

CHAPTER 518B

DOMESTIC ABUSE

518B.01 Domestic abuse act.

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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 the following, if committed against a family or household member by a family or household member:

- (1) physical harm, bodily injury, or assault;
- (2) the infliction of fear of imminent physical harm, bodily injury, or assault; or
- (3) terroristic threats, within the meaning of section 609.713, subdivision 1, or criminal sexual conduct, within the meaning of section 609.342, 609.343, 609.344, or 609.345.

(b) "Family or household members" means:

- (1) spouses and former spouses;
- (2) parents and children;
- (3) persons related by blood;
- (4) persons who are presently residing together or who have resided together in the past;
- (5) persons who have a child in common regardless of whether they have been married or have lived together at any time;

(6) a man and woman if the woman is pregnant and the man is alleged to be the father, regardless of whether they have been married or have lived together at any time; and

(7) persons involved in a significant romantic or sexual relationship.

Issuance of an order for protection on the ground in clause (6) does not affect a determination of paternity under sections 257.51 to 257.74. In determining whether persons are or have been involved in a significant romantic or sexual relationship under clause (7), the court shall consider the length of time of the relationship; type of relationship; frequency of interaction between the parties; and, if the relationship has terminated, length of time since the termination.

Subd. 3. **Court jurisdiction.** An application for relief under this section may be filed in the court having jurisdiction over dissolution actions in the county of residence of either party, in the county in which a pending or completed family court proceeding involving the parties or their minor children was brought, or in the county in which the alleged domestic abuse occurred. 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 in the action in the same manner and subject to the same limitations provided in section 518.13. Actions under this section shall be given docket priorities by the court.

Subd. 3a. **Filing fee.** The filing fees for an order for protection under this section are waived for the petitioner. 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, without requiring the petitioner to make application under section 563.01. 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 the petitioner's request, information maintained by the court regarding the petitioner's location or residence is not accessible to the public 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. **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.

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. If an ex parte order has been issued under subdivision 7 and a hearing requested, the time periods under subdivision 7 for holding a hearing apply. Personal service shall be made upon the respondent not less than five days prior to the hearing, if the hearing was requested by the petitioner. If the hearing was requested by the respondent after issuance of an ex parte order under subdivision 7, 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 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 paragraph, the court may set a new hearing date.

(b) Notwithstanding the provisions of paragraph (a), service on the respondent 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) exclude the abusing party from a reasonable area surrounding the dwelling or residence, which area shall be described specifically in the order;

(4) 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. Except for cases in which custody is contested, findings under section 257.025, 518.17, or 518.175 are not required. 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 decision on custody and visitation shall in no way delay the issuance of an order for protection granting other reliefs provided for in this section;

(5) 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;

(6) provide upon request of the petitioner counseling or other social services for the parties, if married, or if there are minor children;

(7) order the abusing party to participate in treatment or counseling services;

(8) 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;

(9) exclude the abusing party from the place of employment of the petitioner, or otherwise limit access to the petitioner by the abusing party at the petitioner's place of employment;

(10) order the abusing party to pay restitution to the petitioner;

(11) order the continuance of all currently available insurance coverage without change in coverage or beneficiary designation; and

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

(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.

(e) If a proceeding for dissolution of marriage or legal separation is pending between the parties, the court shall provide a copy of the order for protection to the court with jurisdiction over the dissolution or separation proceeding for inclusion in its file.

(f) An order for restitution issued under this subdivision is enforceable as civil judgment.

Subd. 6a. Subsequent orders and extensions. Upon application, notice to all parties, and hearing, the court may extend the relief granted in an existing order for protection or, if a petitioner's order for protection is no longer in effect when an application for subsequent relief is made, grant a new order. 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 order for protection;
- (2) the petitioner is reasonably in fear of physical harm from the respondent; or
- (3) the respondent has engaged in acts of harassment or stalking within the meaning of section 609.749, subdivision 2.

A petitioner does not need to show that physical harm is imminent to obtain an extension or a subsequent order under this subdivision.

Subd. 7. Ex parte order. (a) Where an application under this section alleges an immediate and present danger of domestic abuse, the court may grant an ex parte order for protection 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;
- (3) excluding the abusing party from the place of employment of the petitioner or otherwise limiting access to the petitioner by the abusing party at the petitioner's place of employment; and
- (4) continuing all currently available insurance coverage without change in coverage or beneficiary designation.

