

AMENDMENTS TO LB157

Introduced by Blood, 3.

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

3           Section 1. Section 30-2626, Reissue Revised Statutes of Nebraska, is  
4 amended to read:

5           30-2626 (a) If a person alleged to be incapacitated has no guardian  
6 and an emergency exists, the court may, pending notice and hearing:

7           (i) Exercise ~~exercise~~ the power of a guardian or enter an ex parte  
8 order appointing a temporary guardian to address the emergency. The order  
9 and letters of temporary guardianship shall specify the powers and duties  
10 of the temporary guardian,  limiting the powers and duties to those  
11 necessary to address the emergency; ~~or~~

12           (ii) Enter an ex parte order appointing a temporary guardian for the  
13 limited purpose of assisting the person in applying for private or  
14 government benefits to which such person may be entitled. The limited  
15 temporary guardian may access personal and financial records of the  
16 person as necessary to apply for such benefits. The order and letters of  
17 limited temporary guardianship shall specify the powers and duties of the  
18 temporary guardian, limiting the powers and duties to those necessary to  
19 apply for private or government benefits to which the person may be  
20 entitled.

21           (b) When the court takes action to exercise the powers of a guardian  
22 or to appoint a temporary guardian under subsection (a) of this section,  
23 an expedited hearing shall be held if requested by the person alleged to  
24 be incapacitated, or by any interested person, if the request is filed  
25 more than ten business days prior to the date set for the hearing on the  
26 petition for appointment of the guardian. If an expedited hearing is to  
27 be held, the hearing shall be held within ten business days after the

1 request is received. At the hearing on the temporary appointment, the  
2 petitioner shall have the burden of showing by a preponderance of the  
3 evidence that temporary guardianship continues to be necessary to address  
4 the emergency situation. Unless the person alleged to be incapacitated  
5 has counsel of his or her own choice, the court may appoint an attorney  
6 to represent the person alleged to be incapacitated at the hearing as  
7 provided in section 30-2619.

8 (c) If an expedited hearing is requested, notice shall be served as  
9 provided in section 30-2625. The notice shall specify that a temporary  
10 guardian has been appointed and shall be given at least twenty-four hours  
11 prior to the expedited hearing.

12 (d) At the expedited hearing, the court may render a judgment  
13 authorizing the temporary guardianship to continue beyond the original  
14 ten-day period. The judgment shall prescribe the specific powers and  
15 duties of the temporary guardian in the letters of temporary guardianship  
16 and shall be effective for a single ninety-day period. For good cause  
17 shown, the court may extend the temporary guardianship for successive  
18 ninety-day periods.

19 (e) The temporary guardianship shall terminate at the end of the  
20 ninety-day period in which the temporary guardianship is valid or at any  
21 time prior thereto if the court deems the circumstances leading to the  
22 order for temporary guardianship no longer exist or if an order has been  
23 entered as a result of a hearing pursuant to section 30-2619 which has  
24 been held during the ninety-day period.

25 (f) If the court denies the request for the ex parte order, the  
26 court may, in its discretion, enter an order for an expedited hearing  
27 pursuant to subsections (b) through (e) of this section.

28 (g) If the petitioner requests the entry of an order of temporary  
29 guardianship pursuant to subsection (a) of this section without  
30 requesting an ex parte order, the court may hold an expedited hearing  
31 pursuant to subsections (b) through (e) of this section.

1 (h) If an appointed guardian is not effectively performing his or  
2 her duties and the court further finds that the welfare of the  
3 incapacitated person requires immediate action, it may, pending notice  
4 and hearing in accordance with section 30-2220, appoint a temporary  
5 guardian for the incapacitated person for a specified period not to  
6 exceed ninety days. For good cause shown, the court may extend the  
7 temporary guardianship for successive ninety-day periods. A temporary  
8 guardian appointed pursuant to this subsection has only the powers and  
9 duties specified in the previously appointed guardian's letters of  
10 guardianship, and the authority of any permanent guardian previously  
11 appointed by the court is suspended so long as a temporary guardian has  
12 authority.

13 (i) A temporary guardian may be removed at any time. A temporary  
14 guardian shall make any report the court requires, except that a  
15 temporary guardian shall not be required to provide the check or report  
16 under section 30-2602.02. In other respects the provisions of the  
17 Nebraska Probate Code concerning guardians apply to temporary guardians.

18 (j) The court may appoint the Public Guardian as the temporary  
19 guardian pursuant to the Public Guardianship Act. If the court appoints  
20 the Public Guardian as the temporary guardian for the limited purpose of  
21 assisting a person in applying for private or government benefits to  
22 which the person may be entitled pursuant to subdivision (a)(ii) of this  
23 section, such appointment is not subject to the caseload ratio set forth  
24 in subsection (2) of section 30-4115.

25 Sec. 2. Section 42-903, Revised Statutes Cumulative Supplement,  
26 2022, is amended to read:

27 42-903 For purposes of the Protection from Domestic Abuse Act,  
28 unless the context otherwise requires:

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

31 (a) Attempting to cause or intentionally and knowingly causing

1   bodily injury with or without a dangerous instrument;

2           (b) Placing, by means of credible threat, another person in fear of  
3   bodily injury. For purposes of this subdivision, credible threat means a  
4   verbal or written threat, including a threat performed through the use of  
5   an electronic communication device, or a threat implied by a pattern of  
6   conduct or a combination of verbal, written, or electronically  
7   communicated statements and conduct that is made by a person with the  
8   apparent ability to carry out the threat so as to cause the person who is  
9   the target of the threat to reasonably fear for his or her safety or the  
10   safety of his or her family. It is not necessary to prove that the person  
11   making the threat had the intent to actually carry out the threat. The  
12   present incarceration of the person making the threat shall not prevent  
13   the threat from being deemed a credible threat under this section; or

