

CHAPTER 518B

DOMESTIC ABUSE

518B.01 Domestic Abuse Act.

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[For text of subs 1 to 3b, see M.S.1996]

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 by a family or household member, a guardian as defined in section 524.1-201, clause (20), or, if the court finds that it is in the best interests of the minor, by a reputable adult age 25 or older on behalf of minor family or household members. A minor age 16 or older may make a 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, if the court determines that the minor has sufficient maturity and judgment and that it is in the best interests of the minor.

(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 must state whether the petitioner has ever had an order for protection in effect against the respondent.

(d) A petition for relief must state whether there is an existing order for protection in effect under this chapter governing both the parties and whether there is a pending lawsuit, complaint, petition or other action between the parties under chapter 257, 518, 518A, 518B, or 518C. The court administrator shall verify the terms of any existing order governing the parties. The court may not delay granting relief because of the existence of a pending action between the parties or the necessity of verifying the terms of an existing order. A subsequent order in a separate action under this chapter may modify only the provision of an existing order that grants relief authorized under subdivision 6, paragraph (a), clause (1). A petition for relief may be granted, regardless of whether there is a pending action between the parties.

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

(f) The court shall advise a petitioner under paragraph (e) 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.

(g) The court shall advise a petitioner under paragraph (e) 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.

(h) The court shall advise the petitioner of the right to seek restitution under the petition for relief.

(i) The court shall advise the petitioner of the right to request a hearing under subdivision 7, paragraph (c). 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.

(j) The court shall advise the petitioner of the right to request supervised visitation, as provided in section 518.175, subdivision 1a.

[For text of subs 5 to 7, see M.S.1996]

Subd. 8. Service; alternate service; publication; notice. (a) The petition and any order issued under this section shall be served on the respondent personally.

(b) When service is made out of this state and in the United States, it may be proved by the affidavit of the person making the service. When service is made outside the United

States, it may be proved by the affidavit of the person making the service, taken before and certified by any United States minister, charge d' affaires, commissioner, consul, or commercial agent, or other consular or diplomatic officer of the United States appointed to reside in the other country, including all deputies or other representatives of the officer authorized to perform their duties; or before an office authorized to administer an oath with the certificate of an officer of a court of record of the country in which the affidavit is taken as to the identity and authority of the officer taking the affidavit.

(c) If personal service cannot be made, the court may order service of the petition and any order issued under this section by alternate means, or by publication, which publication must be made as in other actions. The application for alternate service must include the last known location of the respondent; the petitioner's most recent contacts with the respondent; the last known location of the respondent's employment; the names and locations of the respondent's parents, siblings, children, and other close relatives; the names and locations of other persons who are likely to know the respondent's whereabouts; and a description of efforts to locate those persons.

The court shall consider the length of time the respondent's location has been unknown, the likelihood that the respondent's location will become known, the nature of the relief sought, and the nature of efforts made to locate the respondent. The court shall order service by first class mail, forwarding address requested, to any addresses where there is a reasonable possibility that mail or information will be forwarded or communicated to the respondent.

The court may also order publication, within or without the state, but only if it might reasonably succeed in notifying the respondent of the proceeding. Service shall be deemed complete 14 days after mailing or 14 days after court-ordered publication.

(d) A petition and any order issued under this section must include a notice to the respondent that if an order for protection is issued to protect the petitioner or a child of the parties, upon request of the petitioner in any visitation proceeding, the court shall consider the order for protection in making a decision regarding visitation.

[For text of subs 9 to 13, see M.S.1996]

Subd. 14. Violation of an order for protection. (a) A person who violates an order for protection 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), whenever an order for protection is granted pursuant to this section or a similar law of another state, and the respondent or person to be restrained knows of the order, violation of the order for protection is a misdemeanor. Upon a misdemeanor conviction under this paragraph, the defendant must be sentenced to a minimum of three days imprisonment and must be ordered to participate in counseling or other appropriate programs selected by the court. If the court stays imposition or execution of the jail sentence and the defendant refuses or fails to comply with the court's treatment order, the court must impose and execute the stayed jail sentence. A violation of an order for protection shall also constitute contempt of court and be subject to the penalties provided in chapter 588.

(c) A person is guilty of a gross misdemeanor who knowingly violates this subdivision during the time period between a previous conviction under this subdivision; sections 609.221 to 609.224; 609.2242; 609.713, subdivision 1 or 3; 609.748, subdivision 6; 609.749; or a similar law of another state; and the end of the five years following discharge from sentence for that conviction. 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. 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) during the time period between the first of two or more previous convictions under this section or sections 609.221 to 609.224; 609.2242; 609.713, subdivision 1 or 3; 609.748,

subdivision 6; 609.749; or a similar law of another state; and the end of the five years following discharge from sentence for that conviction; 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.

(e) 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 or a similar law of another state restraining the person or excluding the person from the residence or the petitioner's place of employment, even if the violation of the order did not take place in the presence of the peace officer, if the existence of the order can be verified by the officer. The person shall be held in custody for at least 36 hours, excluding the day of arrest, Sundays, and holidays, unless the person is released earlier by a judge or judicial officer. A peace officer acting in good faith and exercising due care in making an arrest pursuant to this paragraph is immune from civil liability that might result from the officer's actions.

(f) If the court finds that the respondent has violated an order for protection and 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 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 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.

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

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

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

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

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

[For text of subs 15 and 16, see M.S.1996]

Subd. 17. Effect on custody proceedings. In a subsequent custody proceeding the court must consider a finding in a proceeding under this chapter or under a similar law of another state 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;

(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; and

(4) pursuant to the Violence Against Women Act of 1994, United States Code, title 18, section 2265, the order is enforceable in all 50 states, the District of Columbia, tribal lands, and United States territories, that violation of the order may also subject the respondent to federal charges and punishment under United States Code, title 18, sections 2261 and 2262, and that if a final order is entered against the respondent after the hearing, the respondent may be prohibited from possessing, transporting, or accepting a firearm under the 1994 amendment to the Gun Control Act, United States Code, title 18, section 922(g)(8).

[For text of subs 19 to 21, see M.S.1996]

History: 1997 c 96 s 3; 1997 c 239 art 7 s 11-15