

State of Minnesota
HOUSE OF REPRESENTATIVES

EIGHTY-NINTH SESSION

H. F. No. 2710

03/08/2016 Authored by Slocum

The bill was read for the first time and referred to the Committee on Public Safety and Crime Prevention Policy and Finance

1.1 A bill for an act
1.2 relating to public safety; modifying harassment restraining orders; amending
1.3 Minnesota Statutes 2014, section 609.748.
1.4 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MINNESOTA:

1.5 Section 1. Minnesota Statutes 2014, section 609.748, is amended to read:

1.6 **609.748 HARASSMENT; RESTRAINING ORDER.**

1.7 Subdivision 1. **Definition.** For the purposes of this section, the following terms have
1.8 the meanings given them in this subdivision.

1.9 (a) "Harassment" includes:

1.10 (1) a single incident of physical or sexual assault or repeated incidents of intrusive or
1.11 unwanted acts, words, or gestures that have a substantial adverse effect or are intended to
1.12 have a substantial adverse effect on the safety, security, or privacy of another, regardless
1.13 of the relationship between the actor and the intended target;

1.14 (2) targeted residential picketing; and

1.15 (3) a pattern of attending public events after being notified that the actor's presence
1.16 at the event is harassing to another.

1.17 (b) "Respondent" includes any adults or juveniles alleged to have engaged in
1.18 harassment or organizations alleged to have sponsored or promoted harassment.

1.19 (c) "Targeted residential picketing" includes the following acts when committed on
1.20 more than one occasion:

1.21 (1) marching, standing, or patrolling by one or more persons directed solely at a
1.22 particular residential building in a manner that adversely affects the safety, security, or
1.23 privacy of an occupant of the building; or

(2) marching, standing, or patrolling by one or more persons which prevents an occupant of a residential building from gaining access to or exiting from the property on which the residential building is located.

(d) "Guardian" has the meaning given in section 524.1-201, clause (26).

Subd. 2. **Restraining order; court jurisdiction.** (a) A person who is a victim of harassment may seek a restraining order from petition the district court for a restraining order in the manner provided in this section:

(1) the parent, guardian, or stepparent of a minor who is a victim of harassment may seek a restraining order from the district court on behalf of the minor;

(2) if the court finds it is in the best interests of the minor, a reputable adult may petition on behalf of the minor; and

(3) a minor age 16 or 17 may petition on the minor's own behalf against a spouse or former spouse, or a person with whom the minor has a child in common.

(b) An application for relief under this section may be filed in the county of residence of either party or in the county in which the alleged harassment occurred. There are no residency requirements that apply to a petition for a harassment restraining order.

Subd. 3. **Contents of petition; hearing; notice.** (a) A petition for relief must allege facts sufficient to show the following:

(1) the name of the alleged harassment victim;

(2) the name of the respondent; and

(3) that the respondent has engaged in harassment.

A petition for relief must state whether the petitioner has had a previous restraining order in effect against the respondent. The petition shall be accompanied by an affidavit made under oath stating the specific facts and circumstances from which relief is sought. The court shall provide simplified forms and clerical assistance to help with the writing and filing of a petition under this section and shall advise the petitioner of the right to sue in forma pauperis under section 563.01. The court shall advise the petitioner of the right to request a hearing. If the petitioner does not request a hearing, the court shall advise the petitioner that the respondent may request a hearing and that notice of the hearing date and time will be provided to the petitioner by mail at least five days before the hearing. Upon receipt of the petition and a request for a hearing by the petitioner, the court shall order a hearing. Personal service must be made upon the respondent not less than five days before the hearing. If personal service cannot be completed in time to give the respondent the minimum notice required under this paragraph, the court may set a new hearing date. Nothing in this section shall be construed as requiring a hearing on a matter that has no merit.

(b) Notwithstanding paragraph (a), the order for a hearing and a temporary order issued under subdivision 4 may be served on the respondent by means of a one-week published notice under section 645.11, if:

(1) the petitioner files an affidavit with the court stating that an attempt at personal service made by a sheriff was unsuccessful because the respondent is avoiding service by concealment or otherwise; and

(2) a copy of the petition and order for hearing and any temporary restraining order has been mailed to the respondent at the respondent's residence or place of business, if the respondent is an organization, or the respondent's last known residence or place of business ~~is not known to the petitioner~~.

(c) Regardless of the method of service, if the respondent is a juvenile, whenever possible, the court also shall have notice of the pendency of the case and of the time and place of the hearing served by mail at the last known address upon any parent or guardian of the juvenile respondent who is not the petitioner.

(d) A request for a hearing under this subdivision must be made within 20 days of service of the petition.

