

## CHAPTER 518B

### DOMESTIC ABUSE

518B.01 Domestic abuse act.

#### 518B.01 DOMESTIC ABUSE ACT.

Subdivision 1. **Short title.** This section may be cited as the domestic abuse act.

Subd. 2. **Definitions.** As used in this section, the following terms shall have the meanings given them:

(a) "Domestic abuse" means: (i) physical harm, bodily injury, assault, or the infliction of fear of imminent physical harm, bodily injury or assault, between family or household members; or (ii) criminal sexual conduct, within the meaning of section 609.342, 609.343, 609.344, or 609.345, committed against a minor family or household member by an adult family or household member.

(b) "Family or household members" means spouses, former spouses, parents and children, persons related by blood, and persons who are presently residing together or who have resided together in the past, and persons who have a child in common regardless of whether they have been married or have lived together at any time.

Subd. 3. **Court jurisdiction.** An application for relief under this section may be filed in the court having jurisdiction over dissolution actions. In a jurisdiction which utilizes referees in dissolution actions, the court or judge may refer actions under this section to a referee to take and report the evidence therein in the same manner and subject to the same limitations as is provided in section 518.13. Actions under this section shall be given docket priorities by the court.

Subd. 4. **Order for protection.** There shall exist an action known as a petition for an order for protection in cases of domestic abuse.

(a) A petition for relief under this section may be made by any family or household member personally or on behalf of minor family or household members.

(b) A petition for relief shall allege the existence of domestic abuse, and shall be accompanied by an affidavit made under oath stating the specific facts and circumstances from which relief is sought.

(c) A petition for relief may be made regardless of whether or not there is a pending lawsuit, complaint, petition or other action between the parties.

(d) The court shall provide simplified forms and clerical assistance to help with the writing and filing of a petition under this section.

(e) The court shall advise a petitioner under clause (d) of the right to file a motion and affidavit and to sue in forma pauperis pursuant to section 563.01 and shall assist with the writing and filing of the motion and affidavit.

(f) The court shall advise a petitioner under clause (d) of the right to serve the respondent by published notice under subdivision 5, paragraph (b), if the respondent is avoiding personal service by concealment or otherwise, and shall assist with the writing and filing of the affidavit.

Subd. 5. **Hearing on application; notice.** (a) Upon receipt of the petition, the court shall order a hearing which shall be held not later than 14 days from the date of the order. Personal service shall be made upon the respondent not less than five days prior to the hearing. In the event that 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.

(b) Notwithstanding the provisions of paragraph (a), service may be made by one week published notice, as provided under section 645.11, provided the petitioner files with the court an affidavit stating that an attempt at personal service made by a sheriff

was unsuccessful because the respondent is avoiding service by concealment or otherwise, and that a copy of the petition and notice of hearing has been mailed to the respondent at the respondent's residence or that the residence is not known to the petitioner. Service under this paragraph is complete seven days after publication. The court shall set a new hearing date if necessary to allow the respondent the five-day minimum notice required under paragraph (a).

**Subd. 6. Relief by the court.** (a) Upon notice and hearing, the court may provide relief as follows:

- (1) restrain the abusing party from committing acts of domestic abuse;
- (2) exclude the abusing party from the dwelling which the parties share or from the residence of the petitioner;
- (3) award temporary custody or establish temporary visitation with regard to minor children of the parties on a basis which gives primary consideration to the safety of the victim and the children. If the court finds that the safety of the victim or the children will be jeopardized by unsupervised or unrestricted visitation, the court shall condition or restrict visitation as to time, place, duration, or supervision, or deny visitation entirely, as needed to guard the safety of the victim and the children. The court's deliberation under this subdivision shall in no way delay the issuance of an order for protection granting other reliefs provided for in Laws 1985, chapter 195;
- (4) on the same basis as is provided in chapter 518, establish temporary support for minor children or a spouse, and order the withholding of support from the income of the person obligated to pay the support according to chapter 518;
- (5) provide upon request of the petitioner counseling or other social services for the parties, if married, or if there are minor children;
- (6) order the abusing party to participate in treatment or counseling services;
- (7) award temporary use and possession of property and restrain one or both parties from transferring, encumbering, concealing, or disposing of property except in the usual course of business or for the necessities of life, and to account to the court for all such transfers, encumbrances, dispositions, and expenditures made after the order is served or communicated to the party restrained in open court;
- (8) order, in its discretion, other relief as it deems necessary for the protection of a family or household member, including orders or directives to the sheriff or constable, as provided by this section.

(b) Any relief granted by the order for protection shall be for a fixed period not to exceed one year, except when the court determines a longer fixed period is appropriate.

