22 ~~victim or who has been involved in a dating relationship with the~~
23 ~~victim. For purposes of this subdivision, dating relationship means~~
24 ~~frequent, intimate associations primarily characterized by the~~
25 ~~expectation of affectional or sexual involvement but does not include~~

1 a casual relationship or an ordinary association between persons in a
2 business or social context; and

3 ~~(d)~~(c) Substantially conforming criminal violation means
4 a guilty plea, a nolo contendere plea, or a conviction for a
5 violation of any federal law or law of another state or any county,
6 city, or village ordinance of this state or another state
7 substantially similar to ~~section 28-311.03.~~the charged offense.

8 Substantially conforming is a question of law to be determined by the
9 court.

10 Sec. 4. Section 28-311.03, Reissue Revised Statutes of
11 Nebraska, is amended to read:

12 28-311.03 Any person who, without a lawful purpose,
13 willfully ~~harasses~~engages in a course of conduct directed at another
14 person or a family or household member of such person with the intent
15 to harass, injure, terrify, threaten, or intimidate commits the
16 offense of stalking.

17 Sec. 5. Section 28-311.04, Reissue Revised Statutes of
18 Nebraska, is amended to read:

19 28-311.04 (1) Except as provided in subsection (2) of
20 this section, any person convicted of ~~violating~~stalking in violation
21 of section 28-311.03 is guilty of a Class ~~I misdemeanor.~~ IIIA felony.

22 (2) Any person convicted of ~~violating~~stalking in
23 violation of section 28-311.03 is guilty of a Class ~~IV~~III felony if:

24 (a) The person has a ~~prior conviction under such section~~
25 ~~or a substantially conforming criminal violation within the last~~

1 ~~seven years;~~ previously been convicted of stalking in violation of
2 section 28-311.03;

3 (b) The person has a substantially conforming criminal
4 violation;

5 ~~(b)-(c)~~ The victim is under sixteen years of age and the
6 offender is nineteen years of age or older;

7 ~~(c)-(d)~~ The person possessed a deadly weapon at any time
8 during the violation;

9 ~~(d)-(e)~~ The person was also in violation of section
10 28-311.09, 42-924, ~~or~~ 42-925, or any valid protection order issued by
11 a court of another state, tribe, or territory at any time during the
12 violation; or

13 ~~(e)-(f)~~ The person has been convicted of any felony in
14 this state or has been convicted of a crime in another jurisdiction
15 which, if committed in this state, would constitute a felony and the
16 victim or a family or household member of the victim was also the
17 victim of such previous felony; or -

18 (g) The person has been previously convicted of a
19 violation or attempted violation of section 7 of this act or a
20 substantially conforming criminal violation and the victim, or a
21 member of the victim's family or household was the victim in the
22 previous conviction.

23 Sec. 6. Section 28-311.09, Revised Statutes Cumulative
24 Supplement, 2012, is amended to read:

25 28-311.09 (1) Any victim who has been ~~harassed as defined~~

1 ~~by section 28-311.02 the target of a course of conduct which serves~~
2 ~~no lawful purpose and which causes such victim to be seriously~~
3 ~~terrified, threatened, or intimidated~~ may file a petition and
4 affidavit for a harassment protection order as provided in subsection
5 (3) of this section. Upon the filing of such a petition and affidavit
6 in support thereof, the court may issue a harassment protection order
7 without bond enjoining the respondent from (a) imposing any restraint
8 upon the person or liberty of the petitioner, (b) harassing,
9 threatening, assaulting, molesting, attacking, or otherwise
10 disturbing the peace of the petitioner, or (c) telephoning,
11 contacting, or otherwise communicating with the petitioner.

12 (2) The petition for a harassment protection order shall
13 state the events and dates of acts constituting the alleged
14 harassment.

15 (3) A petition for a harassment protection order shall be
16 filed with the clerk of the district court, and the proceeding may be
17 heard by the county court or the district court as provided in
18 section 25-2740.

