

# LB 532: Protection Orders

**LB 532 will clarify, simplify and strengthen the process of obtaining legal protection for survivors of harassment, domestic abuse and sexual assault.** It will also streamline the process for the court system by providing the court with the information needed to make these legal determinations, as well as make uniform the processes among the three types of protection orders.

A victim of violence may pursue a protection order to seek legally-enforceable protections from physical or sexual violence, intimidation or harassment. The type of protection order a victim will seek depends upon the specifics of their situation. Protection orders may prohibit contact or impose restrictions on the reported perpetrator's behavior as it relates to the victim and their family in order to keep the victim safe from further violence or harassment.

## THREE TYPES OF PROTECTION ORDERS

### Harassment Protection Order (HPO)

HPO does not depend upon relationships but requires a number of **telephone or personal contacts that seriously terrify, threaten or intimidate the victim and serve no legitimate purpose.**<sup>i</sup>

### Sexual Assault Protection Order (SAPO)

SAPO does not depend upon relationships and is granted because someone subjected or attempted to subject the other person to **sexual contact or sexual penetration without consent.**<sup>ii</sup>

### Domestic Abuse Protection Order (DAPO)

DAPO is for people who have been in **close relationships** (relatives, spouses or former spouses, people who have lived or are living together, etc.) and is granted because someone attempted, threatened, caused **bodily injury or intimidated the other person by credible threat, or engaged in sexual contact or sexual penetration without consent.**<sup>iii</sup>

## PROTECTION ORDERS—STATEWIDE

Over the last five years (2014-2018), there were an annual average of **9,375 protection orders requested** and an annual average of **5,360 were granted** (57% issuance rate).



## MAJOR PROVISIONS INCLUDED IN LB 532

### Streamlines and clarifies the renewal process for SAPO and DAPO.<sup>iv</sup>

- ▶ Makes the renewal timeline the same for SAPO and DAPO – they can be renewed at any time within 45 days prior to the expiration of the current order, including the date the order expires.  
*Under current law, the SAPO renewal process is at least 45 days before the current order expires. DAPO is on or after 30 days before the expiration of the previous protection order.*
- ▶ Makes the effective date of the renewal order for SAPO and DAPO the same, both would be in effect on the first calendar day following the expiration of the previous order or on the calendar day the court grants the renewal, if after the expiration of previous order.
- ▶ Provides clarity that the court can rely on the existence of a protection order as sufficient evidence for renewal, if certain conditions are met (no material change in relevant circumstances, no modifications of order are being sought and respondent does not contest the renewal).

## Makes uniform the penalties for multiple violations of SAPO and DAPO.

- The bill makes the SAPO penalty structure the same as DAPO – first offense is a Class I misdemeanor, subsequent violation is a Class IV felony.

*Under current law, the penalty for a first offense under both SAPO and DAPO is a Class I misdemeanor. For any subsequent violation of a DAPO, the penalty is a Class IV felony. For SAPO, the penalty is enhanced to a Class IV felony for a second violation that occurs within a 12-month period or for a third or subsequent violation. The concern is the lack of clarity about what happens if a second violation of a SAPO occurs beyond the 12-month period. It appears that it would drop back down to a Class I misdemeanor (not be enhanced).*

## Specifies information to be included in the affidavit—most recent and most severe incidents and approximate dates (HPO, SAPO, DAPO).

*The intent of this provision is to add clarity to the forms to ensure the court is provided the information they need to make a decision. Since the protection order process is often pursued without the assistance of an attorney, victims may submit an affidavit that is lacking in clarity or pertinent information about the harassment, assault or abuse. Also, victims of trauma may have difficulty remembering specific details of the abuse, such as the date – this change will allow them to provide the information to the best of their knowledge.*

## Requires protection orders to state to whom the protections apply (HPO, SAPO, DAPO).

*In some jurisdictions, everyone in the family can be included (or “captioned”). Other jurisdictions will allow a parent on one protection order and children on their own. In other jurisdictions, the court wants every person in the family to have their own protection order. At the very least, LB 532 would require that the protection order should state to whom the protection granted in the order applies.*

## Provides statutory clarity regarding ex parte (or temporary) orders and how they become final enforceable orders (HPO, SAPO, DAPO).

- Under current law, a protection order is issued “ex parte” 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 have a hearing. Upon issuance of an ex parte order, the respondent is served notice that they may show cause as to why the order should not be entered or the order will remain in effect for a period of one year.
- LB 532 provides that a respondent has 10 days to request a hearing in response to an ex parte temporary order.
- The bill states that a temporary ex parte order becomes final if a respondent fails to request a hearing within 10 days OR if the respondent fails to appear at any hearing.

## Clarifies due process for both parties for protection orders that are not granted ex parte (HPO, SAPO, DAPO)—court must hold a hearing within 14 days.

- If not granted ex parte, the court must hold a hearing within 14 days to consider the evidence presented by the petitioner and respondent as to whether or not the protection order should be put in place.

*This process is already clear in the DAPO statutes in 42-925 (2): “If an order under 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.” In LB 532, this same language was added to the HPO and SAPO to mirror the process.*

## Provides for judicial discretion to change the type of protection order for which a victim has initially applied (SAPO & DAPO).

<sup>i</sup> State of Nebraska Judicial Branch, “Protection Order Form Guide,” <https://supremecourt.nebraska.gov/self-help/protection-abuse/form-guide>.

<sup>ii</sup> Ibid.

<sup>iii</sup> Ibid.

<sup>iv</sup> Under current law, harassment protection orders cannot be renewed.