

ORDERS FOR PROTECTION

RANA S ALEXANDER



STANDPOINT

Attorneys & advocates against domestic & sexual violence

WHAT IS DOMESTIC ABUSE?

- Physical harm, bodily injury or assault
- Creating fear of imminent physical harm, bodily injury or assault in another person
- Criminal sexual conduct
- Threats of violence (terroristic threats)
- Interference with an emergency call

Minn. Stat. § 518B.01, subd.2 (a)

WHO ARE FAMILY/HOUSEHOLD MEMBERS?

- Spouses, former spouses;
- Parents and children;
- Blood relatives;
- Live or used to in the same house together;
- Have a child together;
- Have a pregnancy in common; or
- Current or formerly dating partners in a significant romantic or sexual relationship
 - 1) length of time of the relationship
 - 2) type of relationship
 - 3) frequency of interaction between the parties
 - 4) if the relationship has terminated, length of time since the termination
- Significant modifies both romantic and sexual
- On a case by case basis

State v. Robinson, __ NW2d __ (Minn. 2019)

Minn. Stat. § 518B.01, subd.2 (b)

CAN I FILE IN MINNESOTA?

- No residency requirements for Petitioner

Minn. Stat. § 518B.01, subd. 3

- Respondent does not have to live in Minnesota.
 - Petitioner in fear in Minnesota AND
 - Respondent has had minimum contacts with Minnesota

Hughs v. Cole, 572 N.W.2d 747 (Minn. Ct. App. 1997)

- Which County Can I File In? (Venue)
 - Petitioner/respondent reside
 - Individual's desire to make a permanent home
 - Where the abuse occurred; or
 - Where other family court proceedings have occurred with the abuser

Minn. Stat. § 518B.01, subd. 3

WHO CAN FILE?

- Adult victim of domestic abuse
- A minor, age 16 or older, against
 - a spouse or former spouse, or
 - a person with whom the petitioner shares a child.
- All other minors must have a family or household member; guardian; or a reputable adult 25 years or older file on the minor petitioner's behalf.

Minn. Stat. § 518B.01, subd. 4(a)

TYPES OF OFPS

- *Ex parte*
 - By one party without notice to the other party
 - Must allege an immediate and present danger of domestic abuse
 - Can become final without a hearing if:
 - Specific relief is request AND
 - Neither respondent nor petitioner request a hearing

Minn. Stat. § 518B.01, subd. 5(b)

- Final
 - After agreement OR
 - After an evidentiary hearing

Minn. Stat. § 518B.01, subd. 5

RELIEF AVAILABLE *EX PARTE*

- Order the respondent not to commit acts of domestic abuse;
- Exclude the respondent from the residence;
- Exclude the respondent from a “reasonable area around the house”;
- Exclude the respondent from work place or limiting access to place of employment;
- Order the respondent not to contact the petitioner, which can include no contact in person, by telephone, letter or third-party;
- Award/modify/return custody of the children (Can be ordered in an ex parte order, the court will require a hearing) see Minn. Stat. § 518B.01, subd. 6(a)

Minn. Stat. § 518B.01, subd. 7(a)

RELIEF AVAILABLE *EX PARTE*

- Give care, possession, or control of a pet or companion animal;
- Prevent respondent from physically abusing or injuring any pet or companion animal;
- Order the respondent to not make changes in insurance coverage, or to dependent insurance coverage;
- Ask for the return of house or car keys;
 - Ask the sheriff/police recover the keys when the OFP is served
- Order the sheriff/police to go with the petitioner to the house to remove the respondent or to help recover property;
- Allow the respondent to only remove property with the sheriff/police present;

Minn. Stat. § 518B.01, subd.7(a)

RELIEF AVAILABLE AFTER HEARING

- Order restitution for expenses related to the abuse;
- Establish/modify a parenting time schedule;
- Order supervised parenting time;
- Award child support;
- Award spousal maintenance;
- Specify who gets to use the property which both parties have in common, such as a car;
- Order neither party sell any property, damage property or use it for a loan;
- Order the abuser to complete a counseling or treatment program; or
- Order other relief necessary for protection from the abuse
- Firearm prohibitions

