

This Document can be made available
in alternative formats upon request

HOUSE FILE NO. 1625

FIRST COMMITTEE ENGROSSMENT

March 5, 2007

Authored by Hosch, Paymar, Fritz, Kranz and Scalze
The bill was read for the first time and referred to the Public Safety and Civil Justice

Referred by Chair to Crime Victims Subcommittee.

Feb/20/2008

Returned to the Committee on Public Safety and Civil Justice as Amended.

1.1 A bill for an act
1.2 relating to public safety; authorizing permanent orders for protection and
1.3 restraining orders after multiple violations or continued threats; amending
1.4 Minnesota Statutes 2006, sections 518B.01, subdivisions 6, 6a, 11, 18; 609.748,
1.5 subdivisions 3, 5, 8.

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

1.7 Section 1. Minnesota Statutes 2006, section 518B.01, subdivision 6, is amended to read:

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

1.10 (1) restrain the abusing party from committing acts of domestic abuse;

1.11 (2) exclude the abusing party from the dwelling which the parties share or from the
1.12 residence of the petitioner;

1.13 (3) exclude the abusing party from a reasonable area surrounding the dwelling or
1.14 residence, which area shall be described specifically in the order;

1.15 (4) award temporary custody or establish temporary parenting time with regard to
1.16 minor children of the parties on a basis which gives primary consideration to the safety of
1.17 the victim and the children. In addition to the primary safety considerations, the court
1.18 may consider particular best interest factors that are found to be relevant to the temporary
1.19 custody and parenting time award. Findings under section 257.025, 518.17, or 518.175
1.20 are not required with respect to the particular best interest factors not considered by the
1.21 court. If the court finds that the safety of the victim or the children will be jeopardized by
1.22 unsupervised or unrestricted parenting time, the court shall condition or restrict parenting
1.23 time as to time, place, duration, or supervision, or deny parenting time entirely, as needed
1.24 to guard the safety of the victim and the children. The court's decision on custody and
1.25 parenting time shall in no way delay the issuance of an order for protection granting other

2.1 relief provided for in this section. The court must not enter a parenting plan under section
2.2 518.1705 as part of an action for an order for protection;

2.3 (5) on the same basis as is provided in chapter 518 or 518A, establish temporary
2.4 support for minor children or a spouse, and order the withholding of support from the
2.5 income of the person obligated to pay the support according to chapter 518A;

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

2.8 (7) order the abusing party to participate in treatment or counseling services,
2.9 including requiring the abusing party to successfully complete a domestic abuse
2.10 counseling program or educational program under section 518B.02;

2.11 (8) award temporary use and possession of property and restrain one or both parties
2.12 from transferring, encumbering, concealing, or disposing of property except in the usual
2.13 course of business or for the necessities of life, and to account to the court for all such
2.14 transfers, encumbrances, dispositions, and expenditures made after the order is served or
2.15 communicated to the party restrained in open court;

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

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

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

2.22 (12) order, in its discretion, other relief as it deems necessary for the protection of
2.23 a family or household member, including orders or directives to the sheriff or other law
2.24 enforcement or corrections officer as provided by this section.

2.25 (b) Any relief granted by the order for protection shall be for a ~~fixed~~ period not to
2.26 exceed one year, except when the court determines a longer ~~fixed~~ period is appropriate.
2.27 When a referee presides at the hearing on the petition, the order granting relief becomes
2.28 effective upon the referee's signature.

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

3.1 (d) An order granting the relief authorized in paragraph (a), clause (2) or (3), is not
3.2 voided by the admittance of the abusing party into the dwelling from which the abusing
3.3 party is excluded.

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

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

3.9 **EFFECTIVE DATE.** This section is effective July 1, 2008.

3.10 Sec. 2. Minnesota Statutes 2006, section 518B.01, subdivision 6a, is amended to read:

3.11 Subd. 6a. **Subsequent orders and extensions.** (a) Upon application, notice to
3.12 all parties, and hearing, the court may extend the relief granted in an existing order for
3.13 protection or, if a petitioner's order for protection is no longer in effect when an application
3.14 for subsequent relief is made, grant a new order. The court may extend the terms of an
3.15 existing order or, if an order is no longer in effect, grant a new order upon a showing that:

3.16 (1) the respondent has violated a prior or existing order for protection;

3.17 (2) the petitioner is reasonably in fear of physical harm from the respondent;

3.18 (3) the respondent has engaged in acts of harassment or stalking within the meaning
3.19 of section 609.749, subdivision 2; or

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

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

3.24 (b) Relief granted by the order for protection may be permanent, if the court finds:

3.25 (1) the respondent has violated a prior or existing order for protection on two or
3.26 more occasions; or

3.27 (2) the petitioner has had two or more orders for protection in effect against the
3.28 same respondent.

