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**RAMSEY COUNTY SPECIAL COURTS  
GUIDE FOR HANDLING:**

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**ORDERS FOR PROTECTION AND  
HARASSMENT RESTRAINING ORDERS**

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**Second Judicial District  
Violence Coordinating Council**

2010 Revisions Approved: February 22, 2011  
2009 Revisions Approved: May 26, 2009  
Approved: April 19, 2008

## **PREFACE**

This manual was developed specifically for use in the Second Judicial District by the Second Judicial District Domestic Violence Coordinating Council. This edition of the manual was approved by the Second District Special Courts Bench. This manual incorporates both statewide legislative and case law developments and local procedural changes for the handling of orders for protection (OFP's) and harassment /restraining order cases (HRO's), including statutory changes through the 2010 legislative session. Editions of a similar companion manual addressing the handling of criminal domestic abuse related cases was approved by the Criminal Team of the Ramsey County Bench.

The Second Judicial District Violence Coordinating Council was formed, as were similar councils in every judicial district throughout the state, on recommendation of the Minnesota Conference on Family Violence and the Courts held in November, 1993. The Council has met regularly since that time to work on Ramsey County's handling of domestic abuse (and more recently, sexual assault) cases in all parts of the system. The Council is an interdisciplinary working group with representatives from all involved agencies, including the bench.

The subcommittee assigned to draft and update this manual includes representatives from the Second Judicial District Bench and Court Administration, Tubman, St. Paul Intervention Project, Southern Minnesota Regional Legal Services, Bridges to Safety.

The entire manual was forwarded for review by all members of the Council, including representatives from the public defender, law enforcement, suburban prosecutors, advocacy agencies, treatment providers, and the Domestic Abuse and Harassment Office. The final draft and updated versions, recommended by the Council, are submitted to the Special Courts Bench for its approval.

The Council's intent was to create a comprehensive and accurate reference on all aspects of domestic abuse and harassment cases for our bench and Ramsey County agencies. We are confident you will find this manual useful.

This manual has been designed to be in loose-leaf format and to update easily by replacing pages and procedures, should case law and legislation change.

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## I. INTRODUCTION

The Domestic Abuse Act is found at Minn. Stat. §518B.01 (2007) *et. Seq. See Appendix AVIII-1* and was enacted as means to protect victims of domestic abuse (*Burkstrand v. Burkstrand*, 632 N.W.2d. 206, 211; Minn. 2001) by providing an efficient remedy for victims of abuse (*State v. Errington*, 310 N.W.2d. 681, 682; (Minn. 1981).

The Act is a substantive statute which is complete in itself, carefully drafted to provide limited types of relief to persons at risk of further abuse. *Baker v. Baker* , 494 N.W.2d 282, 285 (Minn. 1992).

It gives law enforcement a tool to protect a victim of domestic violence by providing authority for immediate arrest of respondent without needing evidence of physical violence.

The Harassment Restraining Order Statute provides relief for victims of repeated, unwanted acts or single incidents of physical or sexual assault. There is no familial or dating relationship required for protection under this Act.

The Domestic Abuse Act provides for relief to be granted on an expedited basis. Thus, the rights and obligations of the parties are contained within the Act itself, and should not be tied to unnecessary external requirements. *Baker* at 286.

The specialized process of domestic abuse court is designed to permit parties to proceed **pro se**. The process is governed by the Rules of Civil Procedure, including the lower civil burden of proof by a fair preponderance of the evidence. Minn.Stat. §518B.01, Subd. 5(e).

The underlying purpose of orders for protection is to provide safety to the victims. See *Baker and Burkstrand*. There are situations where the potential for further violence is extreme. A Danger Assessment Tool has been developed by researchers to attempt to identify warning signs for potential lethality. See Appendix AVI-1. *A copy of a lethality assessment tool which has been distributed by the Minnesota Supreme Court Administration is included in the inside flap of this manual for easy reference.*

Recognize that each case is different and there are still cases in which a homicide occurs that was not foreseeable. However, there are certain warning signs that are important to know. See Appendix AVI-1.

This guide was developed from a consensus on domestic abuse court procedure as it is practiced by the Ramsey County District Court Bench. Its purpose is to make the practice smoother for Judicial Officers as well as more predictable for parties and attorneys. An order for protection is issued if there has been an **act of domestic abuse** or, if an order for protection has already been issued and certain conditions apply, the order for protection may be **extended** or a **new order issued**.

## II. BASIC PROCEDURES

An order for protection cannot be issued without a petition. A person seeking an order for protection telephones the Ramsey County Domestic Abuse and Harassment Office. Staff screens for basic eligibility and schedules an appointment. A person seeking an order for protection is offered to schedule an appointment at either the Domestic Abuse and Harassment Office located at the Juvenile and Family Justice Center or at Bridges to Safety.\* A person seeking a harassment restraining order is offered to schedule an appointment at the Domestic Abuse and Harassment Office. At the appointment, with staff assistance, the petitioner fills out an information form and an affidavit of domestic abuse. Staff completes a proposed *ex parte* order for protection, with a hearing date, if necessary, and takes it to the signing Judicial Officer (judge/referee). The filing fee is automatically waived by statute. Minn. Stat. §518B.01, Subd. 3a. The signing Judicial Officer reviews the petition and decides whether or not to sign an *ex parte* order for protection. If the order is signed, the staff returns to the office, gives a copy to the petitioner, arranges for service of the order, and sends a copy to the police department. At the hearing, the Judicial Officer decides whether to issue the final order for protection.

*NOTE: The statute requires that the court provide clerical assistance to petitioners. Minn. Stat. §518B.01, subd. 4(e). In Ramsey County, this assistance is the Domestic Abuse and Harassment Office staff. These staff persons are not advocates for petitioners, but rather a source of information for Judicial Officers.*

### Petitioner's Address Disclosure

*NOTE: 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. Minn. Stat. §518B.01, subd. 3b.*

\*Bridges to Safety (BTS) is the domestic abuse service center located in Room 140 at the Ramsey County Courthouse. BTS provides centralized safety and services for victims of domestic violence in Ramsey County. It is a program of the Partnership for Domestic Abuse Services, a collaborative of 19 nonprofit and government member agencies. For more information: [www.bridgestosafety.org](http://www.bridgestosafety.org).

### III. SERVICE AND COSTS

Service must be made upon the respondent personally. The service is normally done by the Sheriff's Civil Process Department. Peace officers licensed by the State of Minnesota, corrections officers, parole officers, and employees of jails or correction facilities may also serve an order for protection. Minn. Stat. §518B.01, subd. 9a. The cost of service is paid by the Court and not by the petitioner, although the respondent may be ordered to pay costs if the Court finds that the respondent has the ability to pay them. Minn. Stat. §518B.01, subd. 3a.

The respondent may also be served a “short form” notification in lieu of personal service if the respondent is located by a law enforcement officer who determines that there is an existence of an unserved order for protection. Minn. Stat. §518B.01, subd. 8a. This form gives notice to the respondent of the existence of the order, how to get a copy of the full order, and that the order for protection is now enforceable.

In most situations, if personal service cannot be made upon the respondent, the Court may order service by publication, in which publication must be made as in other actions. *See* Minn. Stat. §518B.01, subd. 8(c). The Ramsey County Domestic Abuse and Harassment Office is helpful in arranging the logistics for publication.

The Minnesota Court of Appeals clarified the publication procedure in *Ayala v. Ayala*, 749 N.W.2d 817 (Minn. Ct. App. 2008). Service by publication is permitted only if (1) the petitioner files with the Court an affidavit stating that an attempt at personal service made by a Sheriff or law enforcement was unsuccessful because the respondent is avoiding service by concealment or otherwise, and (2) a copy of the petition and notice of hearing has been mailed to the respondent at the respondent's last known address or the residence is not known to the petitioner.

The state form affidavit complies with the statutory requirements. Unfortunately, the statute requires an “attempt to serve” by law enforcement even if there is no known address for the respondent.

If the petitioner is proceeding under the “No Hearing” provisions as described below (Minn. Stat. §518B.01, subd. 7), then service by publication may be made by one week published notice. Service is complete seven (7) days after publication. The Court must set a new hearing date if necessary to allow the respondent the five-day minimum notice required under that section. Minn. Stat. §518B.01, subd. 5(f).

If an affidavit by the petitioner alleging the need for service by publication is not filed within fourteen (14) days of the issuance of an *ex parte* order, the order expires. If the personal service or service by publication is not completed within 28 days of the issuance of the *ex parte* order for protection, the order expires. Minn. Stat. §518B.01, subd. 7(d).

The order is effective sufficient for criminal enforcement once service is made or the respondent *knows of the existence of the order*. Minn. Stat. §518B.01, subd. 14(b).

## IV. EX PARTE ORDER

### Role of the Judicial Officer

A Judicial Officer (judge/referee) decides what orders will be issued and the specifics of those orders.

### Ex Parte Orders: Whether to Issue

The signing Judicial Officer will be brought the petition by Ramsey County Domestic Abuse and Harassment Office staff, along with other available information and a proposed *ex parte* order for protection. In reviewing the petition, the Judicial Officer looks for **jurisdictional requirements** and then for **allegations of domestic abuse**.

#### **A. Jurisdictional Requirements**

##### Jurisdiction: Relationship

The parties must either be married/formerly married, living/lived together, have a child/unborn child together, have/had significant sexual/romantic relationship, or related by blood. A Court of Appeals decision clarified that parties who shared common kitchen and living areas and had separate sleeping area but had no romantic or blood relationship were still covered under the Act. *Elmasry v. Verdin*, 727 N.W.2d 163 (Minn. Ct. App. 2007). In *Sperle v. Orth*, 763 N.W.2d 670 (Minn. Ct. App. 2010) the Court of Appeals held that past relationships qualify as a “significant sexual or romantic relationships” and that a petitioner who had recently ended a three year relationship was a family or household member within the statutory definition.

##### Jurisdiction: Venue

The action may be brought in the county where either party lives or where their Family Court action is or where the incident occurred. There is no absolute residency requirement.