Subd. 3a. **Filing fee; cost of service.** The filing fees for a restraining order under this section are waived for the petitioner and the respondent if the petition alleges acts that would constitute a violation of section 609.749, subdivision 2, 3, 4, or 5, or sections 609.342 to 609.3451. The court administrator and the sheriff of any county in this state shall perform their duties relating to service of process without charge to the petitioner. The court shall direct payment of the reasonable costs of service of process if served by a private process server when the sheriff is unavailable or if service is made by publication. ~~The court may direct a respondent to pay to the court administrator the petitioner's filing fees and reasonable costs of service of process if the court determines that the respondent has the ability to pay the petitioner's fees and costs.~~

Subd. 3b. **Information on petitioner's location or residence.** Upon petitioner's request, information maintained by the court regarding the petitioner's location or residence shall be sealed and may be disclosed only to court personnel or law enforcement for purposes of service of process, conducting an investigation, or enforcing an order.

Subd. 4. **Temporary restraining order; relief by court.** (a) The court may issue a temporary restraining order that provides any or all of the following:

(1) orders the respondent to cease or avoid the harassment of ~~another person~~ the petitioner; or

(2) orders the respondent to have no contact with ~~another person~~ the petitioner.

(b) The court may issue an order under paragraph (a) if the petitioner files a petition in compliance with subdivision 3 and if the court finds reasonable grounds to believe that the respondent has engaged in harassment. When a petition alleges harassment as defined by subdivision 1, paragraph (a), clause (1), the petition must further allege an immediate and present danger of harassment before the court may issue a temporary restraining order under this section. When signed by a referee, the temporary order becomes effective upon the referee's signature.

(c) Notice need not be given to the respondent before the court issues a temporary restraining order under this subdivision. A copy of the restraining order must be served on the respondent along with the order for hearing and petition, as provided in subdivision 3.

(d) If the respondent is a juvenile, whenever possible, a copy of the restraining order, along with notice of the pendency of the case and the time and place of the hearing, shall also be served by mail at the last known address upon any parent or guardian of the juvenile respondent who is not the petitioner. A temporary restraining order may be entered only against the respondent named in the petition.

~~(d)~~ (e) The temporary restraining order is in effect until a hearing is held on the issuance of a restraining order under subdivision 5. The court shall hold the hearing on the issuance of a restraining order if the petitioner requests a hearing. The hearing may be continued by the court upon a showing that the respondent has not been served with a copy of the temporary restraining order despite the exercise of due diligence or if service is made by published notice under subdivision 3 and the petitioner files the affidavit required under that subdivision.

~~(e)~~ (f) If the temporary restraining order has been issued and the respondent requests a hearing, the hearing shall be scheduled by the court upon receipt of the respondent's request. Service of the notice of hearing must be made upon the petitioner not less than five days prior to the hearing. The court shall serve the notice of the hearing upon the petitioner by mail in the manner provided in the Rules of Civil Procedure for pleadings subsequent to a complaint and motions and shall also mail notice of the date and time of the hearing to the respondent. In the event that service cannot be completed in time to give the respondent or petitioner the minimum notice required under this subdivision, the court may set a new hearing date.

~~(f)~~ (g) A request for a hearing under this subdivision must be made within ~~45~~ 20 days after the temporary restraining order is ~~issued~~ served.

(h) If neither party requests a hearing, then the temporary order becomes a valid order for one year from the date of issue.

Subd. 5. **Restraining order.** (a) The court may issue a restraining order that provides any or all of the following:

(1) orders the respondent to cease or avoid the harassment of ~~another person~~ the petitioner; or

(2) orders the respondent to have no contact with ~~another person~~ the petitioner, whether in person; by telephone, social media, or electronic mail or message; through electronic devices; through a third party; or by any other means.

(b) The court may issue an order under paragraph (a) if all of the following occur:

(1) the petitioner has filed a petition under subdivision 3;

(2) the sheriff has served respondent with a copy of the temporary restraining order obtained under subdivision 4, and with notice of the right to request a hearing, or service has been made by publication under subdivision 3, paragraph (b); and

(3) the court finds at the hearing that there are reasonable grounds to believe that the respondent has engaged in harassment.

(c) A restraining order may be issued only against the respondent named in the petition; except that if the respondent is an organization, the order may be issued against and apply to all of the members of the organization. ~~If the court finds that the petitioner has had two or more previous restraining orders in effect against the same respondent or the respondent has violated a prior or existing restraining order on two or more occasions, relief granted by the restraining order may be for a period of up to 50 years. In all other cases,~~

(d) Relief granted by the restraining order must be for a fixed period of not more than two years except as provided in subdivision 6.

(e) When a referee presides at the hearing on the petition, the restraining order becomes effective upon the referee's signature.

