

SENATE

STATE OF MINNESOTA

EIGHTY-EIGHTH LEGISLATURE

S.F. No. 1423

(SENATE AUTHORS: JENSEN)

DATE	D-PG	OFFICIAL STATUS
03/14/2013	1029	Introduction and first reading Referred to Judiciary
04/02/2013	1462a 1668	Comm report: To pass as amended Second reading
05/02/2013	3195	HF substituted on General Orders HF1400

1.1

A bill for an act

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relating to public safety; modifying certain provisions regarding domestic

1.3

abuse; amending Minnesota Statutes 2012, sections 518B.01, subdivision 14, by

1.4

adding a subdivision; 609.2242, subdivision 2; 609.748, subdivision 6; 629.75,

1.5

subdivision 2, by adding a subdivision; 634.20.

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BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MINNESOTA:

1.7

Section 1. Minnesota Statutes 2012, section 518B.01, subdivision 14, is amended to

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read:

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Subd. 14. **Violation of an order for protection.** (a) A person who violates an

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order for protection issued by a judge or referee is subject to the penalties provided

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in paragraphs (b) to (d).

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(b) Except as otherwise provided in paragraphs (c) and (d), whenever an order for

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protection is granted by a judge or referee or pursuant to a similar law of another state,

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the United States, the District of Columbia, tribal lands, or United States territories, and

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the respondent or person to be restrained knows of the existence of the order, violation of

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the order for protection is a misdemeanor. Upon a misdemeanor conviction under this

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paragraph, the defendant must be sentenced to a minimum of three days imprisonment and

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must be ordered to participate in counseling or other appropriate programs selected by

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the court. If the court stays imposition or execution of the jail sentence and the defendant

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refuses or fails to comply with the court's treatment order, the court must impose and

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execute the stayed jail sentence. A violation of an order for protection shall also constitute

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contempt of court and be subject to the penalties provided in chapter 588.

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(c) A person is guilty of a gross misdemeanor who knowingly violates this

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subdivision within ten years of a previous qualified domestic violence-related offense

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conviction or adjudication of delinquency. Upon a gross misdemeanor conviction under

2.1 this paragraph, the defendant must be sentenced to a minimum of ten days imprisonment
2.2 and must be ordered to participate in counseling or other appropriate programs selected
2.3 by the court. Notwithstanding section 609.135, the court must impose and execute the
2.4 minimum sentence provided in this paragraph for gross misdemeanor convictions.

2.5 (d) A person is guilty of a felony and may be sentenced to imprisonment for not
2.6 more than five years or to payment of a fine of not more than \$10,000, or both, if the
2.7 person ~~knowingly~~ violates this subdivision:

2.8 (1) within ten years of the first of two or more previous qualified domestic
2.9 violence-related offense convictions or adjudications of delinquency; or

2.10 (2) while possessing a dangerous weapon, as defined in section 609.02, subdivision 6.

2.11 Upon a felony conviction under this paragraph in which the court stays imposition or
2.12 execution of sentence, the court shall impose at least a 30-day period of incarceration
2.13 as a condition of probation. The court also shall order that the defendant participate in
2.14 counseling or other appropriate programs selected by the court. Notwithstanding section
2.15 609.135, the court must impose and execute the minimum sentence provided in this
2.16 paragraph for felony convictions.

2.17 (e) A peace officer shall arrest without a warrant and take into custody a person whom
2.18 the peace officer has probable cause to believe has violated an order granted pursuant to
2.19 this section or a similar law of another state, the United States, the District of Columbia,
2.20 tribal lands, or United States territories restraining the person or excluding the person from
2.21 the residence or the petitioner's place of employment, even if the violation of the order
2.22 did not take place in the presence of the peace officer, if the existence of the order can be
2.23 verified by the officer. The probable cause required under this paragraph includes probable
2.24 cause that the person knows of the existence of the order. If the order has not been served,
2.25 the officer shall immediately serve the order whenever reasonably safe and possible to
2.26 do so. An order for purposes of this subdivision, includes the short form order described
2.27 in subdivision 8a. When the order is first served upon the person at a location at which,
2.28 under the terms of the order, the person's presence constitutes a violation, the person shall
2.29 not be arrested for violation of the order without first being given a reasonable opportunity
2.30 to leave the location in the presence of the peace officer. A person arrested under this
2.31 paragraph shall be held in custody for at least 36 hours, excluding the day of arrest,
2.32 Sundays, and holidays, unless the person is released earlier by a judge or judicial officer.
2.33 A peace officer acting in good faith and exercising due care in making an arrest pursuant
2.34 to this paragraph is immune from civil liability that might result from the officer's actions.

2.35 (f) If the court finds that the respondent has violated an order for protection and
2.36 that there is reason to believe that the respondent will commit a further violation of the

provisions of the order restraining the respondent from committing acts of domestic abuse or excluding the respondent from the petitioner's residence, the court may require the respondent to acknowledge an obligation to comply with the order on the record. The court may require a bond sufficient to deter the respondent from committing further violations of the order for protection, considering the financial resources of the respondent, and not to exceed \$10,000. If the respondent refuses to comply with an order to acknowledge the obligation or post a bond under this paragraph, the court shall commit the respondent to the county jail during the term of the order for protection or until the respondent complies with the order under this paragraph. The warrant must state the cause of commitment, with the sum and time for which any bond is required. If an order is issued under this paragraph, the court may order the costs of the contempt action, or any part of them, to be paid by the respondent. An order under this paragraph is appealable.