## B. Allegations of Domestic Abuse

### Domestic Abuse – Initial Request – Definitions of Harm

If the matter concerns a first-time request, the crucial judicial determination is whether there has been an **act of domestic abuse**. By the time the question is presented to the Judicial Officer, staff will already have eliminated those persons not entitled to request an order for protection regarding venue and relationship, family/household member, etc. See “*Role of D.A. office at page 18*.” Domestic abuse staff does not screen out applicants for other reasons such as merit. The question is presented to the Judicial Officer in writing as part of the request for an *ex parte* order for protection, and may be presented in an evidentiary hearing. The definition is the same:

**Physical harm or bodily injury or assault OR**

**Infliction of fear** of imminent physical harm or bodily injury or assault OR

*Note: There is no “reasonable person” standard: The focus is on the petitioner’s perception of fear, not whether that perception might seem “reasonable” to another person.*

**Terroristic threats:** “threatening directly or indirectly to commit any crime of violence with the purpose to terrorize another or in reckless disregard of the risk of causing such terror” OR

**Criminal sexual conduct** (first through fifth degrees) OR

**Interference with an emergency call** See Appendix AIII-2. Minn. Stat. §518B.01, subd. 2. The Court of Appeals held that to establish the elements of this crime, the state must establish that an emergency existed at the time of the call which is defined as a “serious event that demands immediate action” and is not limited to threats of violence, violence or an underlying criminal event. *State v. Brandes*, \_\_\_ N.W.2d \_\_\_ (Minn. Ct. App. 2010)(2010 WL 1850575)

### **BEST PRACTICE**

***Because the statutory definition of domestic abuse is much broader than “hitting,” additional history recited in the petition and/or by the petitioner at a trial may be helpful to the Judicial Officer in deciding various aspects of the matter. For instance, the decision as to whether there is an immediate danger of domestic abuse may be clarified by how recent to the petition is the act of domestic abuse, which is why petitions usually start describing events at the present time and move backwards.***

***If the Judicial Officer determines that domestic abuse has occurred and that the petition alleges an immediate and present danger of domestic abuse and that an order for protection is necessary, then the ex parte order is issued. If the Court finds that the domestic abuse has not occurred so that an ex parte order is not issued, the statute requires that a hearing be set if that is the petitioner’s request. NOTE: Staff sometimes refer to this order as an “Order for Hearing Only.”***

Subsequent Order or Extension of Existing Order–Lower Threshold Standard: It is not necessary that a petitioner allege/show a new act of domestic abuse in order for an existing order for protection to be extended or for a second/subsequent order for protection to be issued. If an order for protection was issued in the past, an existing order is **extended** or a **new order is issued** if:

- Respondent **violated the prior/existing order for protection OR**
- Petitioner is **reasonably in fear of physical harm** from the respondent (physical harm **need not be imminent**)
- Respondent has **engaged in acts of harassment or stalking** within the meaning of Minn. Stat §609.749, subd. 2 (statute is criminal not Harassment Restraining Order and in 2010 the title of statute is now “Stalking”). The respondent need not have intended his or her actions to be harassing to the petitioner. *See, Braend vs. Braend*, 721 N.W.2d 924 (Minn. Ct. App. 2006) OR
- Respondent is **incarcerated and about to be released** or has **recently been released from incarceration.**

For this lower standard to apply, the previous order may have already expired or could be still in existence and about to expire. Minn. Stat. §518B.1, Subd. 6(a).

#### Decision Not to Issue an Ex Parte Order

If the judicial officer decides not to issue the *ex parte* order, s/he may decide to issue a harassment restraining order if petitioner has requested one and if the respondent's behavior constitutes harassment. *See*, “Harassment and Restraining Orders” below. If the judicial officer decides that neither order will issue, a hearing must still be scheduled, Minn. Stat. §518B.01, subd. 5(a). Often, if staff informs petitioner that no *ex parte* order has been issued, the petitioner may be fearful to proceed without an *ex parte* order and may elect to withdraw the petition, and no hearing is scheduled.

*NOTE: If the Court issues a Harassment Restraining Order instead of an order for protection, the statute does not give the Court authority to exclude the respondent from a shared residence.*

#### Issuing (Ex Parte) Order

If the judicial officer decides that there is an immediate and present danger of domestic abuse, then the focus shifts to the provision of the order and the details to be decided. The staff is very knowledgeable and helpful, and will have completed the order before presenting it. The staff will also have run the names against existing Paternity, Family, Domestic Abuse, or Juvenile Court files, or a No Contact Order in a criminal case which might be pending.

**C. Length of Time Ex Parte Order is Effective**

If the petitioner has selected an order through the “ No Hearing” option under Minn. Stat. §518B.01, subd. 7, the order is effective for a time set by the Judicial Officer unless the respondent requests a hearing within five (5) days. See “No Hearing Option” below.

In all other situations, the *ex parte* order remains in effect until a hearing is held and the order expires or a new order is issued.

If the respondent is not served the *ex parte* order within fourteen (14) days, the order expires. Minn. Stat. §518B.01, subd.7(d).

## V. CHECKLIST FOR ISSUING AN *EX PARTE* OFP

	Yes	No
<b>1. Initial Order for Protection</b>		
Has there been an act of domestic abuse upon petitioner by respondent?		
• Physical Harm?		
• Bodily Injury?		
• Assault?		
• Infliction of fear of imminent physical harm, bodily injury, or assault?		
• Criminal sexual conduct?		
• Interference with a emergency call?		
• Threat to commit a crime of violence?		
<b>2. Subsequent Order for Protection or Extension</b>		
• Did the respondent violate the previous order for protection?		
• Is the petitioner reasonably in fear of physical harm from respondent?		
• Has the respondent engaged in harassment or stalking of the petitioner?		
• Has the respondent recently been or is about to be released from incarceration?		
<b>3. Custody/Parenting Time:</b>		
• What is necessary for the safety of the victim and the children?		
• Is there an existing Family Court Order addressing custody/visitation?		
• Are the parties married?		
• If there is a family, paternity or juvenile case, is the domestic abuse case blocked to that judicial officer?		

## VI. REMEDIES

An order for protection may include:

### A. No Contact Provisions: Petitioner/Children

Every order for protection (whether ex parte or after hearing) orders the Respondent not to commit domestic abuse upon the Petitioner. The statute authorizes the court to order the abusing party to have no contact with the petitioner whether in person, by telephone, mail, electronic mail or messaging, through a third party, or by any other means. Minn. Stat. Sec. 518B.01, subd. 6 (a)(10)

It is virtually routine to order the respondent to have no contact with the petitioner. On rare occasion, a petitioner will ask that this provision not be included, or that exceptions be listed.

If the petition is brought on behalf of the child/ren, a no contact provision is usual. Occasionally, a petitioner will request “no contact with the children” provision when the petition is not on behalf of child/ren, usually with a request for language or “except for parenting time.” A decision on this provision will require a careful review of the petition and of petitioner’s stated reasons for this request.

### **BEST PRACTICE**

***The printed form for the order for protection contains the provision no contact “except for” followed by blank lines, which can be filled in by the judicial officer. Best practice is to use this “except for” provision sparingly. Many police officers and prosecutors will not charge respondents with a violation of the order for protection for having contact in violation of these exceptions. They are concerned that this provision creates confusion as to the behavior prohibited by the order.***

*NOTE: It will make a difference if this ex parte order is only in effect until a scheduled hearing; or if the petitioner is using the “no hearing” procedure (see below).*

### B. Exclusion from Home

The statute provides for the respondent to be excluded from the dwelling the parties share or from the residence of the petitioner. The Minnesota Supreme Court in *State v. Carufel*, \_\_\_N.W.2d.\_\_\_\_ (Minn. 2010), 2010 WL 1707236 (2010), addressed the issue of defining a city block for the purposes of determining whether the defendant in that case was guilty of selling a controlled substance in a park zone which was defined as being within one city block of a park. The Court held that “one city block” is defined by the area surrounding [the park which is] divided into rectangular blocks bounded by city blocks on all four sides. This case stands for the proposition that excluding a respondent from being within x city block(s) from the

petitioner's residence is not too ambiguous to pass constitutional muster.

**BEST PRACTICE**

*On September 15, 2010, the Ramsey County Bench adopted a judicial policy as follows: "When judges use a distance restriction in harassment restraining orders, no contact orders, domestic abuse no contact orders, and orders for protection, the judges are encouraged to describe the reasonable area of the restriction as, ' \_\_\_ city blocks or \_\_\_ mile, whichever is greater,' or otherwise with as much specificity as feasible."*

**BEST PRACTICE**

*To comply with the above-mentioned policy, clerks will use the following language as a standard for distance provisions when preparing Orders for Protection and Harassment Restraining Orders: "2 city blocks or ¼ mile in all directions, whichever is greater".*

*NOTE: This provision excluding respondent is not voided if the respondent is admitted into the petitioner's residence, whether by the petitioner or another. See, Minn. Stat. §518B.01, subd. 6(d). The order form contains specific wording for this provision. The petitioner's right to apply for this relief is not affected by his/her leaving the residence to avoid abuse and the domestic abuse court can issue an order allowing the petitioner to return to the residence and the respondent be excluded. See subd. 10.*

*NOTE: This order does not decide ownership of property and it is not the same as dissolution's "occupancy of the homestead." Those decisions are properly made within the dissolution proceeding, and the domestic abuse proceeding is not a substitute for that. If the petitioner moves or is ordered to move (Housing Court, Family Court), the exclusion provision moves with the petitioner.*

Authority to Exclude Only Respondent

*Note: The court has authority after trial to exclude the respondent from the dwelling, but not the petitioner. Swenson v. Swenson, 490 N.W. 2d 668 (Minn. Ct. App. 1992).*

**C. Custody:**

Child custody in an order for protection is always temporary custody – until order of the Family Court.

**1. No Marriage, No Order**

Mother Petitioner

- In most domestic abuse situations, the child is placed in the custody of the petitioner where there is not a previous custody order.

Father Petitioner

- If the parties were never married and the father is the petitioner and there is no custody order, the child is placed in legal and physical custody of the mother.

## BEST PRACTICE

*In order to make custody clear, the “other” box should be marked and the statement “Paternity has not been decided by a Court, and the Court is not addressing issues of custody, parenting time (visitation), and support.” (Under Minnesota law, where paternity has not been decided, sole physical and legal custody of a child is with the biological mother.) Without this, an enforcement problem often arises, as police will not assist mother with custody if the order does not say this.*

*NOTE: This provision is likely to be overlooked because the Petitioner is unlikely to ask that it be included.*

### **2. Prior Order Gives Joint Custody or Parties are Married and No Order**

- If the parties are married and there is no Court order, they have equal rights to the children. If parties have joint physical custody through a Court order, then access is governed by that order. In this situation the petitioner could be granted custody; however the question of temporary custody shall consider the safety of the victim and children given the facts alleged in the petition.

### **3. Prior Order Gives Petitioner Sole Physical Custody**

- Petitioner should continue to have sole custody in the OFP.

### **4. Prior Order Gives Respondent Sole Physical Custody**

- Just because the Respondent has custody does not mean the Petitioner should not get an Order for Protection. However, granting the Petitioner custody in an ex parte order should be done cautiously. It is best to have clear, specific allegations that would show risk to the safety of the children.

*Some helpful questions for this rare situation: Are there previous or current orders for protection? Is there a criminal matter? A Juvenile Court matter? Advice from a prior bench book: proceed with caution. In matters involving specific or direct allegations of harm to children the court has the authority to issue an order on behalf of children which could override previous custody orders. See section H.*

## **D. Exclusion from Employment**

The order (*ex parte* or after hearing) may exclude the respondent from the petitioner’s place of employment or limit the respondent’s access to petitioner at his/her place of employment. See the definition of “city block” discussed in VI B above.

The State’s Order for Protection forms include new language with what the restriction means. The language reads, “Respondent must not call or enter Petitioner’s place of employment which

includes all land, parking lots, and buildings at . . .”

**E. Continuance of Insurance**

The order (after hearing or *ex parte*) may require the respondent to continue all currently available insurance coverage without change.

**F. Child Support, Maintenance, Property Division**

Child support and/or spousal maintenance can be a part of a final order for protection, but not an *ex parte* order for protection. An order for protection after hearing may address the use and possession of property.

- Any child support, spousal maintenance, or property provision in an order for protection is in effect unless/until the Family Court makes a subsequent order.
- The child support law was changed dramatically, effective January 1, 2007. The changes in the law require calculations, which can easily be made on the web-based calculator that is available on the Internet from the Bench if the right information is available. Unfortunately, often the petitioner does not know all the information or what to bring to the hearing and the respondents, at times, lack the incentive to bring that information to court. *Note: See the extremely useful summary of the calculation process which is attached to the Appendix AV-1.*
- If the information is available either through documentary or testimonial evidence, it is important for victims to be able to receive immediate child support as part of a larger plan to stay safe. The child support calculator can be used to determine what the child support award should be under the Guidelines under the current law. To access the web calculator: click on the icon that should be on your desktop or go to:



2007 Child Support Calculator.url

<http://childsupportcalculator.dhs.state.mn.us>

- If the information is not available, there are a number of options, most of which have consequences which may impact the victim.
  1. The parties could be required to return to Court for a review hearing with the necessary documents. A list of the information necessary to determine child support is attached to the *Appendix AV-1*.
  2. The parties could also be required to file a motion for child support accompanied with the proper documentation in the order for protection.
  3. The parties could be referred to Family Court to address this matter, but this referral requires the parties to pay additional filing fees.