Minn. Stat. § 518B.01, subd. 6(a)

TIMELINES FOR HEARING

- If an *ex parte* is not issued:
 - Hearing scheduled in 14 days

Minn. Stat. § 518B.01, subd. 5(a)
 - If *ex parte* is issued:
 - Only limited relief: No hearing required
 - Respondent must request a hearing within 5 days of service

Minn. Stat. § 518B.01, subd. 7(c)
 - If respondent requests hearing: 10 days after request
 - If no personal service within 14 days, *ex parte* expires
 - Must file for service by alternative means

Minn. Stat. § 518B.01, subd. 5(d)

Minn. Stat. § 518B.01, subd. 7(d)
 - If additional relief: Hearing in 7 days
- Minn. Stat. § 518B.01, subd. 5(c)

SERVICE BY ALTERNATIVE MEANS

- Alternative means

Minn. Stat. § 518B.01, subd. 8(c)

- Publication if:

- service is unsuccessful because
- respondent is avoiding service by concealment or otherwise

Minn. Stat. § 518B.01, subd. 4(g)

Minn. Stat. § 518B.01, subd. 5(f)

Ayala v. Ayala, 749 N.W.2d 817 (Minn. Ct. App. 2008)

- might reasonably succeed in notifying the respondent

Minn. Stat. § 518B.01, subd. 8(c)

COURT FEES

- None for the petitioner or the respondent

Minn. Stat. § 518B.01, subd. 3a

Standard to Apply – *Ex Parte*

- Domestic abuse against
 - petitioner (family or household member)
 - true even if O/B/O!

Schmidt, on behalf of P.M.S. v. Coons, 818 N.W.2d 523 (Minn. 2012)

- Domestic abuse occurred:
 - immediate and present danger of domestic abuse

Minn. Stat. § 518B.01, subd. 7

- overt act is not necessary

Hall v. Hall, 408 N.W.2d 626 (Minn. Ct. App. 1987)

- totality of the circumstances
 - includes a history of past abusive behavior

Pechovnik v. Pechovnik, 765 N.W.2d 94 (Minn. Ct. App. 2009)

- no temporal restriction as to when physical harm occurred

Thompson v. Schrimsher, 906 N.W.2d 495 (Minn. 2018)

Standard to Apply – After Hearing

1) Domestic abuse occurred

- Against petitioner (family or household member)
- Preponderance of the evidence

Oberg v. Bradley, 868 N.W.2d 62 (Minn. Ct. App. 2015)

2) Should OFP be granted

- The relevant circumstances of the domestic abuse, including:
 - Timing
 - Frequency
 - Severity
 - Likelihood of further abuse

Thompson v. Schrimsher, 906 N.W.2d 495 (Minn. 2018)

HOW LONG DOES THE OFP LAST?

- Often 2 years
 - Can be longer (or shorter), as the court determines “appropriate”

Minn. Stat. § 518B.01, subd. 6(b)

- 50 year orders

Minn. Stat. § 518B.01, subd. 6(c)

EXTENDING OR SUBSEQUENT

1) The respondent has violated a prior or existing OFP;

- Doesn't need to be a conviction

Ekman v. Miller, 812 N.W.2d 892 (Minn. Ct. App. 2012)

2) The petitioner is in reasonable fear of physical harm from the respondent;

3) The respondent has engaged in acts of harassment or stalking; or

4) The respondent is incarcerated and about to be released, or has recently been released from incarceration

■ If petitioner only seek relief under subd. 7 no hearing required unless

- court declines the order or
- respondent asks for a hearing

Minn. Stat. § 518B.01, subd. 6a(b)

50 YEAR ORDERS

- 1) Respondent violated a prior or existing order on two or more occasions; or
- 2) Petitioner had two or more orders in effect against the same respondent.