19 (4) A petition for a harassment protection order filed
20 pursuant to subsection (1) of this section may not be withdrawn
21 except upon order of the court. An order issued pursuant to
22 subsection (1) of this section shall specify that it is effective for
23 a period of one year unless otherwise dismissed or modified by the
24 court. Any person who knowingly violates an order issued pursuant to
25 subsection (1) of this section after service or notice as described

1 in subdivision (8)(b) of this section shall be guilty of a Class II
2 misdemeanor.

3 (5)(a) Fees to cover costs associated with the filing of
4 a petition for a harassment protection order or the issuance or
5 service of a harassment protection order seeking only the relief
6 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
9 were false and that the harassment protection order was sought in bad
10 faith.

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

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

1 (7) Any order issued under subsection (1) of this section
2 may be issued ex parte without notice to the respondent if it
3 reasonably appears from the specific facts shown by affidavit of the
4 petitioner that irreparable harm, loss, or damage will result before
5 the matter can be heard on notice. If the specific facts included in
6 the affidavit (a) do not show that the petitioner will suffer
7 irreparable harm, loss, or damage or (b) show that, for any other
8 compelling reason, an ex parte order should not be issued, the court
9 may forthwith cause notice of the application to be given to the
10 respondent stating that he or she may show cause, not more than
11 fourteen days after service, why such order should not be entered. If
12 such ex parte order is issued without notice to the respondent, the
13 court shall forthwith cause notice of the petition and order and a
14 form with which to request a show-cause hearing to be given the
15 respondent stating that, upon service on the respondent, the order
16 shall remain in effect for a period of one year unless the respondent
17 shows cause why the order should not remain in effect for a period of
18 one year. If the respondent wishes to appear and show cause why the
19 order should not remain in effect for a period of one year, he or she
20 shall affix his or her current address, telephone number, and
21 signature to the form and return it to the clerk of the district
22 court within five days after service upon him or her. Upon receipt of
23 the request for a show-cause hearing, the court shall immediately
24 schedule a show-cause hearing to be held within thirty days after the
25 receipt of the request for a show-cause hearing and shall notify the

1 petitioner and respondent of the hearing date.

2 (8)(a) Upon the issuance of any harassment protection
3 order, the clerk of the court shall forthwith provide the petitioner,
4 without charge, with two certified copies of such order. The clerk of
5 the court shall also forthwith provide the local police department or
6 local law enforcement agency and the local sheriff's office, without
7 charge, with one copy each of such order and one copy each of the
8 sheriff's return thereon. The clerk of the court shall also forthwith
9 provide a copy of the harassment protection order to the sheriff's
10 office in the county where the respondent may be personally served
11 together with instructions for service. Upon receipt of the order and
12 instructions for service, such sheriff's office shall forthwith serve
13 the harassment protection order upon the respondent and file its
14 return thereon with the clerk of the court which issued the
15 harassment protection order within fourteen days of the issuance of
16 the harassment protection order. If any harassment protection order
17 is dismissed or modified by the court, the clerk of the court shall
18 forthwith provide the local police department or local law
19 enforcement agency and the local sheriff's office, without charge,
20 with one copy each of the order of dismissal or modification.

21 (b) If the respondent is present at a hearing convened
22 pursuant to this section and the harassment protection order is not
23 dismissed, such respondent shall be deemed to have notice by the
24 court at such hearing that the protection order will be granted and
25 remain in effect and further service of such notice described in this

1 subsection shall not be required for purposes of prosecution under
2 this section. If the respondent has been properly served with the ex
3 parte order and fails to appear at the hearing, the temporary order
4 shall be deemed to be granted and remain in effect and the service of
5 the ex parte order will serve as notice required under this section.