4. The parties could be referred to the County for IV-D (child support enforcement services), but this also takes time depending on the County's schedule.
5. Other options include keeping the record open for the parties to bring in the documentation so that the Judicial Officer can make the calculations and issue a separate order. This option requires the obligor to bring in documents with little incentive to do so.
6. If for some reason either party lacks information about his or her income, the statute permits the Court to impute income, and if there is no other basis to impute income, the Court may do so at 150% of the minimum wage. A calculation of the minimum wage is attached to the *Appendix AIV-1*.

## **BEST PRACTICE**

***In most cases, the best practice is #1 above: to require the parties to return to court for a review hearing with the necessary documents. Typically the hearing should be scheduled on the next available date for the Judicial Officer.***

### **G. Counseling/Treatment for the Respondent**

An order for protection after hearing may order a respondent to complete a specific program, obtain an evaluation, and follow the recommendations of the evaluator, etc. Enforcement of these provisions is accomplished through the setting of a mandatory review hearing and use of the Ramsey County Addendum to the order for protection. Historically, the Ramsey County Bench has determined that the statute does not provide for mandatory treatment for a victim of domestic abuse, and petitioners are not ordered to participate in treatment programs.

### **H. Order for Protection on Behalf of Child(ren)**

A petitioner may seek an order for protection on behalf of a child. This occurs when there are allegations of domestic abuse where a child is a victim.

*NOTE: Staff usually refer to these as "o/b/o" of petitioner orders.*

### **Threats to Kidnap Child**

Such requests may be for both the petitioner and on behalf of children or only on behalf of children. Sometimes the petitioner alleges that the respondent has committed domestic abuse of the children. More commonly, the petitioner alleges that the respondent has threatened to kidnap the children as a method of exerting control over the petitioner. *See domestic abuse, terroristic threats, in Appendix AIII-1.*

### **Domestic Abuse Versus Reasonable Force to Restrain or Correct a Child**

In situations where the respondent is the other parent and an order for protection on behalf of children is sought on the basis of domestic abuse to the children, the Judicial Officer must determine whether the acts of respondent constitute domestic abuse or whether they constitute the reasonable use of force by a parent to restrain or correct a child. *Minn. Stat § 609.06(b)*. There is some question as to whether the court should apply the standards for domestic child abuse found in Minn. Stat. § 626.556, subd. 2(d); the form order promulgated by the Counsel of Chief Judges contains this notation.

*NOTE: The Minnesota Supreme Court has held that the use of corporal punishment in the form of using a paddle to strike a teenage son was not abuse in the context of determining whether child abuse occurred for child protection purposes. In the Matter of Children of N.F. 749 N.W.2d 802 (Minn. 2008).*

Usually, *ex parte* orders for protection on behalf of children require the respondent to have no contact with the children and place the children in the custody of the petitioner until a hearing is held or the order expires. Orders for protection on behalf of children issued following a hearing will usually place the children in the custody of the petitioner but may make a provision for contact between the respondent and the children, if such contact can occur while giving primary consideration to the safety of the petitioner and the children. (e.g. supervised parenting time, etc.)

If the order is issued on behalf of a child and the court has reason to believe that the minor child is a victim of domestic child abuse (Minn. Stat. 260C.007 - child protection) or neglect (Minn. Stat. Sec. 626.556 - mandatory reporting) as defined by statute, Minn. Stat. §518.165 then the court may need to appoint a Guardian ad Litem. (See VIII.B.5 for more information)

*NOTE: This may be a situation in which the Court will consider ordering parental access be supervised.*

#### No parental access if no adjudication of parentage

As in actions which are not on behalf of children, the domestic abuse court *does not have jurisdiction* to decide custody or parenting time if there has not been an adjudication of parentage or if there has not been an order concerning custody/parenting time as part of a paternity proceeding, even if it is an action for the protection of the children. This creates difficulty in the relatively rare circumstance where the petitioner alleges domestic abuse of the children by respondent/mother and the action is brought by unadjudicated petitioner/father. Each Judicial Officer must decide case-by case how this issue will be resolved.

*NOTE: The Minnesota Supreme Court held that a father who had not been to Court to establish his custody or parenting time rights, yet the parties had executed a valid Recognition of Parentage, could be granted supervised parental access over the objections of the mother. *Beardsley v. Garcia*, 753 N.W.2d 735 (Minn. 2008) The decision does not change the requirement that the court focus on the safety of the victim and child when determining custody and parental access, nor does it require the court to award parental access. See additional discussion under “Effect of Recognition” below.*

## **I. Duration**

- A. A standard order for protection will be issued for two years from the date of the hearing, although the court has authority to issue it for a longer or shorter period of time if it so determines. Minn. Stat. Sec. 518B.01, subd. 6 (b)
- B. The Court may issue an order for fifty (50) years if the court finds:
  - a. The respondent has violated a prior or existing order for protection two or more times; or
  - b. The petitioner has a two or more orders for protection in effect against the same respondent.
  - c. An order under this section may restrain the respondent from committing domestic abuse against the petitioner or having any contact at all whether direct or indirect with the petitioner. Minn. Stat. Sec. 518B.01, subd. 6a (b)

In an unpublished case, the Court of Appeals remanded the trial court to make findings as to the duration of the extended OFP. The appellate court noted the trial court did not otherwise explain why it concluded a 50 year order was warranted, discuss how the petitioner's need for protection weighs against the respondent's claim of adverse effect since he lives in a small community or explain why a 50 year extension was more appropriate than a 25-year or 2-year extension. *Shaw v. Sikora*, WL 4286236 (Minn. Ct. App. 2010).

## **J. Protection of Pets or Companion Animals**

- A. The 2010 Legislature expanded jurisdiction for the Court to direct the care of a companion animal owned, possessed or kept by either party or either party's child.
- B. Jurisdiction was also expanded to allow the Court to restrain a party from injuring or threatening to injure a companion animal in the other party's residence as an indirect means of threatening the other party. Minn. Stat. Sec. 518B.1, sections 6 and 7.

NOTE: A sample provision implementing this provision is attached in the appendix as a sample order.

## VII. NO HEARING OPTION

### No Hearing Option

Under certain circumstances, the statute allows the petitioner to choose between requesting a hearing and requesting that no hearing be scheduled. [This “No hearing” procedure is limited to situations when the petitioner seeks relief limited to: 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. Minn. Stat. §518B.01, subd. 5(c) (limiting relief in an *ex parte* order to that specified in Subd. 7)].

### Explanation Ex Parte/”No Hearing” Order Only

*NOTE: The procedure in Ramsey County allows the Court to issue an ex parte/“no hearing” order for custody when the father is not adjudicated, the parties have executed a Recognition of Parentage, and there is no parenting time order or when the parties are already operating under a custody/parenting time order through Family Court.*

### Respondent Does Not Request a Hearing

If the petitioner opts for no scheduled hearing, the *ex parte* order becomes the final (permanent) order if, after personal service, the respondent does not request a hearing. The respondent has the right to request such a hearing if he/she does so within 5 days of service.

### Hearing: Respondent Appears, Petitioner Does Not

If such a hearing is scheduled and respondent appears, but petitioner does not appear, the *ex parte* order for protection is dismissed. Staff explains this procedure to petitioners.

### Hearing: Petitioner Appears, Respondent Does Not

If such a hearing is scheduled at respondent’s request, but respondent does not appear and petitioner does, the *ex parte* order stays in effect.

### **BEST PRACTICE**

***Some cautious Judicial Officers fill out and issue the usual “Order for Protection Following Hearing” at this hearing, so that there would be no question of validity of the order.***

## VIII. TRIAL/HEARING

### A. Generally.

Whether parties are represented or are acting *pro se*, a brief procedural description by the Judicial Officer at the start of the hearing can be of great help to the litigants and, ultimately, to the Judicial Officer: hearings proceed smoother, with fewer interruptions and are usually shorter when the parties know what to expect and what evidence will be considered by the Court.

#### 1. Out-of Court Statements by Children

Minn. R. Evid. 807, the residual or “catch-all” exception to the hearsay rule, provides that if certain procedures involving notice are followed and the Court finds sufficient guarantees of trustworthiness, out-of-court statements may be admissible as evidence regardless of the availability of the declarant. Mirroring the notice and reliability criteria of Rule 807, two Minnesota statutes expressly provide for the admission of the out-of-court statements of children under the age of 10 regarding child abuse committed on them or committed on another child but observed by them. Minn. Stat. § 260C.165 covers out-of-court statements regarding either abuse or neglect and applies to any CHIPS, foster care, or domestic child abuse proceeding or proceeding for termination of parental rights. Minn. Stat. §595.02, subd. 3, applies to any court proceeding involving child abuse but requires that there be other corroborative evidence of the act if the declarant (child under 10) is unavailable as a witness. These statutes serve to highlight for the Court the Legislature’s intent that the out-of-court statements of child abuse victims under the age of 10 be admitted as evidence in appropriate circumstances. However, the application of Rule 807 alone is generally sufficient and is not age-limited. See, *State v. Edwards*, 485 N.W. 2d 911, 913 (Minn. 1992) (statement made by victim to police admissible where no motive to fabricate and officer had no preconceived notion of what child would say). *But see, State v. Scott*, 501 N.W. 2d 608 (Minn. 1983)(taped police and social worker interview with victim had insufficient indicia of reliability).

Minn. Stat. § 592.02, subd. 3 and Rule 807 consider similar factors when determining guarantees of trustworthiness. See *Edwards* at 915-17. These factors include: [1] whether the statements were spontaneous, [2] whether the person talking with the child had a preconceived idea of what the child should say, [3] whether the statements were in response to leading or suggestive questions, [4] whether the child had any apparent motive to fabricate, ... [5] whether the statements are the type of statements one would expect a child of that age to fabricate[,] ... [6] the mental state of the child at the time the statements were made, ... [7] the consistent repetition of the child's statements during the same interview or conversation, ... [and][8] whether the child had an apparent motive to speak truthfully. *Edwards* at 915-16

#### 2. Crawford v. Washington, 124 S.Ct. 1354, 1374 (2004)

In this landmark decision, the United States Supreme Court ruled that a criminal

defendant’s constitutional right to confront witnesses against him bars the state from offering *testimonial* hearsay against him unless the declarant is available for cross-examination. The term “testimonial” was left undefined but would certainly include formal police interrogations obtained for prosecutorial purposes.

The right of an accused to cross-examine witnesses against him cannot be eliminated just because a testimonial out-of-court statement satisfies an exception to the rule against hearsay. However, the constitutional protections of the Sixth Amendment right of confrontation underlying Crawford apply only to criminal proceedings. There is no Crawford problem if (1) the declarant is available and testifies subject to cross-examination or (2) if the hearsay sought to be introduced is not testimonial. In addition, if the defendant procures the unavailability of the witness, forfeiture by wrongdoing may extinguish his right to confrontation. To invoke this doctrine, the State must show not only that the defendant was responsible for the killing, but also that he committed the killing with the intent of preventing the victim from testifying against him. *Giles v. California*, 128 S. Ct. 2678 (2008)

The context of domestic violence is relevant to the forfeiture question because “[a]cts of domestic violence often are intended to dissuade a victim from resorting to outside help, and include conduct designed to prevent testimony to police officers or cooperation in criminal prosecutions.” *State v. Her*, 781 N.W.2d 869, 876-77 (Minn. 2010)(quoting *Giles*).