~~(e)~~ (f) An order issued under this subdivision must be personally served upon the respondent.

~~(d) If the court orders relief for a period of up to 50 years under paragraph (a), the respondent named in the restraining order may request to have the restraining order vacated or modified if the order has been in effect for at least five years and the respondent has not violated the order. Application for relief under this paragraph must be made in the county in which the restraining order was issued. Upon receipt of the request, the court shall set a hearing date. Personal service must be made upon the petitioner named in the restraining order not less than 30 days before the date of the hearing. At the hearing, the respondent named in the restraining order has the burden of proving by a preponderance of the evidence that there has been a material change in circumstances and that the reasons upon which the court relied in granting the restraining order no longer apply and are~~

unlikely to occur. If the court finds that the respondent named in the restraining order has met the burden of proof, the court may vacate or modify the order. If the court finds that the respondent named in the restraining order has not met the burden of proof, the court shall deny the request and no request may be made to vacate or modify the restraining order until five years have elapsed from the date of denial. An order vacated or modified under this paragraph must be personally served on the petitioner named in the restraining order.

Subd. 5a. **Orders for a period of up to 50 years.** (a) Relief granted by the harassment restraining order may be for a period of up to 50 years, if the court finds that:

(1) the respondent has violated a prior or existing harassment restraining order on two or more occasions; or

(2) the petitioner has had two or more harassment restraining orders in effect against the same respondent.

(b) If the court orders relief for a period of up to 50 years under this subdivision the respondent named in the restraining order may request to have the restraining order vacated or modified as provided in subdivision 5c.

Subd. 5b. **Subsequent orders and extensions.** (a) Upon application, notice to parties, and hearing, the court may extend an existing harassment restraining order or, if a petitioner's harassment restraining order is no longer in effect when a subsequent application is made, grant a new order. A hearing is not required for an extension of an existing order if a temporary restraining order is issued under subdivision 4, paragraph (a), and the respondent does not request a hearing on the temporary restraining order as allowed under subdivision 4, paragraph (f). The court may extend the terms of an existing order, or, if an order is no longer in effect, grant a new order upon a showing that:

(1) the respondent has violated a prior or existing harassment restraining order;

(2) the petitioner is reasonably in fear of harassment from the respondent;

(3) the respondent has engaged in acts that would constitute a violation of section 609.749, subdivision 2, 3, 4, or 5 or sections 609.342 to 609.3451; or

(4) the respondent is incarcerated and about to be released, or has recently been released, from incarceration.

(b) A petitioner does not need to show that harassment is imminent to obtain an extension or a subsequent order under this subdivision.

(c) A request for a hearing under this subdivision must be made within 20 days after the application for subsequent order or extension is served.

(d) An order issued under this paragraph may restrain the harassing party from committing acts of harassment and prohibit the harassing party from having any contact

7.1 from the petitioner, whether in person; by telephone, mail, social media, or electronic mail
7.2 or message; through electronic devices; through a third party; or by any other means.

7.3 Subd. 5c. **Modifying or vacating order.** (a) Upon application, notice to all
7.4 parties, and hearing, the court may modify or vacate the terms of an existing harassment
7.5 restraining order.

7.6 (b) If the court orders relief for a period of up to 50 years under subdivision 6,
7.7 the respondent named in the restraining order may request to have the restraining order
7.8 vacated or modified if the order has been in effect for at least five years and the respondent
7.9 has not violated the order. Application for relief under this paragraph must be made in the
7.10 county in which the restraining order was issued. Upon receipt of the request, the court
7.11 shall set a hearing date. Personal service must be made upon the petitioner named in the
7.12 restraining order not less than 30 days before the date of the hearing. At the hearing, the
7.13 respondent named in the restraining order has the burden of proving by a preponderance
7.14 of the evidence that there has been a material change in circumstances and that the reasons
7.15 upon which the court relied in granting the restraining order no longer apply and are
7.16 unlikely to occur. If the court finds that the respondent named in the restraining order has
7.17 met the burden of proof, the court may vacate or modify the order. If the court finds that the
7.18 respondent named in the restraining order has not met the burden of proof, the court shall
7.19 deny the request and no request may be made to vacate or modify the restraining order
7.20 until five years have elapsed from the date of denial. An order vacated or modified under
7.21 this paragraph must be personally served on the petitioner named in the restraining order.

7.22 (c) A request for a hearing under this subdivision must be made within 20 days after
7.23 the application for modification or vacation is served.

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

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

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

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

7.35 (1) within ten years of the first of two or more previous qualified domestic
7.36 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 as provided in section 609.34 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~~ this section 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).