6 (9) A peace officer may, with or without a warrant,
7 arrest a person if (a) the officer has probable cause to believe that
8 the person has committed a violation of a harassment protection order
9 issued pursuant to this section or a violation of a valid foreign
10 harassment protection order recognized pursuant to section 28-311.10
11 and (b) a petitioner under this section provides the peace officer
12 with a copy of a harassment protection order or the peace officer
13 determines that such an order exists after communicating with the
14 local law enforcement agency or a person protected under a valid
15 foreign harassment protection order recognized pursuant to section
16 28-311.10 provides the peace officer with a copy of such order.

17 (10) A peace officer making an arrest pursuant to
18 subsection (9) of this section shall take such person into custody
19 and take such person before the county court or the court which
20 issued the harassment protection order within a reasonable time. At
21 such time the court shall establish the conditions of such person's
22 release from custody, including the determination of bond or
23 recognizance, as the case may be. The court shall issue an order
24 directing that such person shall have no contact with the alleged
25 victim of the harassment.

1 Sec. 7. (1) A person commits the offense of harassment if
2 he or she, without a lawful purpose, engages in conduct directed at a
3 specific person or family with the intent to cause a person to feel
4 alarmed, harassed, terrified, threatened, or intimidated.

5 (2) Except as provided in subsection (3) of this section,
6 any person convicted of harassment in violation of this section is
7 guilty of a Class II misdemeanor.

8 (3) Any person convicted of a second or subsequent
9 violation of this section or who has a substantially conforming
10 criminal violation is guilty of a Class I misdemeanor.

11 Sec. 8. Section 28-323, Revised Statutes Cumulative
12 Supplement, 2012, is amended to read:

13 28-323 (1) A person commits the offense of domestic
14 assault in the third degree if he or she:

15 (a) Intentionally and knowingly causes bodily injury to
16 his or her intimate partner;

17 (b) Threatens an intimate partner with imminent bodily
18 injury; or

19 (c) Threatens an intimate partner in a menacing manner.

20 (2) A person commits the offense of domestic assault in
21 the second degree if he or she intentionally and knowingly causes
22 bodily injury to his or her intimate partner with a dangerous
23 instrument.

24 (3) A person commits the offense of domestic assault in
25 the first degree if he or she intentionally and knowingly causes

1 serious bodily injury to his or her intimate partner.

2 (4) Violation of subdivision (1)(a) or (b) of this
3 section is a Class I misdemeanor, except that ~~for any subsequent~~
4 ~~violation of subdivision (1)(a) or (b) of this section, any person so~~
5 ~~offending~~ any person who violates this section and has previously
6 been convicted of a violation of this section or any other state or
7 federal law with essentially the same elements as this section is
8 guilty of a Class IV felony.

9 (5) Violation of subdivision (1)(c) of this section is a
10 Class I misdemeanor.

11 (6) Violation of subsection (2) of this section is a
12 Class IIIA felony, except that ~~for any second or subsequent violation~~
13 ~~of such subsection, any person so offending~~ any person who violates
14 this section and has previously been convicted of a violation of this
15 section or any other state or federal law with essentially the same
16 elements as this section is guilty of a Class III felony.

17 (7) Violation of subsection (3) of this section is a
18 Class III felony, except that ~~for any second or subsequent violation~~
19 ~~under such subsection, any person so offending~~ any person who
20 violates this section and has previously been convicted of a
21 violation of this section or any other state or federal law with
22 essentially the same elements as this section is guilty of a Class II
23 felony.

24 (8) For purposes of this section, intimate partner means
25 a spouse; a former spouse; persons who have a child in common whether

1 or not they have been married or lived together at any time; and
2 persons who are or were involved in a dating relationship. For
3 purposes of this subsection, dating relationship means frequent,
4 intimate associations primarily characterized by the expectation of
5 affectional or sexual involvement, but does not include a casual
6 relationship or an ordinary association between persons in a business
7 or social context.

8 Sec. 9. If an electronic communication device, as defined
9 in section 28-833, is used in the violation of section 28-311.01,
10 28-311.03, subdivision (1)(b) of section 28-310, or subdivision (1)
11 (c) of section 28-323, or section 7 of this act, the offense shall be
12 deemed to have been committed either at the place where the
13 communication was originated or where it was received.