In criminal child abuse cases, a defendant may not be convicted upon the testimonial out-of-court statement of an incompetent (i.e. unavailable) child victim. However, many out-of-court statements of children may not be testimonial (e.g., excited utterances at the scene, statements for purposes of medical diagnosis). The Minnesota Supreme Court continues to sort this out on a case-by-case basis but has begun to articulate criteria for determining if a give statement is testimonial. See, *State v. Wright*, 701 N.W.2d 802, 812-813 (Minn. 2005). The *Wright* Court also expressly noted that cases involving domestic violence present special concerns (specifically, forfeiture by wrong doing). *Id.* at 814.

The Minnesota Supreme Court held that out of court statements made to nurses from the Midwest Children’s Center where the police officer observed from a window and was not visible to the child was admissible because the statements were not testimonial. See *State v. Krasky*, 736 N.W.2d 636 (Minn. 2007).

## **B. Participants**

### **1. Advocates:**

The Minnesota Supreme Court has issued an order allowing domestic abuse advocates to assist victims of domestic abuse in the preparation of petitioners, to sit at counsel table, to confer with the victim, and at the Judge’s discretion, to address the Court. When advocates assist victims of domestic violence as specified in that order, advocates are not engaged in the unauthorized

practice of law. *See Appendix AVII-1.* Advocates are not expected to give their name or their program’s name on the record.

Advocates do not give legal advice; rather, they educate petitioners on the unique focus of the domestic abuse hearing, and prepare them for the process and possible outcomes. Advocates focus on safety issues while explaining options and offering support and encouragement to petitioners who are often almost too afraid or intimidated to testify. Advocates also bring safety concerns to the attention of deputies outside of the courtroom. Consistency in Court proceedings is important to advocates in preparing petitioners for court. Advocates working for recognized, respected organizations are welcomed and appreciated by the Court.

While virtually all Judicial Officers allow advocates to address the court, none of them recommend treating the advocate as though he/she is an attorney for the petitioner.

The statute on privileges includes a provision which provides that a domestic abuse advocate may not be compelled to disclose any opinion or information received from or about the victim without the consent of the victim unless ordered by the court. In determining whether to compel disclosure the court shall weigh the public interest and need for disclosure against the effect on the victim, the relationship between the victim and domestic abuse advocate, and the service if disclosure occurs.

The domestic abuse advocates continue to be mandatory reporters under Minn. Stat. §626.556 and 626.557.

A domestic abuse advocate is defined under the statute as an employee or supervised volunteer from a community based women’s shelter and domestic abuse program eligible to receive grants under Minn. Stat. §611A.32 (Department of Corrections Battered Women Programs) that provides information, advocacy, crisis intervention, emergency shelter, or support to victims of domestic abuse and who is not employed by or under the direct supervision of a law enforcement agency, a prosecutor’s office, or by a city, county, or state agency. Minn. Stat. § 595.02, subd. 1(1)(2008).

## **BEST PRACTICE**

*The petitioner should be addressed directly, and the Judicial Officer should hear from the advocate when either the advocate or the petitioner requests it or when it appears that the petitioner is having difficulty speaking. Sometimes this difficulty can be eased by a few minutes’ conference between the advocate and the petitioner. Most advocates are comfortable making a request for such time. Advocates are well-placed to give the Court information about security concerns in a particular case, and most Judicial Officers entertain such information from advocate. Just because someone appears with a party asserting that s/he is an advocate does not mean that person qualifies as an advocate under the Supreme Court Order or the privilege under the statute. See definition at Appendix.*

### **2. Courtroom Security:**

There should always be courtroom security in an Order for Protection and Harassment Restraining Order hearing. The Sheriff’s Department advised that during a domestic abuse hearing, the deputy should be positioned so as to observe the behavior of the parties. This is different from the deputy’s position at criminal/delinquency hearings, in which the risk is that the defendant will flee. In a domestic abuse hearing, the risk is that the respondent will violate the order for protection or intimidate the petitioner during the hearing. The placement of the deputy is for the deputy to decide, since courtroom security is his/her responsibility and she/he has the training and experience to make decisions concerning courtroom security. Nevertheless, most deputies are open to suggestions/questions from Judicial Officers/staff, particularly if a party is well known to the Judicial Officer/staff.

**3. Parties’ Appearances:**

**a. Both parties appear:**

If both parties are present at the hearing, the Court will issue an order: the final order for protection (whether on agreement or after a trial), or an order of dismissal (whether on agreement or after a trial), or an order for continuing protection. The order for continuing protection form allows space for changes, while referring to the *ex parte* order, and the court may note reason(s) for a continuance and/or address any urgent issues in summary fashion pending the evidentiary hearing. See “*Continuances,*” *below*.

**b. Service not completed: no appearance by respondent:**

If personal service has not been completed on the respondent, the petitioner will be the only party to appear. Usually, the reason for a failure of personal service is that the respondent’s address is unknown, or, personal service is unsuccessful because the respondent is avoiding service (e.g., not responding to the service deputy’s card left in the door). The usual procedure is to order service by publication (and mail, setting a new date for initial hearing).

**c. Service completed: no appearance by respondent:**

If personal service (or service by publication) was completed on the respondent but the respondent does not appear, the usual procedure is to issue the final order for protection.

*NOTE: For a discussion of situations in which the respondent has requested a hearing but does not appear for that hearing, see “No hearing Options” – Respondent Requests, above:*

**d. No appearance by Petitioner:**

If the respondent appears but the petitioner does not, the usual procedure is to dismiss the *ex parte* order for protection.

There will, of course, be exceptions in unusual situations (illness, incarceration, etc.).

**e. Neither party appears**

On relatively rare occasions, neither party will appear. The usual procedure is to dismiss the *ex parte* order for protection.

#### 4. Role of The Ramsey Domestic Abuse Office and Harassment Office

- The Ramsey County Domestic Abuse/Harassment Office plays a neutral role in providing clerical assistance to petitioners seeking orders for protection and harassment restraining orders.

The Ramsey County Domestic Abuse/Harassment Office:

- Does general screening of petitioners seeking orders to determine eligibility to apply for orders for protection and harassment restraining orders; however the clerk cannot deny anyone the right to try to file an order if they wish to do so.
- Schedules appointments for interviews, with people seeking orders for protection and harassment restraining orders.
- Sets calendar dates.
- Interviews and records information for petitioners seeking orders for protection and explains the Court process and order to petitioner. Makes appropriate referrals to petitioner for advocacy, counseling, shelter, etc. Makes referrals and shares information with other County agencies when appropriate. (e.g., probation, child protection, etc).
- Presents the petition, affidavit and proposed order to a Judicial Officer for review and answers any questions regarding the case.
- Sends order to appropriate Sheriff's Departments for service of order.
- Responds to questions from petitioner and respondent after order is issued and processes any motions to amend orders.
- Monitors and modifies procedures so as to insure the effectiveness of the domestic abuse system.
- Networks with divisions of the Court and County system, police departments and outside agencies in furtherance of the above.
- Provides clerks for Domestic Abuse/Harassment Court hearings.

#### 5. Guardian ad Litem

A Guardian ad Litem shall be appointed if the court has reason to believe that a minor child which is a subject of a proceeding in which custody or parenting time is an issue before it is a victim of domestic child abuse (Minn. Stat. 260C.007 - child protection) or neglect (Minn. Stat. Sec. 626.556 - mandatory reporting) as defined by statute. Minn. Stat. §518.165

There are form orders available from the bench and are issued separately from any order coming out of the hearing. The Guardian ad Litem office has agreed that orders coming out of an order for protection proceeding where there is reason to believe a child has been a victim of domestic child abuse or neglect are appropriate.

## BEST PRACTICE

*In order to create a mechanism for the Guardian ad Litem to report back to the Court, it is best to set up a review date for the Guardian to report back to the Court with an earlier date for the Guardian's report to be due.*

Note: The role of the Guardian is to inform the court about the child's best interests. It is not the Guardian's role to determine whether domestic abuse actually occurred, as that is the role of the Court.

### C. Continuances

#### Continuing for Evidentiary Hearing

Judicial Officers routinely grant continuances in domestic abuse matters by securing a date from the courtroom clerk, using the form (order for continuing protection), reading the order aloud, and having the order served on each party immediately after the hearing.

#### Timelines for hearing

If the Judicial Officer determines that an evidentiary hearing will be held, the statute requires that it occur within certain time requirements. It is preferable to hold the evidentiary hearing within these limits - on the initial hearing date, if possible - but it is rarely feasible. In the 2001 *Burkstrand* case, the Minnesota Supreme Court addressed the situation in which the evidentiary hearing is not held within the statutory framework. While it determined that the court does not lose subject matter jurisdiction that the *ex parte* order simply expires if the evidentiary hearing is not held by the required date. A 2002 amendment to the statute has addressed this concern.

#### Order for Continuing Protection

Ramsey County has adopted the "Order for Continuing Protection". The order form allows space for changes, while referring to the *ex parte* order for easier use by law enforcement. Thus, the Court may note (a) party's(ies') request for or agreement to a continuance and/or address any urgent issues in summary fashion pending the evidentiary hearing.

#### Administrative Continuances

As more parties retain counsel, there are more requests to continue the hearing to a date more convenient for the attorney(s). Sometimes, both counsel will agree to a continuance. Attorneys who practice family law are familiar with the informal process of changing a Family Court hearing date; the attorney telephones the clerk who usually has the Judge's permission to grant continuances, especially if both attorneys agree.

While domestic abuse proceedings resemble Family Court proceedings, the issues of safety,

notice, enforcement, etc., require quite different procedures.

The Domestic Abuse/Harassment office receives many requests to continue matters. The clerks instruct parties to submit their requests in writing. When the requests are received, the clerk forwards the request along with a proposed order to continue the matter to the Judicial Officer assigned to hear the case. Careful consideration should be made when deciding whether to grant or deny the requests to continue without requiring appearances.

#### Parenting Time Pending Trial

In situations where the parties are/were married, or situations in which there is a Family Court paternity file, the Domestic Abuse Court may include a provision for parenting time. In situations where the parties have never been married to each other and there is no Family Court paternity file, opinions differ as to whether the Domestic Abuse Court has jurisdiction to order parenting time.

#### **BEST PRACTICE**

***For the enforcement reasons mentioned above, it is essential that the respondent remain in the waiting room until he/she has been personally served. If necessary, the deputy can detain the respondent until personal service has been completed.***

## D. Procedures

### Helpful to Make Introduction

Keeping the hearing focused on the issue of domestic abuse is helpful to the Judicial Officer and to the parties. Most trials benefit from the brief statement from the court on the issue of domestic abuse before the trial begins. *See definition of domestic abuse, Appendix AIII-1.*

Staying on the topic of domestic abuse leads to limited scope of inquiry. One incident of domestic abuse is sufficient finding upon which to issue an order for protection.

### Question from Respondent

It is not unusual for the respondent to ask questions to Judicial Officers such as, “What if the petitioner calls me?” and “What if the petitioner violates the order for protection?” and “What if I go to the bar [the church, the AA meeting, the school recital] and the petitioner is there?”