(b) A finding by the court that there is a basis for issuing an ex parte order for protection constitutes a finding that sufficient reasons exist not to require notice under applicable court rules governing applications for ex parte relief.

(c) Subject to paragraph (d), an ex parte order for protection shall be effective for a fixed period set by the court, as provided in subdivision 6, paragraph (b), or until modified or vacated by the court pursuant to a hearing. Upon request, a full hearing, as provided by this section, shall be set for not later than seven days from the issuance of the ex parte order, if a hearing is requested by the petitioner, or not later than ten days or earlier than eight days from receipt by the court of a request for a hearing by the respondent. Except as provided in paragraph (d), the respondent shall be personally served forthwith a copy of the ex parte order along with a copy of the petition and, if requested by the petitioner, notice of the date set for the hearing. If the petitioner does not request a hearing, an order served on a respondent under this subdivision must include a notice advising the respondent of the right to request a hearing, must be accompanied by a form that can be used by the respondent to request a hearing and must include a conspicuous notice that a hearing will not be held unless requested by the respondent within five days of service of the order.

(d) Service of the ex parte order may be made by published notice, as provided under subdivision 5, provided that the petitioner files the affidavit required under that subdivision. If personal service is not made or the affidavit is not filed within 14 days of issuance of the ex parte order, the order expires. If the petitioner does not request a hearing, the petition mailed to the respondent's residence, if known, must be accompanied by the form for requesting a hearing and notice described in paragraph (c). Unless personal service is completed, if service by published notice is not completed within 28 days of issuance of the ex parte order, the order expires.

(e) If the petitioner seeks relief under subdivision 6 other than the relief described in paragraph (a), the petitioner must request a hearing to obtain the additional relief.

(f) Nothing in this subdivision affects the right of a party to seek modification of an order under subdivision 11.

Subd. 8. Service; alternate service; publication. (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.

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. If the application for relief is brought in a county in which the respondent is not present, the sheriff shall forward the pleadings necessary for service upon the respondent to the sheriff of the county in which the respondent is present. This transmittal must be expedited to allow for timely service.

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. (a) 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.

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

(c) When an order for protection is granted, the applicant for an order for protection 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 applicant;

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

(3) the order for protection 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 applicant's new residence.

An order for protection is enforceable even if the applicant does not notify the court administrator or the appropriate law enforcement agency of a change in residence.

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. Upon conviction, 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 person is guilty of a gross misdemeanor who violates this paragraph during the time period between a previous conviction under this paragraph; 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 conviction, 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.

(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 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.

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

(d) 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.

(e) 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, 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. The court also shall refer the violation of the order for protection to the appropriate prosecuting authority for possible prosecution under paragraph (a).

(f) If it is alleged that the respondent has violated an order for protection issued under subdivision 6 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.

(g) 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 (b).

(h) When a person is convicted of violating an order for protection under this section 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.

(i) Except as otherwise provided in paragraph (h), when a person is convicted of violating an order for protection under this section, 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.

(j) Except as otherwise provided in paragraph (h), a person is not entitled to possess a pistol if the person has been convicted after August 1, 1996, of violating an order for protection under this section, 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.

(k) If the court determines that a person convicted of violating an order for protection under this section 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.

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

Subd. 20. Statewide application. An order for protection granted under this section applies throughout this state.

Subd. 21. Order for protection forms. The state court administrator, in consultation with the advisory council on battered women, city and county attorneys, and legal advocates who work with victims, shall develop a uniform order for protection form that will facilitate the consistent enforcement of orders for protection throughout the state.

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; 1990 c 583 s 1-3; 1991 c 271 s 7; 1991 c 272 s 2-5; 1992 c 464 art 1 s 56; 1992 c 571 art 6 s 2-9; 1993 c 322 s 17-20; 1993 c 326 art 2 s 4-9; 1Sp1993 c 5 s 1; 1994 c 630 art 12 s 5; 1994 c 636 art 2 s 11,12; 1995 c 142 s 2-5; 1995 c 226 art 7 s 3-7; 1995 c 259 art 3 s 6; 1996 c 408 art 4 s 1