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State of Minnesota
HOUSE OF REPRESENTATIVES

EIGHTY-SEVENTH
SESSION

HOUSE FILE No. 738

February 28, 2011

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The bill was read for the first time and referred to the Committee on Judiciary Policy and Finance

1.1 A bill for an act
1.2 relating to public safety; modifying certain harassment restraining order
1.3 provisions; amending Minnesota Statutes 2010, section 609.748, subdivisions 4,
1.4 5, 6.

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

1.6 Section 1. Minnesota Statutes 2010, section 609.748, subdivision 4, is amended to read:

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

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

1.10 (2) orders the respondent to have no contact with ~~that~~ another person;

1.11 (3) excludes the respondent from the dwelling place or residence of another person;

1.12 or

1.13 (4) excludes the respondent from a reasonable area surrounding the dwelling or
1.14 residence of another person, which area shall be described specifically in the order.

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

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

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

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

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

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

2.24 Sec. 2. Minnesota Statutes 2010, section 609.748, subdivision 5, is amended to read:

2.25 Subd. 5. **Restraining order.** (a) The court may ~~grant~~ issue a temporary restraining
 2.26 order ~~ordering that provides any or all of the following:~~

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

2.28 (2) orders the respondent to have no contact with ~~that~~ another person;

2.29 (3) excludes the respondent from the dwelling place or residence of another person;

2.30 or

2.31 (4) excludes the respondent from a reasonable area surrounding the dwelling or
 2.32 residence of another person, which area shall be described specifically in the order.

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

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

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

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

3.6 A restraining order may be issued only against the respondent named in the petition;
3.7 except that if the respondent is an organization, the order may be issued against and
3.8 apply to all of the members of the organization. If the court finds that the petitioner has
3.9 had two or more previous restraining orders in effect against the same respondent or the
3.10 respondent has violated a prior or existing restraining order on two or more occasions,
3.11 relief granted by the restraining order may be for a period of up to 50 years. In all other
3.12 cases, relief granted by the restraining order must be for a fixed period of not more than
3.13 two years. When a referee presides at the hearing on the petition, the restraining order
3.14 becomes effective upon the referee's signature.

3.15 ~~(b)~~ (c) An order issued under this subdivision must be personally served upon the
3.16 respondent.

3.17 ~~(c)~~ (d) If the court orders relief for a period of up to 50 years under paragraph (a),
3.18 the respondent named in the restraining order may request to have the restraining order
3.19 vacated or modified if the order has been in effect for at least five years and the respondent
3.20 has not violated the order. Application for relief under this paragraph must be made in the
3.21 county in which the restraining order was issued. Upon receipt of the request, the court
3.22 shall set a hearing date. Personal service must be made upon the petitioner named in the
3.23 restraining order not less than 30 days before the date of the hearing. At the hearing, the
3.24 respondent named in the restraining order has the burden of proving by a preponderance
3.25 of the evidence that there has been a material change in circumstances and that the reasons
3.26 upon which the court relied in granting the restraining order no longer apply and are
3.27 unlikely to occur. If the court finds that the respondent named in the restraining order has
3.28 met the burden of proof, the court may vacate or modify the order. If the court finds that the
3.29 respondent named in the restraining order has not met the burden of proof, the court shall
3.30 deny the request and no request may be made to vacate or modify the restraining order
3.31 until five years have elapsed from the date of denial. An order vacated or modified under
3.32 this paragraph must be personally served on the petitioner named in the restraining order.

3.33 Sec. 3. Minnesota Statutes 2010, section 609.748, subdivision 6, is amended to read:

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

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

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

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

4.10 (1) within ten years of the first of two or more previous qualified domestic
4.11 violence-related offense convictions or adjudications of delinquency;

4.12 (2) because of the victim's or another's actual or perceived race, color, religion, sex,
4.13 sexual orientation, disability as defined in section 363A.03, age, or national origin;

4.14 (3) by falsely impersonating another;

4.15 (4) while possessing a dangerous weapon;

4.16 (5) with an intent to influence or otherwise tamper with a juror or a judicial
4.17 proceeding or with intent to retaliate against a judicial officer, as defined in section
4.18 609.415, or a prosecutor, defense attorney, or officer of the court, because of that person's
4.19 performance of official duties in connection with a judicial proceeding; or

4.20 (6) against a victim under the age of 18, if the respondent is more than 36 months
4.21 older than the victim.

4.22 (e) A person who commits violations in two or more counties may be prosecuted in
4.23 any county in which one of the acts was committed for all acts in violation of this section.

4.24 (f) A person may be prosecuted at the place where any call is made or received or, in
4.25 the case of wireless or electronic communication or any communication made through
4.26 any available technologies, where the actor or victim resides, or in the jurisdiction of
4.27 the victim's designated address if the victim participates in the address confidentiality
4.28 program established under chapter 5B.

4.29 (g) A peace officer shall arrest without a warrant and take into custody a person
4.30 whom the peace officer has probable cause to believe has violated an order issued under
4.31 subdivision 4 or 5 if the existence of the order can be verified by the officer.

4.32 ~~(f)~~ (h) A violation of a temporary restraining order or restraining order shall also
4.33 constitute contempt of court.

4.34 ~~(g)~~ (i) Upon the filing of an affidavit by the petitioner, any peace officer, or an
4.35 interested party designated by the court, alleging that the respondent has violated an order
4.36 issued under subdivision 4 or 5, the court may issue an order to the respondent requiring

- 5.1 the respondent to appear within 14 days and show cause why the respondent should not
- 5.2 be held in contempt of court. The court also shall refer the violation of the order to the
- 5.3 appropriate prosecuting authority for possible prosecution under paragraph (b), (c), or (d).