## BEST PRACTICE

***Best practice is for the Judicial Officer to avoid being drawn into a lengthy discussion with the respondent, and, instead to focus on the order for protection. For instance, it is often helpful to state that the prohibitions in the order for protection are directed to the respondent, not the petitioner, and that the petitioner cannot keep those provisions or break those provisions as they are not addressed to her/him, etc. Asking a few fact questions of the parties can often solve the problem. It is important that the Judicial Officer remain focused on the behavior of respondent, and not reprimand petitioner to stay away from respondent “too.” Sometimes, the Judicial Officer will tell a respondent that he can apply for an order for protection or a harassment restraining order if the petitioner has committed domestic abuse or has harassed the respondent; the Judicial Officer can request that the courtroom clerk refer the respondent to the Domestic Abuse Office when serving the respondent with the order for protection.***

The evidentiary hearing is meant to be an expedited hearing. This can be facilitated by focus on the narrow issues which the court must determine. This is a civil proceeding with the civil burden of “fair preponderance.” Focus on the issues not only keeps the hearing to a manageable length but also minimizes the need for continuances to complete the trial. According to the Supreme Court language of the *Baker* and *Burkstrand* decisions, an expedited hearing is in accord with the purpose of the statute.

## E. Custody at Trial

The Domestic Abuse Act permits the court to award custody or parenting time. Primary consideration must be given to the safety of the victim and the children. Minn. Stat. §518B.01, subd.6(a)(4) Except for cases in which custody is contested, findings under Minn. Stat. §§518.17, 518.175, or 257.025 are not required.

This has been clarified in the Court of Appeals case *Gada v. Dedefo*, 684 N.W.2d 512 (Minn. Ct. App. 2004) which requires the court to make findings when custody is contested. This does not mean that the findings all have to be written; some Judicial Officers read their findings into the record.

#### When Findings Not Required

Findings are not required if the father has not had paternity adjudicated or has executed a Recognition of Parentage and has not gone to Court to establish his custody or parental access rights. Nor are findings required when the parties agree to custody.

#### No Adjudication of Paternity or Recognition of Parentage

If the parties have never been married to each other and there is no existing Family Court order adjudicating paternity and addressing custody/parenting time, the domestic abuse court does not have jurisdiction to determine custody/parenting time, and the children remain in the sole legal and sole physical custody of the mother.

#### Effect of Recognition

A Recognition of Parentage is often times executed by parents after the birth of a child. The effect of this Recognition is that, except in situations where there are competing presumptions of paternity, the Recognition has the force and effect of a judgment determining the existence of the parent/child relationship. Minn. Stat. §257.75, subd. 3.

However, on the face of the Recognition of Parentage itself and under Minn. Stat. §257.541, subd. 3, the father must go to court to establish parenting time or custody rights. Unless he does so, by law the mother has sole physical and sole legal custody and the father has no legal rights to have contact with the child. Minn. Stat. §257.541, subd. 1. The proceeding to establish such rights may not be combined with a domestic abuse proceeding under Chapter 518.B. See Minn. Stat. §257.541, subd. 3. The Minnesota Supreme Court in *Beardsley* held that this language is permissive and thus the court may award parental access in a domestic abuse proceeding. See below.

This case does not address the issue of notice to the petitioner if s/he did not seek an order for custody or parenting time as a form of relief. In such a situation, it would be appropriate either to refer the respondent to family court or continue the issue of custody or parenting time to a later hearing.

The authority for the court to establish custody or parenting time in a domestic abuse proceeding when there is a recognition of parentage is premised on the adjudication of the father through the execution and proper filing of the recognition of parentage. If there was not a valid recognition of parentage, this authority would not exist. This presumably could happen if the recognition of parentage was revoked properly and within the time frame of the statute, was executed by a

minor who has not yet reached the age of majority or there were conflicting presumptions of paternity.

The Minnesota Supreme Court held that a father who had not been to Court to establish his custody or parenting time rights, yet the parties had executed a valid Recognition of Parentage could be granted supervised parental access over the objections of the mother. *Beardsley v. Garcia*, 753 N.W.2d 735 (Minn. 2008) The decision does not change the requirement that the court focus on the safety of the victim and child when determining custody and parental access, nor does it require the court to award parental access.

In the usual situation, the Petitioner is the mother.

#### Unadjudicated Father/Petitioner

In the less-frequent situation in which the Petitioner is the unadjudicated father, the Order for protection will state that the child is in the custody of Respondent/mother. *Also see Actions on Behalf of Children above.*

#### Married Parties

If the parties are married, the Domestic Abuse Court makes a temporary decision concerning custody, which is in effect until the parties bring a Family Court action and the Family Court issues an order. If there is an existing Family Court order addressing custody, the Domestic Abuse Court makes a temporary decision concerning custody, which is in effect until the parties bring a Family Court motion and the Family Court issues an order.

*NOTE: The temporary custody provision of an order for protection can change an existing Family Court custody order. For all custody decisions made by the Domestic Abuse Court, the primary consideration must be the safety of the petitioner and children.*

### **F. Parental Access**

Barring extreme situations (domestic abuse of the children by the respondent or threats to kidnap the children, extreme violence, untreated mental illness, or untreated serious chemical dependency), most petitioners will wish the court to arrange for contact between the respondent and the children.

*NOTE: The Court does not have to find an order for protection on behalf of the child in order to restrict parental access.*

#### Supervised Parental Access or Safe Exchanges

The use of safety centers may be appropriate in any cases where an Order for Protection is issued. Supervisory services may include direct supervision, group supervision, or monitoring exchanges. In addition to keeping adults and children safe from a direct offense, safety centers are useful to protecting children from hearing inappropriate discussions or witnessing

arguments. Professional supervisors provide increased protection to children and adults over the use of family members or friends. *See the attached Appendix AX-1 for further details about the process, myths and advantages in cost.*

*NOTE: The form order has an addendum to address supervised parenting time and/or use of the Children’s Safety Center.*

**BEST PRACTICE**

*Although it may appear preferable to use mutually agreeable family members/friends as supervisors, they should be used cautiously. A good supervisor must be able to intervene if necessary for the safety or best interests of the child. This requires the ability to identify unhealthy interactions and the fortitude to intervene if necessary. Acting as supervisor is usually a long-term time and emotional commitment.*

**BEST PRACTICE**

*When ordering parenting time using an organization, include the following information in the order:*

- 1) Name of the organization providing the service*
- 2) Parties must follow the rules of the organization*
- 3) Indicate whether it is for Supervised Parenting time or Exchange*
- 4) Indicate the level of supervision, if applicable*
- 5) Indicate who is responsible for payment: Respondent/Petitioner/ Shared by both*

Parties Not Married and No Previous Order for Parental Access

If the parties have never been married to each other and there have been no Family Court proceedings, the Domestic Abuse Court does not have jurisdiction to order parenting time. Sometimes, the parties may agree on the record to a parenting time plan: one of the parties will suggest a parenting time plan and the other will agree.

*NOTE: Care must be taken by the Judicial Officer, whether the parties are represented by counsel or not, that the petitioner is not being pressured to enter into an agreement which endangers his/her safety or the safety of the child(ren).*

**G. Interface of Family Blocked Cases with Domestic Abuse Matters**

The statute speaks to the combining of domestic abuse and dissolution actions. Minn. Stat. §518B.01, subd. 6(c). The Judicial Officer will certainly agree that efforts should be made to minimize the parties’ legal fees and inconvenience by hearing related matters at the same time, but the Judicial Officer has a responsibility to prevent parties from trading safety for dollars.

There is an increased risk of this in situations where the domestic abuse respondent is represented by counsel and the domestic abuse petitioner is not. If the domestic abuse court is making orders as to child support, insurance, parenting time, etc., it may be helpful to the parties

to remind them that the decisions of the domestic abuse court on these collateral issues are in effect only until the dissolution court makes order on these issues.

### Different legal standards

The Court has different authority in terms of jurisdiction, venue, service of process, necessary pleadings, notice including time line for hearing, available relief before and after a hearing, and enforceability of the Order depending on which type of proceeding is held. *See Appendix AI-1 for a summary of different standards and relief available under and order for protection compared with a temporary hearing in a dissolution or paternity action.*

*NOTE: Some Judicial Officers emphasize this by adding “pending further Order of the Family Court” to applicable provisions in the order for protection.*

### Exclusion of Respondent from Petitioner’s Residence Travels with Petitioner’s Residence

For instance, there is sometimes confusion surrounding the provision in the order for protection excluding Respondent from Petitioner’s residence. The prohibition to the respondent remains with the petitioner if s/he changes her/his residence, whether s/he changes her/his residence on her/his own or because the Family Court awards the use and possession of the homestead to the respondent.

## **H. Special Issues**

### **1. Firearms**

The prohibition against possession of guns/ammunition by a respondent is subject to differing opinions among Judicial Officers: some believe this clause should always be included, some believe it should never be included, and some believe it should be left to the applicable federal law. Currently, there is a committee of professionals researching this issue to give the bench more guidance. Until that report, the Judicial Officer is referred to the Appendix. *See Quick Reference Guide to Minnesota and Federal Firearm Bans in Domestic Violence Cases, Appendix AI-1.*

### **2. Mental Illness of Parties**

In the opinion of at least one Judicial Officer, persons adjudged to be mentally ill are, by definition, incompetent to proceed alone in legal matters. A diagnosis of mental illness does not preclude a person from being the victim of domestic abuse nor from perpetrating domestic abuse. Each Judicial Officer will need to assess each case as it is presented.

*NOTE: It is the experience of most Judicial Officers (and, when the Corrections Department provided program monitoring, the topic of an agreement between Corrections and the Bench) that ordering mentally ill persons to attend a domestic abuse education program is not fruitful.*

### **3. Personal Property**

Often, never-married parties in domestic abuse court have personal property disputes. Most Judicial Officers agree that the focus of domestic abuse court should remain on protection, and that the domestic abuse court should not take testimony to decide ownership of personal property.

### **4. Discovery When Criminal Proceedings are Pending**

In some unusual situations there may be attempts to use the existence of a domestic abuse proceeding to engage in discovery for an overlapping criminal proceeding which might not otherwise be permitted in the criminal process. This leaves the victim with the dilemma of choosing between supporting a vigorous criminal prosecution and obtaining necessary relief in the order for protection. A recent Minnesota Supreme Court decision clarifies that in such situations it is appropriate to 1) allow the state to permissively intervene for the limited purpose of seeking a protective order to preserve the integrity of the criminal process; and 2) issue a protective order to stay discovery including depositions in the domestic abuse proceedings pending the result of the criminal proceedings even if that means continuing custody and no contact provisions of the order for protection until the hearing can be held. *State v. Deal*, 740 N.W.2d 755 (Minn. 2007).