14 Sec. 10. Section 28-1206, Revised Statutes Cumulative
15 Supplement, 2012, is amended to read:

16 28-1206 (1)(a) Any person who possesses a firearm, a
17 knife, or brass or iron knuckles and who has previously been
18 convicted of a felony, who is a fugitive from justice, or who is the
19 subject of a current and validly issued domestic violence protection
20 order and is knowingly violating such order, or (b) any person who
21 possesses a firearm or brass or iron knuckles and who has been
22 convicted within the past seven years of a misdemeanor crime of
23 domestic violence, commits the offense of possession of a deadly
24 weapon by a prohibited person.

25 (2) The felony conviction may have been had in any court

1 in the United States, the several states, territories, or
2 possessions, or the District of Columbia.

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

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

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

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

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

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

21 (B)(I) Assault in the third degree under section 28-310,
22 ~~stalking under subsection (1) of section 28-311.04, false~~
23 imprisonment in the second degree under section 28-315, or first
24 offense domestic assault in the third degree under subsection (1) of
25 section 28-323 or any attempt or conspiracy to commit one of these

1 offenses; and

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

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

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

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

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

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

18 (b) For purposes of this section, subject of a current
19 and validly issued domestic violence protection order pertains to a
20 current court order that was validly issued pursuant to section
21 28-311.09 or 42-924 or that meets or exceeds the criteria set forth
22 in section 28-311.10 regarding protection orders issued by a court in
23 any other state or a territory, possession, or tribe.

24 Sec. 11. Section 29-4103, Revised Statutes Cumulative
25 Supplement, 2012, is amended to read:

1 29-4103 For purposes of the DNA Identification
2 Information Act:

3 (1) Combined DNA Index System means the Federal Bureau of
4 Investigation's national DNA identification index system that allows
5 the storage and exchange of DNA records submitted by state and local
6 forensic DNA laboratories;

7 (2) DNA means deoxyribonucleic acid which is located in
8 the cells and provides an individual's personal genetic blueprint.
9 DNA encodes genetic information that is the basis of human heredity
10 and forensic identification;

11 (3) DNA record means the DNA identification information
12 stored in the State DNA Data Base or the Combined DNA Index System
13 which is derived from DNA typing test results;

14 (4) DNA sample means a blood, tissue, or bodily fluid
15 sample provided by any person covered by the DNA Identification
16 Information Act for analysis or storage, or both;

17 (5) DNA typing tests means the laboratory procedures
18 which evaluate the characteristics of a DNA sample which are of value
19 in establishing the identity of an individual;

20 (6) Law enforcement agency includes a police department,
21 a town marshal, a county sheriff, and the Nebraska State Patrol;

22 (7) Other specified offense means ~~misdemeanor stalking~~
23 ~~pursuant to sections 28-311.02 to 28-311.05 or false imprisonment in~~
24 the second degree pursuant to section 28-315 or an attempt,
25 conspiracy, or solicitation to commit stalking pursuant to sections

1 28-311.02 to 28-311.05, false imprisonment in the first degree
2 pursuant to section 28-314, false imprisonment in the second degree
3 pursuant to section 28-315, knowing and intentional sexual abuse of a
4 vulnerable adult pursuant to subdivision (1)(c) of section 28-386, or
5 a violation of the Sex Offender Registration Act pursuant to section
6 29-4011; and

7 (8) Released means any release, parole, furlough, work
8 release, prerelease, or release in any other manner from a prison, a
9 jail, or any other detention facility or institution.

10 Sec. 12. Original sections 28-311.02, 28-311.03, and
11 28-311.04, Reissue Revised Statutes of Nebraska, sections 27-413,
12 28-311.09, 28-323, 28-1206, and 29-4103, Revised Statutes Cumulative
13 Supplement, 2012, and section 28-101, Revised Statutes Supplement,
14 2013, are repealed.