(g) Upon the filing of an affidavit by the petitioner, any peace officer, or an interested party designated by the court, alleging that the respondent has violated any order for protection granted pursuant to this section or a similar law of another state, the United States, the District of Columbia, tribal lands, or United States territories, the court may issue an order to the respondent, requiring the respondent to appear and show cause within 14 days why the respondent should not be found in contempt of court and punished therefor. The hearing may be held by the court in any county in which the petitioner or respondent temporarily or permanently resides at the time of the alleged violation, or in the county in which the alleged violation occurred, if the petitioner and respondent do not reside in this state. The court also shall refer the violation of the order for protection to the appropriate prosecuting authority for possible prosecution under paragraph (b), (c), or (d).

(h) If it is alleged that the respondent has violated an order for protection issued under subdivision 6 or a similar law of another state, the United States, the District of Columbia, tribal lands, or United States territories, and the court finds that the order has expired between the time of the alleged violation and the court's hearing on the violation, the court may grant a new order for protection under subdivision 6 based solely on the respondent's alleged violation of the prior order, to be effective until the hearing on the alleged violation of the prior order. If the court finds that the respondent has violated the prior order, the relief granted in the new order for protection shall be extended for a fixed period, not to exceed one year, except when the court determines a longer fixed period is appropriate.

(i) The admittance into petitioner's dwelling of an abusing party excluded from the dwelling under an order for protection is not a violation by the petitioner of the order for protection.

4.1 A peace officer is not liable under section 609.43, clause (1), for a failure to perform
4.2 a duty required by paragraph (e).

4.3 (j) When a person is convicted under paragraph (b) or (c) of violating an order for
4.4 protection and the court determines that the person used a firearm in any way during
4.5 commission of the violation, the court may order that the person is prohibited from
4.6 possessing any type of firearm for any period longer than three years or for the remainder
4.7 of the person's life. A person who violates this paragraph is guilty of a gross misdemeanor.
4.8 At the time of the conviction, the court shall inform the defendant whether and for
4.9 how long the defendant is prohibited from possessing a firearm and that it is a gross
4.10 misdemeanor to violate this paragraph. The failure of the court to provide this information
4.11 to a defendant does not affect the applicability of the firearm possession prohibition or the
4.12 gross misdemeanor penalty to that defendant.

4.13 (k) Except as otherwise provided in paragraph (j), when a person is convicted under
4.14 paragraph (b) or (c) of violating an order for protection, the court shall inform the defendant
4.15 that the defendant is prohibited from possessing a pistol for three years from the date of
4.16 conviction and that it is a gross misdemeanor offense to violate this prohibition. The failure
4.17 of the court to provide this information to a defendant does not affect the applicability of
4.18 the pistol possession prohibition or the gross misdemeanor penalty to that defendant.

4.19 (l) Except as otherwise provided in paragraph (j), a person is not entitled to possess a
4.20 pistol if the person has been convicted under paragraph (b) or (c) after August 1, 1996,
4.21 of violating an order for protection, unless three years have elapsed from the date of
4.22 conviction and, during that time, the person has not been convicted of any other violation
4.23 of this section. Property rights may not be abated but access may be restricted by the
4.24 courts. A person who possesses a pistol in violation of this paragraph is guilty of a gross
4.25 misdemeanor.

4.26 (m) If the court determines that a person convicted under paragraph (b) or (c) of
4.27 violating an order for protection owns or possesses a firearm and used it in any way during
4.28 the commission of the violation, it shall order that the firearm be summarily forfeited
4.29 under section 609.5316, subdivision 3.

4.30 Sec. 2. Minnesota Statutes 2012, section 518B.01, is amended by adding a subdivision
4.31 to read:

4.32 Subd. 14a. **Venue.** A person may be prosecuted under subdivision 14 at the place
4.33 where any call is made or received or, in the case of wireless or electronic communication
4.34 or any communication made through any available technologies, where the actor or victim

resides, or in the jurisdiction of the victim's designated address if the victim participates in the address confidentiality program established under chapter 5B.

Sec. 3. Minnesota Statutes 2012, section 609.2242, subdivision 2, is amended to read:

Subd. 2. **Gross misdemeanor.** Whoever violates subdivision 1 within ten years of a previous qualified domestic violence-related offense conviction or an adjudication of delinquency ~~against a family or household member as defined in section 518B.01, subdivision 2,~~ is guilty of a gross misdemeanor and may be sentenced to imprisonment for not more than one year or to payment of a fine of not more than \$3,000, or both.

Sec. 4. Minnesota Statutes 2012, section 609.748, subdivision 6, is amended to read:

Subd. 6. **Violation of restraining order.** (a) A person who violates a restraining order issued under this section is subject to the penalties provided in paragraphs (b) to (d).