### **5. Fifth Amendment Issues**

Sometimes parties may offer testimony which has the potential to subject them to criminal prosecution. Minn. Stat. §518B.01 subd. 15 states that “any testimony offered by a respondent in a hearing . . . is inadmissible in a criminal proceeding.” Nonetheless, there are times when a witness offers testimony which might result in criminal prosecution. Parties in civil proceedings may invoke the Fifth Amendment in order to protect themselves from criminal prosecution. *In re Welfare of J.W.*, 391 N.W.2d 791, 797 (Minn. 1986). However, when a party asserts the Fifth Amendment in a civil action, the Court may make an adverse inference when that party refuses to testify. *Parker v. Hennepin County Dist. Court*, 285 N.W. 2d 81, 83 (Minn. 1979)

## BEST PRACTICE

### *For Hearings*

- *Be aware of intimidation tactics (e.g. respondent making personal comments about petitioner, respondent continually staring at petitioner, etc.).*
- *Restrict trial testimony to that which is relevant to the petition.*
- *Write the order for protection clearly so that law enforcement knows precisely what is permissible and what is not, and so that subsequent Judicial Officers will understand your order.*
- *Write the order yourself; if inviting suggestions from counsel on contents of the order, decide on wording yourself.*
- *Assure that each party receives a copy of the order before he/she leaves.*
- *Be sure there is a deputy in the courtroom on “blocked” cases heard on your individual calendar. Order that each party remains on the premises in order to be served.*
- *Observe other Judicial Officer’s domestic abuse calendars for ideas (advice from a Judicial Officer new to hearing domestic abuse matters: ask the domestic abuse office staff to suggest a Judicial Officer to observe).*
- *Do not give custody/parenting time to ineligible fathers.*
- *Use qualified interpreters rather than allowing parties’ friends/relatives to interpret.*
- *Do not issue mutual orders for protection if each party has not filed separate petitions. See, *FitzGerald v. FitzGerald*, 406 N.W.2d 52 (Minn. Ct. App. 1987).*
- *Issue “mutual” orders for protection only if mutual petitions are filed, and the evidence warrants issuing the orders, and not if one party has not filed a petition.*
- *Avoid taking OFP’s and HRO’s under advisement as enforcement can be a problem due to effective dates or receipt issues. See “Harassment Restraining Orders” below.*
- *After going to hearing, do not give an option of an order for protection without findings.*

## IX. ISSUANCE AND ENFORCEMENT OF ORDER

### A. Issuance

#### 1. Orders for Protection for Petitioner and On Behalf of Children

On occasion, a trial will be held in a case where the *ex parte* order for protection was for both the petitioner and a child, and the Court may determine domestic abuse as to one but not the other.

#### **BEST PRACTICE**

*Issue a single order for protection with a caption appropriate to the termination and include a finding of no domestic abuse as to the petitioner (or vice versa) rather than to issue an additional Order for Dismissal as to the petitioner. For instance, the final order for protection would be captioned “John Doe on behalf of Baby Doe vs. Jane Doe” if the Court determined that there was no domestic abuse as to John Doe himself.*

*If the order is issued on behalf of a child and the court has reason to believe that the minor child is a victim of domestic child abuse (Minn. Stat. 260C.007 - child protection) or neglect (Minn. Stat. Sec. 626.556 - mandatory reporting) as defined by statute, Minn. Stat. §518.165 then the court may need to appoint a Guardian ad Litem. (See VIII.B.5 for more information)*

#### 2. Mutual Orders

Orders for protection may be issued only upon petition. If both parties file petitions alleging domestic abuse by the other, it is possible that two orders for protection will be issued. An order for protection cannot be issued without a petition. It is an error for the court to issue mutual orders for protection where only one party requests an order for protection and there is no evidence that the requesting party committed abuse against the adverse party. *FitzGerald v. FitzGerald*, 406 N.W.2d 52 (Minn. Ct. App. 1987).

#### 3. Child Support

Since orders for protection are expedited matters and the hearings occur so quickly, it is often times not possible to have a lot of information about an obligor’s income. Yet, child support can be quite important for a victim to remain safe. See the discussion about child support on VI-3.

## **B. Enforcement of Order**

An order for protection gives law enforcement officers the means to arrest for violation of an order for protection. This is a relatively simple enforcement procedure since the terms of the Order are so important to the arrest/enforcement.

### **BEST PRACTICE**

*The use of form orders familiar to law enforcement is essential. In general, enforcement concerns fuel a number of procedures currently used by the Ramsey County Bench. For instance, it is essential for enforcement of criminal charges of violation of an order for protection to show proof that the respondent had been personally served with the order for protection or personally served with a continuance order stating that the order for protection remained in effect. To assure service of the order on respondent it is best to keep the respondent in the courtroom or order the respondent to remain in the waiting area.*

### **BEST PRACTICE**

*Read provisions of order in open court. At the end of the hearing ask the parties if they understand what the Order says and review any special provisions. The main purpose is to avoid the issue of enforcement and the need for police involvement by insuring that the respondent knows what he/she has been ordered to do and not to do. Human experience (as well as the discarded orders in hallways and sidewalks) teaches that many respondents do not actually read the Order and will not know its terms unless we read to them. Given the harsh consequences for conviction of violation of an order for protection, it seems only fair that respondent have actual, as well as legal, notice of the order for protection.*

## **C. Collateral Consequences**

The issuance of an order for protection may have collateral or unintended consequences for the parties. These issues sometimes come up during hearings or negotiations between counsel for the parties who attempted to settle prior to their evidentiary hearing.

Collateral consequences should not detract from the purpose of the hearing to determine whether an act of domestic abuse occurred.

#### **D. Post Order Motions**

The Domestic Abuse Statute provides that upon application, notice to all parties, and hearing, the Court may modify the terms of an existing order for protection. Minn. Stat. §518B.01, subd. 11.

1. Types of motions:

There are many reasons either party may need to move to modify the order. From the petitioners, the Court may see motions to make an order more or less restrictive, extend an order, dismiss the order, change support or parenting time provisions, or to make exceptions to the order. Respondents may seek to modify support or parental access, reopen a default hearing for good cause, allow access to the home because the petitioner has moved out, or to change custody. These are just a few examples.

From time to time, there may be an attempt to file a motion for a new trial. Such a motion in an order for protection is not proper, as an order for protection is considered a “special proceeding” with an evidentiary hearing rather than a trial. There is no need for appellants to file a motion for new trial to preserve evidentiary objections on appeal. See *Steeves v. Campbell*, 508 N.W.2d 817 (Minn. Ct. App. 1993)

2. Procedure to File Motions:

The Ramsey County Domestic Abuse and Harassment Office has procedures to address the motions depending on the type of motion which is brought. If the motion presents an emergency, the process is similar to a new petition in that the Ramsey County Domestic Abuse and Harassment Office prepares an Order to Appear for Modification Hearing with immediate relief to the Judicial Officer and a hearing is set within seven days and the motion is served. All motions need to originate through the Ramsey County Domestic Abuse and Harassment Office in order to coordinate files, run the case in the electronic database to see if there are any conflicting orders, and update the database.

If the motion is one to dismiss the order or make the order less restrictive, the motion is served by mail and the hearing is set about 14 days out to allow for five days notice. Judicial Officers review all motions to make orders more restrictive or motions made by respondents. This procedure is different than Family Court. These motions need to be filed and approved by a Judicial Officer before a hearing can be scheduled. The motion is personally served on the opposing party. The hearing is usually set about 14 days out to allow for five days notice.

If the only form relief requested by the Petitioner is to issue an Amended Order protecting the Petitioner’s new address, there is no need for a hearing, the Amended Order may be issued administratively.

### 3. Hearing Procedure

Depending on the motion filed, testimony will likely be taken by parties or witnesses if the motion is opposed. If the motion is argued, it would be done as if it was a motion hearing in Family Court, based on the record including the affidavit(s) filed in support or opposition to the motion.

One example the Court might face is an Application for Extension of Order for Protection for an additional year before its expiration. (See “subsequent order or extension of existing order” at IV-3.) In this situation, testimony likely would be taken if the respondent opposes the extension.

Another example occurs if a petitioner seeks to modify an Order to include more restrictions regarding contact if the earlier order allowed for some. In this case, if there are allegations of violations, it may be necessary to hear testimony.

## **X. HARASSMENT RESTRAINING ORDER**

The statute governing harassment restraining orders is found at Minn. Stat. § 609.748 *et. seq.* See Appendix AIX-1.

### **A. Who May Bring a Harassment Restraining Order**

1. A person who is a victim of harassment; or
2. The parent, stepparent, or guardian of a minor who is a victim of harassment;

### **B. Elements Needed for a Finding of Harassment**

1. A single incident of physical or sexual assault; or

*Note: This prong of the statute has been construed to require the petitioner to prove the physical aspect of the statutory definition of assault in Chapter 609. (The infliction of or attempt to inflict bodily harm upon another). Peterson v. Johnson, 755 N.W.2d 758 (Minn. Ct. App. 2008) This interpretation is not applicable to the proof necessary for an order for protection. See footnote 1 of Peterson.*

2. Repeated incidents of intrusive or unwanted acts, words, or gestures
  - a. That have or are intended to have a substantial adverse effect.
  - b. On the safety, security or privacy of another, regardless of the relationship between the actor or the intended target.

*Note: This prong of the statute has been construed to require proof of, first, “objectively unreasonable conduct or intent on part of the harasser,” and second, “an objectively reasonable belief on the part of the person subject to harassing conduct” that the conduct had a substantial adverse effect on his or her safety, security, or privacy. Peterson v. Johnson, 755 N.W.2d 758 (Minn. Ct. App. 2008).*

3. Targeted residential picketing, which includes marching, standing, or patrolling by one or more persons directed solely at a particular residential building:
  - a. In a manner that adversely affects the safety, security, or privacy of an occupant of the building; or
  - b. In a manner which prevents an occupant of a residential building from gaining access to or exiting from the property on which the residential building is located.

3. A pattern of attending public events after being notified that the actor’s presence at the

event is harassing to another.

**Venue** is as in civil actions (respondent’s residence or where incidents(s) happen.). See Minn. Stat. §542.09.

### **C. Service and costs**

#### **1. Service and notice**

**a.** Respondent must be personally served with the temporary restraining order.

**b.** If an attempt at personal service was made by law enforcement and was unsuccessful because the respondent was avoiding service or otherwise, upon the filing of an affidavit and mailing of a copy of the petition and order to respondent’s residence or place of employment, service may be made by one week *published notice*. Minn. Stat. § 609.748, subd.3(b).

*Note: There is a potential for there to be orders issued restraining respondent, requiring the respondent to request a hearing where the respondent has never been served, either personally or by publication. This is because the harassment statute contains no automatic expiration of a temporary order which has not been served upon the respondent.*

**c.** Issuance of a HRO after hearing must be personally served on respondent. Minn. Stat. § 609.748, subd. 5(b).

#### **2. Filing fees and cost of service**

**a.** Will be waived if:

**i.** Petitioner alleges acts that would constitute a violation of Minn. Stat. § 609.749, subd. 2 or 3.

**ii.** Petition alleges criminal sexual conduct in the first-fifth degree.

**iii.** Petitioner is granted *in forma pauperis* status. Minn. Stat. §563.01.

### **BEST PRACTICE**

***Fees may be waived, but look for the level of any pending charge or the severity of the allegations. Decision is to be made by the issuing Judicial Officer.***

**b.** Court can also order the respondent to pay the filing fees.

### **D. Hearing**

1. No hearing required.
  2. A hearing will be held upon the request of either party within 45 days after filing, service or issuance of an *ex parte* order.
  3. Parties are entitled to five (5) days notice of hearing.
- E. Standard of Proof-** preponderance of the evidence.
- F. Relief Ordered by the Court**
1. *Ex parte* restraining order or no contact order may be granted if the court finds reasonable grounds to believe respondent engaged in harassment and there is immediate and present danger of further harassment.
  2. Restraining order relief:
    - a. Respondent to cease or avoid harassment; or
    - b. Respondent to have no contact with that person.
  3. Relief may be directed against an individual respondent or against an organization, in which case all members of the organization are restrained.