Subd. 7. Copy to law enforcement agency. (a) An order granted under this section shall be forwarded by the court administrator within 24 hours to the local law enforcement agency with jurisdiction over the residence of the ~~applicant~~ petitioner. Each appropriate law enforcement agency shall make available to other law enforcement officers through a system for verification, information as to the existence and status of any order issued under this section.

(b) If the petitioner notifies the court administrator of a change in the petitioner's residence so that a different law enforcement agency has jurisdiction over the residence, the harassment restraining order and any continuance of a harassment restraining order must be forwarded by the court administrator to the new law enforcement agency within 24 hours of the notice. If the petitioner notifies the law enforcement agency that a harassment restraining order has been issued under this section and the petitioner has established a new residence within that agency's jurisdiction, within 24 hours the local law enforcement agency shall request a copy of the harassment restraining order from the court administrator in the county that issued the order.

(c) When a harassment restraining order is granted, the petitioner for a harassing restraining order must be told by the court that:

(1) notification of a change in residence should be given immediately to the court administrator and to the local law enforcement agency having jurisdiction over the new residence of the petitioner;

(2) the reason for notification of a change in residence is to forward a harassment restraining order to the proper law enforcement agency; and

(3) the harassment restraining order must be forwarded to the law enforcement agency having jurisdiction over the new residence within 24 hours of notification of a change in residence, whether notification is given to the court administrator or to the local law enforcement agency having jurisdiction over the petitioner's new residence.

(d) A harassment restraining order is enforceable even if the petitioner does not notify the court administrator or the appropriate law enforcement agency of a change in residence.

Subd. 8. **Notice.** (a) An order granted under this section must contain a conspicuous notice to the respondent:

(1) of the specific conduct that will constitute a violation of the order;

(2) that violation of an order is either (i) a misdemeanor punishable by imprisonment for up to 90 days or a fine of up to \$1,000, or both, (ii) a gross misdemeanor punishable by imprisonment for up to one year or a fine of up to \$3,000, or both, or (iii) a felony punishable by imprisonment for up to five years or a fine of up to \$10,000, or both; and

(3) that a peace officer must arrest without warrant and take into custody a person if the peace officer has probable cause to believe the person has violated a restraining order.

(b) If the court grants relief for a period of up to 50 years under subdivision 5 6, the order must also contain a conspicuous notice to the respondent that the respondent must wait five years to seek a modification of the order.

Subd. 8a. **Assistance of sheriff in service or execution.** When an order is issued under this section upon request of the petitioner, the court shall order the sheriff to

10.1 accompany the petitioner and assist in execution of service of the harassment restraining
10.2 order. If the application for relief is brought in a county in which the respondent is not
10.3 present, the sheriff shall forward the pleadings necessary for service upon the respondent
10.4 to the sheriff of the county in which the respondent is present. This transmittal must
10.5 be expedited to allow for timely service.

10.6 Subd. 8b. **Service by others.** Peace officers licensed by the state and corrections
10.7 officers, including, but not limited to, probation officers, court services officers, parole
10.8 officers, and employees of jails or facilities, may serve a harassment restraining order.
10.9 Outside of Minnesota, service may be accomplished under the laws of the state where
10.10 the respondent is located.

10.11 Subd. 9. **Effect on local ordinances.** Nothing in this section shall supersede or
10.12 preclude the continuation or adoption of any local ordinance which applies to a broader
10.13 scope of targeted residential picketing conduct than that described in subdivision 1.

10.14 Subd. 10. **Prohibition against employer retaliation.** (a) An employer shall not
10.15 discharge, discipline, threaten, otherwise discriminate against, or penalize an employee
10.16 regarding the employee's compensation, terms, conditions, location, or privileges of
10.17 employment, because the employee took reasonable time off from work to obtain or
10.18 attempt to obtain relief under this section. Except in cases of imminent danger to the health
10.19 or safety of the employee or the employee's child, or unless impracticable, an employee
10.20 who is absent from the workplace shall give 48 hours' advance notice to the employer.
10.21 Upon request of the employer, the employee shall provide verification that supports the
10.22 employee's reason for being absent from the workplace. All information related to the
10.23 employee's leave pursuant to this section shall be kept confidential by the employer.

10.24 (b) An employer who violates paragraph (a) is guilty of a misdemeanor and may
10.25 be punished for contempt of court. In addition, the court shall order the employer to pay
10.26 back wages and offer job reinstatement to any employee discharged from employment in
10.27 violation of paragraph (a).

10.28 (c) In addition to any remedies otherwise provided by law, an employee injured by
10.29 a violation of paragraph (a) may bring a civil action for recovery of damages, together
10.30 with costs and disbursements, including reasonable attorneys fees, and may receive such
10.31 injunctive and other equitable relief, including reinstatement, as determined by the court.