- Relief available:

- No acts of domestic abuse
- No contact

Minn. Stat. § 518B.01, subd. 6a(c)

- Can be vacated or modified after 5 years and no violations

- Burden on respondent by preponderance of evidence of a material change

Minn. Stat. § 518B.01, subd. 11(b)

MODIFICATION

- File a motion with affidavit
- Must have a hearing

Minn. Stat. § 518B.01, subd. 11(a)

- “No abuse” provision may not be vacated or modified in a proceeding for divorce
 - may hear a motion for modification concurrently upon notice of motion and motion
 - notice can’t be waived
 - separate order must issue

Minn. Stat. § 518B.01, subd. 6(c)

OTHER THINGS TO NOTE

- Do NOT need respondent's address to issue
- No mutual OFP unless both parties filed a petition

Fitzgerald v. Fitzgerald, 406 N.W.2d 52 (Minn. Ct. App. 1987)

Mechtel v. Mechtel, 528 N.W.2d 916 (Minn. Ct. App. 1995)

- In awarding custody or parenting time primary consideration is safety of the victim or children.

Minn. Stat. § 518B.01, subd. 6(a)(4)

- If ordering supervised parenting time or exchanges
 - How is that going to happen?
- Any testimony offered by a respondent is inadmissible in a criminal proceeding.
 - Not true for the petitioner

Minn. Stat. § 518B.01, subd. 15

FEDERAL FIREARM PROHIBITIONS: PROTECTIVE ORDERS

- Qualifying

- Particular language and prohibitions
- Notice and opportunity to be heard

18 U.S.C. §922(g)(8)

- Against an intimate partner

- Spouses, former spouses, an individual who is a parent of a child of the person, and an individual who cohabitates or has cohabited with the person.

18 U.S.C. § 921(a)(32)

QUALIFYING ORDER LANGUAGE MUST

Do 1 of These:

- Restrains the respondent from harassing, stalking, or threatening an intimate partner of the respondent or child of the intimate partner or child of the respondent

Or

- Restrain the respondent from engaging in other conduct that would place the respondent's intimate partner in reasonable fear of bodily injury to the partner or the child

AND

Do 1 of These:

- Includes a finding the respondent represents a credible threat to the physical safety of the intimate partner or child

Or

- Explicitly prohibits the use, attempted use, or threatened use of physical force against the intimate partner or child that would reasonably be expected to cause bodily injury

FEDERAL FIREARM PROHIBITIONS: PROTECTIVE ORDERS

- Does NOT include *ex parte* OFPs
- Prohibition on all firearms and ammunition
- Prohibition lasts as long as OFP is valid
- Exception for law enforcement and military personnel when carrying a department or government issued firearm

18 U.S.C. §925(a)(1)

MINNESOTA FIREARM PROHIBITIONS: PROTECTIVE ORDERS

- Qualifying

- Particular language and prohibitions
- Notice and opportunity to be heard
- Inform respondent of surrender requirement (?)
 - Minn. Stat. § 518B.01, subd. 6(g), Minn. Stat. § 260C.201, subd. 3(d) and Minn. Stat. § 624.713, subd. 1(10)(viii)
 - However, Minnesota's definition of family or household member is broader than the federal definition of intimate partner

QUALIFYING ORDER LANGUAGE MUST

Do 1 of These:

- Restrain the abusing party of harassing, stalking, or threatening the petitioner

Or

- Restrain the abusing party from engaging in other conduct that would place the petitioner in reasonable fear of bodily injury

AND

Do 1 of These:

- Include a finding that the abusing party represents a credible threat to the physical safety of the petitioner

Or

- Prohibit the abusing party from using, attempting to use, or threatening to use physical force against the petitioner.