*Note: The statute does not expressly allow a Judicial Officer to remove a respondent from his or her home through a harassment restraining order.*

Removal may be the consequence of the “having no contact” provision of the order. There are other remedies (e.g., unlawful detainer action). This should be considered at the time of issue. Sheriff is reluctant to serve or enforce an Order if it is to exclude a respondent from his/her residence.

Duration of the order: Fixed period up to two (2) years.

**G. Courtroom Security**

There should always be Courtroom Security in an OFP and HRO hearing. The Sheriff’s Department is advised that during a domestic abuse hearing, the deputy should be positioned so as to observe the behavior of the parties. This is different from the deputy’s position at criminal/delinquency hearings, in which the risk is that the defendant will flee. In a domestic abuse hearing, the risk is that the respondent will violate the order for protection or intimidate the petitioner during the hearing. The placement of the deputy is for the deputy to decide, since courtroom security is his/her responsibility and he/she has the training and experience to make decisions concerning courtroom security. Nevertheless, most deputies are open to suggestions/questions from Judicial Officers/staff, particularly if a party is well known to the

Section X – Harassment Restraining Order

Judicial Officer/staff.

**H. Role of the Ramsey County Domestic Abuse and Harassment Office.** See “Role of Domestic Abuse Office on Page VIII-4.

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## COMPARISON BETWEEN OFPS & TEMPORARY HEARINGS IN MINNESOTA

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ORDER FOR PROTECTION	TEMPORARY RELIEF IN DISSOLUTION
<b>JURISDICTION and VENUE</b>	
<p><b>SUBJECT MATTER JURISDICTION:</b>                      No residency requirement. §518B.01 subd. 3.                      No requirement that abuse occur in Minnesota. <i>Benson v. Benson</i>, Minn. Ct. App. #C3-95-515, Aug 29, 1995.                      Compliance with statutory time limits is not jurisdictional. <i>Burkstrand v. Burkstrand</i>, 632 N.W.2d 206 (Minn. 2001).                      Custody jurisdiction is governed by U.C.C.J.E.A., §518D.102(e).                      Uniform Interstate Family Support Act determines jurisdiction for child support and spousal maintenance decisions §518C.204-206.</p>	<p><b>SUBJECT MATTER JURISDICTION:</b>                      Petitioner must be resident or domiciled in Minnesota for 180 days prior to filing for dissolution (armed forces exception). §518.07.                      Custody jurisdiction is governed by U.C.C.J.E.A., §518D.                      Uniform Interstate Family Support Act determines jurisdiction for child support and spousal maintenance decisions §518C.204-206.</p>
<p><b>PERSONAL JURISDICTION:</b>                      Long-arm jurisdiction appropriate when abuser telephoned child in Minnesota even though abuser never came to Minnesota and physical abuse occurred outside Minnesota. <i>Hughs on Behalf of Praul v. Cole</i>, 572 N.W.2d 747 (Minn. App. 1997).                      Jurisdiction over non-resident for child support and spousal maintenance issues governed by Uniform Interstate Family Support Act §518C.201-202.</p>	<p><b>PERSONAL JURISDICTION:</b>                      Long-arm jurisdiction appropriate when parties married and conceived child in Minnesota, and respondent took child as Minnesota tax deduction. <i>Impola v. Impola</i>, 464 N.W.2d 296 (Minn. App. 1990).                      Personal jurisdiction over respondent is not required to dissolve marriage or grant custody, as dissolution and custody actions are <i>in rem</i>, with the marriage or custody status being the <i>res</i>. <i>Allegrezza v. Allegrezza</i>, 53 N.W.2d 133 (Minn. 1952); <i>Larson v. Larson</i>, 252 N.W. 329 (Minn. 1934).                      Jurisdiction over non-residents for child support and spousal maintenance issues governed by Uniform Interstate Family Support Act §518C.201-202.</p>

ORDER FOR PROTECTION	TEMPORARY RELIEF IN DISSOLUTION
<p><b>VENUE:</b>                      County of residence of either party, county in which a pending or completed family court proceeding involving the parties or their minor children was brought, or county in which alleged abuse occurred. §518B.01 subd. 3.                      Order to show cause for violation of OFP may be heard in any county in which the petitioner or respondent temporarily or permanently resides at the time of alleged violation. §518B.01 subd. (e).</p>	<p><b>VENUE:</b>                      County where either party resides or is domiciled, or stationed if in military service; venue may be changed by court. §518.09.</p>
<b>PLEADINGS</b>	
<p><b>NECESSARY PLEADINGS:</b>                      Petition and Affidavit. §518B.01 subd. 4(b).                      Petition must include notice that an OFP will be considered in future parenting time decisions if requested by petitioner. §518B.01 subd. 8(d).</p>	<p><b>NECESSARY PLEADINGS:</b>                      Notice of Motion, Motion, Affidavit, and, if financial relief requested, Application for Temporary Relief. Minn. Gen. R. Prac. 303.02 &amp; 303.03.</p>
<p><b>UNIFORM FORMS:</b>                      "Will facilitate consistent enforcement of OFPs throughout the state." § 518B.01 subd. 21.</p>	<p><b>UNIFORM FORMS:</b>                      Form to be used for Application for Temporary Relief is Form 1 attached to Rules of Family Court Procedure. Minn. Gen. R. Prac. 303.02(b).</p>
<p><b>DISCLOSURE OF OTHER PROCEEDINGS:</b>                      Petition must state whether there is an existing order for protection in effect governing parties, or whether there is pending action under chapter 257, 518, 518A, 518B, or 518C; court administrator shall verify the terms of any existing order, but relief may not be delayed because of pending action or necessity of verifying terms of existing order; relief may be granted regardless of whether there is pending action. §518B.01 subd. 4(d).                      If dissolution is pending the court must provide copy of OFP to dissolution court for inclusion in that file. §518B.01 subd. 6(e).</p>	<p><b>DISCLOSURE OF OTHER PROCEEDINGS:</b>                      Dissolution petition must state whether or not there is a pending proceeding for dissolution, legal separation, or custody, and whether an OFP involving either party or a child is in effect. §518.10(f) &amp; (j).                      In Ramsey County at time of filing new action, special courts will require order for disclosure of pending or past court activity in Ramsey County.                      If a dissolution is pending the OFP court must provide copy of OFP to dissolution court for inclusion in file. §518B.01 subd. 6(e).</p>

ORDER FOR PROTECTION	TEMPORARY RELIEF IN DISSOLUTION
SERVICE and FILING	
<p><b>SERVICE:</b>  <b>Personal:</b> Petition and orders must be served on respondent personally; if respondent is not in county, sheriff shall expeditiously forward pleadings to sheriff in appropriate county. §518B.01 subd. 8(a) &amp; 9. Court administrators and sheriffs of any Minnesota county shall perform duties related to service of process without charge to petitioner. The court shall direct payment of reasonable costs of a private process server or publication without requiring an IFP application. §518B.01 subd. 3a.                      Service by short-form notice may be made on any day at any time, and the respondent may be detained to effectuate service. §518.01 subd. 8a(b) &amp; (d).  <b>By Alternate Means:</b>                      Court may order service by alternate means, including mail or publication if personal service cannot be made; service is complete 14 days after mailing or publication. §518B.01 subd. 8 (c).                      Service may be by 1 week's published notice with copy mailed to respondent if sheriff is unsuccessful at service because respondent is avoiding service; service is complete 7 days after publication. §518B.01 subd. 5(f).</p>	<p><b>SERVICE:</b>                      Summons &amp; petition for dissolution must be personally served. If personal service cannot be made, court may order service by alternate means, including by mail or publication, in which case service is complete 21 days after mailing or publication §518.11 (a) &amp; (c) and Minn. Gen. R. Prac. 303.01.                      A motion for temporary relief accompanied by an order to show cause or ex parte restraining order must be personally served, otherwise service is on opposing counsel. §518.131 subd. 4; Minn. Gen. R. Prac. 303.03(a)(1).                      Proof of service on respondent outside U.S. is governed by §518.11 (b) and M.R.Civ.Proc. 4.04(c).</p>
<p><b>FILING FEE:</b>                      Fee is waived for petitioner. Upon determination of ability to pay, court may direct respondent to pay petitioner's filing fees and reasonable service costs. §518B.01 subd. 3a.</p>	<p><b>FILING FEE:</b>                      Required both to begin dissolution and for motion for temporary relief unless IFP order granted. §357.021.</p>
<p><b>CONFIDENTIALITY:</b>                      OFP data is confidential until temporary order is executed or served. §13.80; Rules Pub.Acc. Rec. Jud. Br. 4 subd.1.                      Upon petitioner's request, information regarding the petitioner's location or residence is not accessible to public, only to court personnel and law enforcement. §518B.01 subd.3b.</p>	<p><b>CONFIDENTIALITY:</b>                      Custody proceedings may be sealed if necessary to protect child's welfare. §518.168(d).                      Court services' recommendations regarding custody and psychological evaluations are not accessible to the public. Rules Pub.Acc. Rec. Jud. Br. 4 subd.1.</p>

ORDER FOR PROTECTION	TEMPORARY RELIEF IN DISSOLUTION
<b>EX PARTE RELIEF</b>	
<p><b>EX PARTE RELIEF:</b>                      Ex parte relief is available when an applicant alleges an immediate and present danger of domestic abuse. §518B.01 subd. 7(a). Notice that would otherwise be required by court rules is not required. §518B.01 subd. 7(b).                      Ex parte custody and parenting time orders may be granted giving primary consideration to the safety of the victim &amp; children. A finding of immediate danger of physical harm not necessary. <i>Baker v. Baker</i>, 494 N.W.2d 282 (Minn. 1992).</p>	<p><b>EX PARTE RELIEF:</b>                      Ex parte order may include any matter that can be included in temporary order except (1) exclusive occupancy can only be granted upon finding of immediate danger of physical harm to party or child, and (2) the order can grant temporary custody or deny parenting time only if the court finds immediate danger of physical harm to the children. Relief only continues until the hearing time noticed unless court for good cause and upon notice extends time for hearing. §518.131 subd. 4.                      Interim child support may be ordered at guidelines level. Minn.Gen.R.Prac. 303.04(d)                      The applicant must provide notice to other party, or demonstrate efforts to notify other party, or reasons why such efforts not made. The affidavit must indicate whether there have been prior applications for relief. Minn.Gen.R. Prac. 3.</p>
<p><b>ONGOING RELIEF AVAILABLE WITHOUT HEARING:</b>                      (1) Order restraining abusing party from committing acts of domestic abuse;                      (2) exclusive occupancy; order excluding abusing party from petitioner's place of employment or otherwise limiting access;                      (3) order continuing all available insurance coverage. §518B.01 subd. 5(b) &amp; subd.7(a).                      Relief shall be for fixed period of one year unless court determines a longer fixed period is appropriate; however, order expires if personal service not made or affidavit requesting publication not filed within 14 days or if publication not completed within 28 days. §518B.01 subd. 7.</p>	<p><b>ONGOING RELIEF AVAILABLE WITHOUT HEARING:</b>                      None.                      Ex parte relief only continues until hearing time noticed unless court for good cause and upon notice extends time for hearing. §518.131 subd. 4.</p>
<b>HEARINGS</b>	
<p><b>RELIEF AVAILABLE WITH HEARING:</b>                      All of the above relief, plus: exclusion of abuser from reasonable area around dwelling; temporary custody; parenting time; temporary child support and/or maintenance; counseling or other social services if requested by petitioner and parties are married or if there are minor children; treatment or counseling for abuser; use and possession of property; restraining order against transfer or disposal of property; restitution; other relief as deemed necessary for protection of family or household member. §518B.01 subd. 6(a).</p>	<p><b>RELIEF AVAILABLE WITH HEARING:</b>                      Temporary custody; parenting time; spousal maintenance; child support; costs and attorney fees; use and possession of family home, automobiles, and other property; restraining orders on assets, harassment, vilification, mistreatment, molestation, disturbing peace, restraint of liberty, or removal of child from court jurisdiction; exclusion of party from home/s; other relief that will facilitate just and speedy disposition or protect party or child from physical or emotional harm. §518.131 subd. 1.</p>