3.29 Notwithstanding subdivision 6, the court may provide permanent relief as follows:

3.30 (1) restrain the abusing party from committing acts of domestic abuse; or (2) prohibit the
3.31 abusing party from having any contact with the petitioner.

3.32 **EFFECTIVE DATE.** This section is effective July 1, 2008.

3.33 Sec. 3. Minnesota Statutes 2006, section 518B.01, subdivision 11, is amended to read:

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

4.3 (b) If the court orders permanent relief under subdivision 6a, the respondent named
4.4 in the order for protection may request to have the order vacated or modified if the order
4.5 has been in effect for at least five years and the respondent has not violated the order
4.6 during that time. Application for relief under this subdivision must be made in the county
4.7 in which the order for protection was issued. Upon receipt of the request, the court shall
4.8 set a hearing date. Personal service must be made upon the petitioner named in the order
4.9 for protection not less than 30 days before the date of the hearing. At the hearing, the
4.10 respondent named in the order for protection shall have the burden of proving by clear
4.11 and convincing evidence that there has been a material change in circumstances and that
4.12 the reasons upon which the court relied in granting or extending the order for protection
4.13 no longer apply and are unlikely to occur. If the court finds that the respondent named
4.14 in the order for protection has met the burden of proof, the court may vacate or modify
4.15 the order. If the court finds that the respondent named in the order for protection has not
4.16 met the burden of proof, the court shall deny the request and no request may be made to
4.17 vacate or modify the order for protection until five years have elapsed from the date of
4.18 denial. Any order vacated or modified under this paragraph must be personally served on
4.19 the petitioner named in the order for protection.

4.20 **EFFECTIVE DATE.** This section is effective July 1, 2008.

4.21 Sec. 4. Minnesota Statutes 2006, section 518B.01, subdivision 18, is amended to read:

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

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

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

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

4.34 (4) pursuant to the Violence Against Women Act of 1994, United States Code,
4.35 title 18, section 2265, the order is enforceable in all 50 states, the District of Columbia,

5.1 tribal lands, and United States territories, that violation of the order may also subject
5.2 the respondent to federal charges and punishment under United States Code, title 18,
5.3 sections 2261 and 2262, and that if a final order is entered against the respondent after the
5.4 hearing, the respondent may be prohibited from possessing, transporting, or accepting a
5.5 firearm under the 1994 amendment to the Gun Control Act, United States Code, title 18,
5.6 section 922(g)(8).

5.7 (b) If the court grants permanent relief under subdivision 6a, the order for protection
5.8 must also contain a conspicuous notice to the respondent or person to be restrained that
5.9 the order does not expire and the respondent must wait five years to seek a modification of
5.10 the order.

5.11 **EFFECTIVE DATE.** This section is effective July 1, 2008.

5.12 Sec. 5. Minnesota Statutes 2006, section 609.748, subdivision 3, is amended to read:

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

5.15 (1) the name of the alleged harassment victim;

5.16 (2) the name of the respondent; and

5.17 (3) that the respondent has engaged in harassment.

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

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

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

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

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

6.15 (d) A request for a hearing under this subdivision must be made within 45 days of
6.16 the filing or receipt of the petition.

6.17 **EFFECTIVE DATE.** This section is effective July 1, 2008.

6.18 Sec. 6. Minnesota Statutes 2006, section 609.748, subdivision 5, is amended to read:

6.19 Subd. 5. **Restraining order.** (a) The court may grant a restraining order ordering
6.20 the respondent to cease or avoid the harassment of another person or to have no contact
6.21 with that person if all of the following occur:

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

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

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

6.28 A restraining order may be issued only against the respondent named in the petition;
6.29 except that if the respondent is an organization, the order may be issued against and
6.30 apply to all of the members of the organization. If the court finds that the petitioner has
6.31 had two or more previous restraining orders in effect against the same respondent or the
6.32 respondent has violated a prior or existing restraining order on two or more occasions,
6.33 relief granted by the restraining order may be permanent. In all other cases, relief granted
6.34 by the restraining order must be for a fixed period of not more than two years. When a

7.1 referee presides at the hearing on the petition, the restraining order becomes effective
7.2 upon the referee's signature.

7.3 (b) An order issued under this subdivision must be personally served upon the
7.4 respondent.

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

7.21 **EFFECTIVE DATE.** This section is effective July 1, 2008.

7.22 Sec. 7. Minnesota Statutes 2006, section 609.748, subdivision 8, is amended to read:

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

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

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

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

7.32 (b) If the court grants permanent relief under subdivision 5, the order must also
7.33 contain a conspicuous notice to the respondent that the order does not expire and the
7.34 respondent must wait five years to seek a modification of the order.

8.1 **EFFECTIVE DATE.** This section is effective July 1, 2008.