(c) An order granting the relief authorized in paragraph (a), clause (1), may not be vacated or modified in a proceeding for dissolution of marriage or legal separation, except that the court may hear a motion for modification of an order for protection concurrently with a proceeding for dissolution of marriage upon notice of motion and motion. The notice required by court rule shall not be waived. If the proceedings are consolidated and the motion to modify is granted, a separate order for modification of an order for protection shall be issued.

(d) An order granting the relief authorized in paragraph (a), clause (2), is not voided by the admittance of the abusing party into the dwelling from which the abusing party is excluded.

**Subd. 7. Temporary order.** (a) Where an application under this section alleges an immediate and present danger of domestic abuse, the court may grant an ex parte temporary order for protection, pending a full hearing, and granting relief as the court deems proper, including an order:

- (1) restraining the abusing party from committing acts of domestic abuse;
  - (2) excluding any party from the dwelling they share or from the residence of the other except by further order of the court.
- (b) An ex parte temporary order for protection shall be effective for a fixed period

not to exceed 14 days, except for good cause as provided under paragraph (c). A full hearing, as provided by this section, shall be set for not later than seven days from the issuance of the temporary order. The respondent shall be served forthwith a copy of the ex parte order along with a copy of the petition and notice of the date set for the hearing.

(c) When service is made by published notice, as provided under subdivision 5, the petitioner may apply for an extension of the period of the ex parte order at the same time the petitioner files the affidavit required under that subdivision. The court may extend the ex parte temporary order for an additional period not to exceed 14 days. The respondent shall be served forthwith a copy of the modified ex parte order along with a copy of the notice of the new date set for the hearing.

**Subd. 8. Service of order.** Any order issued under this section shall be personally served upon the respondent.

**Subd. 9. 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 or constable to accompany the petitioner and assist in placing the petitioner in possession of the dwelling or residence, or otherwise assist in execution or service of the order of protection.

**Subd. 10. Right to apply for relief.** (a) A person's right to apply for relief shall not be affected by the person's leaving the residence or household to avoid abuse.

(b) The court shall not require security or bond of any party unless it deems necessary in exceptional cases.

**Subd. 11. Modification of order.** Upon application, notice to all parties, and hearing, the court may modify the terms of an existing order for protection.

**Subd. 12. Real estate.** Nothing in this section shall affect the title to real estate.

**Subd. 13. Copy to law enforcement agency.** An order for protection granted pursuant to 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.

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 for protection issued pursuant to this section.

**Subd. 14. Violation of an order for protection.** (a) Whenever an order for protection is granted pursuant to this section, and the respondent or person to be restrained knows of the order, violation of the order for protection is a misdemeanor.

(b) 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 granted pursuant to this section restraining the person or excluding the person from the residence, if the existence of the order can be verified by the officer.

(c) A violation of an order for protection shall also constitute contempt of court and be subject to the penalties therefor.

(d) Upon the filing of an affidavit by the petitioner or any peace officer, alleging that the respondent has violated any order for protection granted pursuant to this section, 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.

(e) 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.

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

**Subd. 15. Admissibility of testimony in criminal proceeding.** Any testimony

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offered by a respondent in a hearing pursuant to this section is inadmissible in a criminal proceeding.

**Subd. 16. Other remedies available.** Any proceeding under this section shall be in addition to other civil or criminal remedies.

**Subd. 17. Effect on custody proceedings.** In a subsequent custody proceeding the court may consider, but is not bound by, a finding in a proceeding under this chapter that domestic abuse has occurred between the parties.

**Subd. 18. Notices.** Each order for protection granted under this chapter must contain a conspicuous notice to the respondent or person to be restrained that:

(1) violation of an order for protection is a misdemeanor punishable by imprisonment for up to 90 days or a fine of up to \$700 or both;

(2) the respondent is forbidden to enter or stay at the petitioner's residence, even if invited to do so by the petitioner or any other person; in no event is the order for protection voided; and

(3) a peace officer must arrest without warrant and take into custody a person whom the peace officer has probable cause to believe has violated an order for protection restraining the person or excluding the person from a residence.

**Subd. 19. Recording required.** Proceedings under this section must be recorded.

**History:** 1979 c 214 s 1; 1981 c 273 s 2; 1983 c 52 s 1-3; 1983 c 308 s 26,27; 1985 c 195 s 1-4; 1986 c 351 s 4; 1986 c 444; 1Sp1986 c 3 art 1 s 69,82; 1987 c 106 s 2; 1987 c 237 s 2-5; 1988 c 638 s 3