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

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

17           (3) Family or household members includes spouses or former spouses,  
18   children, persons who are presently residing together or who have resided  
19   together in the past, persons who have a child in common whether or not  
20   they have been married or have lived together at any time, other persons  
21   related by consanguinity or affinity, and persons who are presently  
22   involved in a dating relationship with each other or who have been  
23   involved in a dating relationship with each other. For purposes of this  
24   subdivision, dating relationship means frequent, intimate associations  
25   primarily characterized by the expectation of affectional or sexual  
26   involvement, but does not include a casual relationship or an ordinary  
27   association between persons in a business or social context;~~and~~

28           (4) Household pet means any animal maintained for companionship or  
29   pleasure but does not include any animal kept primarily for commercial  
30   purposes or for consumption or any livestock animal as defined in section  
31   54-902; and

1           (5) ~~(4)~~ Law enforcement agency means the police department or town  
2 marshal in incorporated municipalities, the office of the sheriff in  
3 unincorporated areas, and the Nebraska State Patrol.

4           Sec. 3. Section 42-924, Revised Statutes Cumulative Supplement,  
5 2022, is amended to read:

6           42-924 (1)(a) Any victim of domestic abuse may file a petition and  
7 affidavit for a protection order as provided in this section. Upon the  
8 filing of such a petition and affidavit in support thereof, the court may  
9 issue a protection order without bond granting the following relief:

10           (i) Enjoining the respondent from imposing any restraint upon the  
11 petitioner or upon the liberty of the petitioner;

12           (ii) Enjoining the respondent from threatening, assaulting,  
13 molesting, attacking, or otherwise disturbing the peace of the  
14 petitioner;

15           (iii) Enjoining the respondent from telephoning, contacting, or  
16 otherwise communicating with the petitioner;

17           (iv) Removing and excluding the respondent from the residence of the  
18 petitioner, regardless of the ownership of the residence;

19           (v) Ordering the respondent to stay away from any place specified by  
20 the court;

21           (vi) Awarding the petitioner temporary custody of any minor children  
22 not to exceed ninety days;

23           (vii) Enjoining the respondent from possessing or purchasing a  
24 firearm as defined in section 28-1201;~~or~~

25           (viii) Directing that the petitioner have sole possession of any  
26 household pet owned, possessed, leased, kept, or held by the petitioner,  
27 the respondent, or any family or household member residing in the  
28 household of the petitioner or respondent;

29           (ix) Enjoining the respondent from coming into contact with,  
30 harming, or killing any household pet owned, possessed, leased, kept, or  
31 held by the petitioner, the respondent, or any family or household member

1 of the petitioner or respondent; or

2 (x) ~~(viii)~~ Ordering such other relief deemed necessary to provide  
3 for the safety and welfare of the petitioner and any designated family or  
4 household member.

5 (b) If sole possession of a household pet is ordered by a court  
6 pursuant to subdivision (1)(a)(viii) of this section, such possession  
7 shall be for the duration of the protection order or until further order  
8 of the court. The grant of sole possession of a household pet under such  
9 subdivision is not intended to permanently determine ownership of such  
10 household pet. The petitioner shall not permanently transfer, sell, or  
11 dispose of a household pet placed in the petitioner's possession without  
12 prior court approval, except that court approval shall not be required in  
13 cases where humane euthanasia of a seriously ill or injured household pet  
14 is recommended by a licensed veterinarian.

15 (c) ~~(b)~~ The petition for a protection order shall state the events  
16 and dates or approximate dates of acts constituting the alleged domestic  
17 abuse, including the most recent and most severe incident or incidents.

18 (d) ~~(c)~~ The protection order shall specify to whom relief under this  
19 section was granted.

20 (2) Petitions for protection orders shall be filed with the clerk of  
21 the district court, and the proceeding may be heard by the county court  
22 or the district court as provided in section 25-2740. A petition for a  
23 protection order may not be withdrawn except upon order of the court.

24 (3)(a) A protection order shall specify that it is effective for a  
25 period of one year and, if the order grants temporary custody, the number  
26 of days of custody granted to the petitioner unless otherwise modified by  
27 the court.

28 (b)(i) Any victim of domestic abuse may file a petition and  
29 affidavit to renew a protection order. Such petition and affidavit for  
30 renewal shall be filed any time within forty-five days before the  
31 expiration of the previous protection order, including the date the order

1 expires.

2 (ii) A protection order may be renewed on the basis of the  
3 petitioner's affidavit stating that there has been no material change in  
4 relevant circumstances since entry of the order and stating the reason  
5 for the requested renewal if:

6 (A) The petitioner seeks no modification of the order; and

7 (B)(I) The respondent has been properly served with notice of the  
8 petition for renewal and notice of hearing and fails to appear at the  
9 hearing; or

10 (II) The respondent indicates that he or she does not contest the  
11 renewal.

12 (iii) Such renewed order shall specify that it is effective for a  
13 period of one year to commence on the first calendar day following the  
14 expiration of the previous order or on the calendar day the court grants  
15 the renewal if such day is subsequent to the first calendar day after  
16 expiration of the previous order and, if the court grants temporary  
17 custody, the number of days of custody granted to the petitioner unless  
18 otherwise modified by the court.

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

25 (5) If there is any conflict between sections 42-924 to 42-926 and  
26 any other provision of law, sections 42-924 to 42-926 shall govern.

27 Sec. 4. Original section 30-2626, Reissue Revised Statutes of  
28 Nebraska, and sections 42-903 and 42-924, Revised Statutes Cumulative  
29 Supplement, 2022, are repealed.