CONSIDERATIONS IN IMMIGRATION CONTEXT

- Protective orders can be particularly effective if the abuser is a non-citizen – fear of repercussions
- Protective orders can provide crucial evidence of abuse in immigration applications
- Immigrant survivors might have a distrust of legal system and be afraid to file for protective orders
- Issuance of a protective order has no immigration consequences for either party

CONSIDERATIONS IN EMPLOYMENT

- OFP with findings that abuse occurred AND being an abusive person to an intimate partner or family member is related to the Respondent's primary job functions
- In reality, most employers can do whatever they want when hiring or firing so long as they have a non-discriminatory reason for doing so
- Background checks vary

VIOLATION

- Misdemeanor

Minn. Stat. § 518B.01, subd. 14(b)

- Enhanceable within 10 years of a qualified domestic violence-related offense conviction

Minn. Stat. § 518B.01, subd. 14(c-d)

- Shall arrest

- Know of the existence: probable cause

Minn. Stat. § 518B.01, subd. 14(e)

- Firearm:

- Used: firearm used must be forfeited and could be prohibited from possessing a firearm for 3 years to life

Minn. Stat. § 518B.01, subd. 14(j)

- Did not use: prohibited from possessing a pistol for 3 years

Minn. Stat. § 518B.01, subd. 14(k)

FULL FAITH AND CREDIT

- Any valid protection order issued in one state must be enforced by another state as if it were issued in that state.
 - A Wisconsin protective order must be enforced in Minnesota if a violation in Minnesota occurred
 - Enforce as if the order was issued in Minnesota
- Includes both temporary and final orders
 - Ex parte and orders after hearing
- Includes civil and criminal orders
 - DANCOS
 - NCOs
 - Family court orders
- Includes orders from tribal courts

FULL FAITH AND CREDIT

- Does not extend to “mutual protection orders” if:
 - Both parties did not file for a protective order or
 - If the court did not make a finding that each party committed abuse against the other
- Registration of the order with Minnesota is NOT required for enforcement



DIFFERENCES BETWEEN OFPS, HROS AND DANCOS



	Order for Protection (OFP)	Harassment Restraining Order (HRO)	Domestic Abuse No Contact Order (DANCO)
Minnesota Statute	518B.01	609.748	629.75
Type of Order	Family Court Order	Civil Order	Criminal Order
Must Allege	1) physical harm, bodily injury or assault; 2) infliction of fear of imminent harm, injury or assault; 3)terrorist threats; 4) criminal sexual conduct; or 5) interference with an emergency call	1) a single incident of physical or sexual assault; 2) repeated incidents of intrusive or unwanted acts, words, or gestures that have a substantial adverse effect or are intended to have a substantial adverse effect on the safety, security, or privacy of another; 3) single incident of nonconsensual dissemination of private sexual images; 4) single incident of using another's personal information, without consent, to invite, encourage, or solicit a third party to engage in a sexual act with the person 5) targeted residential picketing; or 6) pattern of attending public events after being notified that the actor's presence at the event is harassing to another	A criminal cases where criminal charges pending and/or conviction for: 1) domestic abuse as defined; 2) harassment or stalking when committed against a family or household member as defined; 3) violation of an order for protection; or 4) violation of a prior domestic abuse no contact order.

	Order for Protection (OFP)	Harassment Restraining Order (HRO)	Domestic Abuse No Contact Order (DANCO)
Relationship	Household or family member as defined	No special relationship necessary	Household or family member as defined
Relief	Broad and includes possession of property, custody, child support, spousal maintenance exclusion from house/work/daycare	Only no contact and no harassment	Only no contact

	Order for Protection (OFP)	Harassment Restraining Order (HRO)	Domestic Abuse No Contact Order (DANCO)
Fee	No fee for the petitioner or respondent	No fee for the petitioner or respondent if the petition alleges acts that constitute a violation of § 609.749, subd. 2, 3, 4, or 5, or §§ 609.342 to 609.3451	No fee
Who Can Seek Order?	Victim	Victim	Prosecutor
Hearing Timelines	Strict timelines	No timelines	Any proceeding in which pretrial release or sentencing issues are decided
Additional Notes	Even if OFP is dismissed; there still could be a DANCO	Even if HRO is dismissed; there still could be a DANCO or other criminal no contact order	Even if DANCO is dismissed, there still could be an OFP or HRO Family Court cannot modify

QUESTIONS?

- Feel free to contact us at:
 - 800-313-2666
 - 612-343-9842
 - info@standpointmn.org