(b) Except as otherwise provided in paragraphs (c) and (d), when a temporary restraining order or a restraining order is granted under this section and the respondent knows of the order, violation of the order is a misdemeanor.

(c) A person is guilty of a gross misdemeanor who ~~knowingly~~ violates the order within ten years of a previous qualified domestic violence-related offense conviction or adjudication of delinquency.

(d) A person is guilty of a felony and may be sentenced to imprisonment for not more than five years or to payment of a fine of not more than \$10,000, or both, if the person ~~knowingly~~ violates the order:

(1) within ten years of the first of two or more previous qualified domestic violence-related offense convictions or adjudications of delinquency;

(2) because of the victim's or another's actual or perceived race, color, religion, sex, sexual orientation, disability as defined in section 363A.03, age, or national origin;

(3) by falsely impersonating another;

(4) while possessing a dangerous weapon;

(5) with an intent to influence or otherwise tamper with a juror or a judicial proceeding or with intent to retaliate against a judicial officer, as defined in section 609.415, or a prosecutor, defense attorney, or officer of the court, because of that person's performance of official duties in connection with a judicial proceeding; or

(6) against a victim under the age of 18, if the respondent is more than 36 months older than the victim.

(e) A person who commits violations in two or more counties may be prosecuted in any county in which one of the acts was committed for all acts in violation of this section.

(f) A person may be prosecuted at the place where any call is made or received or, in the case of wireless or electronic communication or any communication made through any available technologies, where the actor or victim resides, or in the jurisdiction of the victim's designated address if the victim participates in the address confidentiality program established under chapter 5B.

(g) A peace officer shall arrest without a warrant and take into custody a person whom the peace officer has probable cause to believe has violated an order issued under subdivision 4 or 5 if the existence of the order can be verified by the officer.

(h) A violation of a temporary restraining order or restraining order shall also constitute contempt of court.

(i) Upon the filing of an affidavit by the petitioner, any peace officer, or an interested party designated by the court, alleging that the respondent has violated an order issued under subdivision 4 or 5, the court may issue an order to the respondent requiring the respondent to appear within 14 days and show cause why the respondent should not be held in contempt of court. The court also shall refer the violation of the order to the appropriate prosecuting authority for possible prosecution under paragraph (b), (c), or (d).

Sec. 5. Minnesota Statutes 2012, section 629.75, subdivision 2, is amended to read:

Subd. 2. **Criminal penalties.** (a) As used in this subdivision "qualified domestic violence-related offense" has the meaning given in section 609.02, subdivision 16.

(b) Except as otherwise provided in paragraphs (c) and (d), a person who knows of the existence of a domestic abuse no contact order issued against the person and violates the order is guilty of a misdemeanor.

(c) A person is guilty of a gross misdemeanor who ~~knowingly~~ violates this subdivision within ten years of a previous qualified domestic violence-related offense conviction or adjudication of delinquency. Upon a gross misdemeanor conviction under this paragraph, the defendant must be sentenced to a minimum of ten days' imprisonment and must be ordered to participate in counseling or other appropriate programs selected by the court as provided in section 518B.02. Notwithstanding section 609.135, the court must impose and execute the minimum sentence provided in this paragraph for gross misdemeanor convictions.

(d) A person is guilty of a felony and may be sentenced to imprisonment for not more than five years or to payment of a fine of not more than \$10,000, or both, if the person ~~knowingly~~ violates this subdivision:

(1) within ten years of the first of two or more previous qualified domestic violence-related offense convictions or adjudications of delinquency; or

(2) while possessing a dangerous weapon, as defined in section 609.02, subdivision 6. Upon a felony conviction under this paragraph in which the court stays imposition or execution of sentence, the court shall impose at least a 30-day period of incarceration as a condition of probation. The court also shall order that the defendant participate in counseling or other appropriate programs selected by the court. Notwithstanding section 609.135, the court must impose and execute the minimum sentence provided in this paragraph for felony convictions.

Sec. 6. Minnesota Statutes 2012, section 629.75, is amended by adding a subdivision to read:

Subd. 2a. **Venue.** A person may be prosecuted under subdivision 2 at the place where any call is made or received or, in the case of wireless or electronic communication or any communication made through any available technologies, where the actor or victim resides, or in the jurisdiction of the victim's designated address if the victim participates in the address confidentiality program established under chapter 5B.

Sec. 7. Minnesota Statutes 2012, section 634.20, is amended to read:

634.20 EVIDENCE OF CONDUCT.

Evidence of ~~similar~~ domestic conduct by the accused against the victim of domestic ~~abuse~~ conduct, or against other family or household members, is admissible unless the probative value is substantially outweighed by the danger of unfair prejudice, confusion of the issue, or misleading the jury, or by considerations of undue delay, waste of time, or needless presentation of cumulative evidence. "~~Similar~~ Domestic conduct" includes, but is not limited to, evidence of domestic abuse, violation of an order for protection under section 518B.01; violation of a harassment restraining order under section 609.748; or violation of section 609.749 or 609.79, subdivision 1. "Domestic abuse" and "family or household members" have the meanings given under section 518B.01, subdivision 2.