ORDER FOR PROTECTION	TEMPORARY RELIEF IN DISSOLUTION
<p><b>WHEN HEARING REQUIRED:</b>                      When petitioner seeks custody or any other relief beyond restraining order, exclusive occupancy, exclusion from petitioner's employment and continuance of insurance coverage. §518.01 subd.5(b) &amp; (c) and subd. 7(e).                      When the court declines to grant relief available without a hearing. §518.01 subd.5(b) &amp; (c).                      When respondent requests an initial hearing when petitioner did not. §518.01 subd.5(b).                      When firearms restrictions are to be imposed. 18 U.S.C. §922(g)(8).</p>	<p><b>WHEN HEARING REQUIRED:</b>                      When ex parte relief granted. §518.131 subd. 4                      When requested by either party. §518.131.</p>
<p><b>RESPONDENT'S REQUEST FOR HEARING:</b>                      Respondent's request for hearing must be made within 5 days of service. §518B.01 subd. 7(c)</p>	<p><b>RESPONDING PARTY'S REQUEST FOR HEARING:</b>                      None required; moving party always must schedule hearing.</p>
<p><b>TIME LINE FOR HEARING:</b>  <u>If no ex parte relief requested:</u> within 14 days from date of order for hearing. §518B.01 subd. 5(a).  <u>If ex parte relief denied:</u> not later than 7 days from issuance of ex parte order. §518.01 subd.5(c).  <u>If petitioner requests hearing:</u> not later than 7 days from issuance of ex parte order. §518.01 subd.5(c).  <u>If respondent requests hearing:</u> within 10 days from receipt by the court of a request for hearing. §518B.01 subd. 5(d) &amp; 7.                      Compliance with statutory time limits is not jurisdictional, but an ex parte order expires if the court fails to meet timeline for hearing. <i>Burkstrand v. Burkstrand</i>, 632 N.W.2d 206 (Minn. 2001).</p>	<p><b>TIME LINE FOR HEARING:</b>                      If ex parte restraining order issued hearing must be held at earliest practicable date; restrained party may advance hearing date. §518.131 subd. 4.</p>
<p><b>DOCKET PRIORITY:</b>                      Required. §518B.01 subd. 3.</p>	<p><b>DOCKET PRIORITY:</b>                      If restraining order issued, hearing must be held at earliest practical date. §518.131 subd. 4. If custody is in issue, proceedings are entitled to priority. §518.168(a). Otherwise there is no requirement for docket priority.</p>

ORDER FOR PROTECTION	TEMPORARY RELIEF IN DISSOLUTION
<p><b>HEARING NOTICE:</b>                      Personal service of ex parte order on respondent may be made up to 12 hours before time set for hearing. §518.01 subd.5(c).                      Ex parte order with no hearing set must include conspicuous notice to respondent &amp; form to request hearing. §518B.01 subd. 7(c).                      Respondent or court must serve notice of hearing on petitioner not less than 5 days before hearing. §518.01 subd.5(d).                      In lieu of OFP, a short form notice may be served, which requires respondent to pick up OFP from sheriff or court. §518.01 subd.8a(a).</p>	<p><b>HEARING NOTICE:</b>                      Notice of time and date of hearing must be promptly given to other party unless parties reside in same residence and there is possibility of abuse. Minn.Gen.R.Prac. 303.01 (a)(2).                      Service &amp; filing of motion must be completed 14 days before hearing.                      Responsive motion raising new issues must be served and filed 10 days before hearing.                      Responses to motions must be served and filed 5 days before hearing.                      Minn.Gen.R.Prac. 303.03 (a).                      Time limits may be shortened if good cause shown. Minn.Gen.R.Prac. 302.03.</p>
<p><b>TESTIMONY:</b>                      "Full hearing" includes right to present and cross-examine witnesses, to present documents, and to have case decided on merits. <i>El Nashaar v. El Nashaar</i>, 529 N.W.2d 13 (Minn.App. 1995).                      Testimony of respondent in a hearing pursuant to this section is inadmissible in a criminal proceeding. §518B.01 subd. 15.</p>	<p><b>TESTIMONY:</b>                      Order shall be based on affidavits, exhibits, subpoenaed documents, memoranda and arguments of counsel. A party may request an evidentiary hearing, which the court may order upon good cause shown. Requests for hearings in excess of one-half hour require a written motion setting forth necessity for oral testimony, reasons affidavits are inadequate, names of witnesses, length of testimony, exhibits, and whether interview of minor child is requested. Minn. Gen. R. Prac. 303.03(d); §518.131 subd. 8.</p>
<p><b>RECORDING:</b>                      Proceedings must be recorded. §518B.01 subd. 19</p>	<p><b>RECORDING:</b>                      May be recorded by electronic means if no testimony is taken, but parties may request a court reporter. §484.72.</p>
<p><b>CONTINUANCES:</b>                      Respondent has right to request continuance if served less than 5 days before hearing, and continuance shall be granted unless there are compelling reasons not to. §518B.01 subd.5(c).                      If service on either party of hearing date set due to respondent's request is less than 5 days before hearing, court may set new date no more than 5 days later. §518B.01 subd.5(d).                      Either party may request continuance of initial hearing, which may be granted if court finds good cause and that continuance is appropriate. §518B.01 subd.5(e).                      Unless parties agree and court approves, continuance shall be for no more than 5 days. §518B.01 subd.5(e).                      Court must issue written order continuing all provisions of ex parte order. §518B.01 subd.5(e).</p>	<p><b>CONTINUANCES:</b>                      No continuances shall be granted unless requested within 3 days of receiving notice; good cause must be shown. Minn.Gen.R.Prac. 302.02.</p>

ORDER FOR PROTECTION	TEMPORARY RELIEF IN DISSOLUTION
<p><b>CONSOLIDATION WITH OTHER PROCEEDINGS:</b>                      Motion to vacate or modify OFP may be heard concurrently with dissolution hearing only if there is notice of motion and motion as required by court rules. Notice may not be waived. The OFP restraining order against domestic abuse cannot be modified. §518B.01 subd. 6(c).                      Proceedings to establish custody or parenting time for a father who has signed a Recognition of Parentage may not be combined with an OFP. §257.541 subd.3.</p>	<p><b>CONSOLIDATION WITH OTHER PROCEEDINGS:</b>                      Motion to vacate or modify OFP may be heard concurrently with dissolution hearing only if there is notice of motion and motion as required by court rules. Notice may not be waived. The OFP restraining order against domestic abuse cannot be modified. §518B.01 subd. 6(c). Separate orders must be issued. §518.131 subd. 2(c).</p>
<p><b>ALTERNATIVE DISPUTE RESOLUTION:</b>                      Actions enumerated in chapter 518B are not subject to ADR. Minn. Gen. R. Prac. 310.01. Issuance of a protective order is an implicit finding of probable cause that domestic abuse occurred and therefore mediation may not be ordered. <i>Vogt v. Vogt</i>, 455 N.W.2d 471 (Minn. 1990)</p>	<p><b>ALTERNATIVE DISPUTE RESOLUTION:</b>                      Dissolution proceedings are subject to alternative dispute resolution processes unless: a party claims to be a victim of domestic abuse by the other party or the court finds probable cause that a party or child has been physically or sexually abused, or threatened with physical abuse, by the other party. In those cases the court shall not order or refer parties to mediation or any other process requiring the parties to meet and confer without counsel. ADR may be permitted if both parties have been advised by counsel and agree to ADR process that does not involve face-to-face meetings. Minn. Gen. R. Prac. 310.01; §518.619 subd. 2. Similar restrictions apply to the use of parenting time expeditors. §518.1751 subd. 1a.</p>
AVAILABLE RELIEF	
<p><b>RESTRAINING ORDER:</b>                      Abusing party may be restrained from committing physical harm, bodily injury, assault; inflicting fear of imminent physical harm, bodily injury, or assault; terroristic threats; and criminal sexual conduct. §518B.01 subd. 6(a)(1).                      Abusing party may be excluded from, or have access limited to, petitioner's place of employment. §518B.01 subd. 6(a)(9).                      Mutual orders not permitted unless respondent filed petition and court makes finding of abuse by petitioner. <i>FitzGerald v. FitzGerald</i>, 406 N.W. 2d 52 (Minn. App. 1987)                      Restraining order against dissipation of assets permitted after hearing. §518B.01 subd. 6(a)(8).</p>	<p><b>RESTRAINING ORDER:</b>                      One or both parties may be restrained from harassing, vilifying, mistreating, molesting, disturbing the peace, or restraining the liberty of the other party of the children of the parties. §518.131 subd. 1(g).                      Restraining order prohibiting both parties from dissipating assets is part of summons, and may be included in temporary order along with requirement for accounting. §518.131 subd. 1(f).                      One or both parties may be restrained from removing minor child from court's jurisdiction. §518.131 subd. 1(j).</p>

ORDER FOR PROTECTION	TEMPORARY RELIEF IN DISSOLUTION
<p><b>EXCLUSIVE OCCUPANCY:</b>                      Court may exclude the abusing party from the dwelling which the parties share or from petitioner's residence without a hearing, and from a reasonable surrounding area (must be specifically described) after a hearing. §518B.01 subd. 5(b) &amp; subd. 6(a)(2). Victim cannot be excluded from shared residence. <i>Swenson v. Swenson</i>, 490 N.W.2d 668 (1992).                      If requested by petitioner, court shall order law enforcement assistance in obtaining possession of premises. §518B.01 subd. 9.</p>	<p><b>EXCLUSIVE OCCUPANCY:</b>                      Either party may be excluded.                      Exclusive occupancy order requires a finding of likelihood of physical or emotional harm to a party or child, or that exclusion is reasonable in the circumstances. §518.131 subd.1(e) &amp; (I) and subd. 2(b).</p>
<p><b>TEMPORARY CUSTODY:</b>                      Awarded on a basis that gives primary consideration to the safety of the victim and children. §518B.01 subd. 6(a)(4).                      Findings are not required unless custody is contested. §518B.01 subd. 6(a)(4); <i>Gada v. Dedefo</i>, 684 N.W.2d 512 (Minn.App. 2004). Oral findings consistent with the safety standard are sufficient. <i>Baker v. Baker</i>, 494 N.W.2d 282 (Minn. 1992).                      A court's decision on custody shall in no way delay issuance of OFP granting other relief. §518B.01 subd. 6(a)(4).</p>	<p><b>TEMPORARY CUSTODY:</b>                      Court shall be guided by §518.17 (best interests factors) and §518.1705 (parenting plans). §518.131 subd. 7.                      Court must consider an abuser's effect on child. The disposition to facilitate the other parent's contact with the child must not be considered if there is a finding of domestic abuse. There is a rebuttable presumption against joint custody if domestic abuse has occurred. §518.17 subd. 1(12) &amp; (13) and subd. 2.                      Court must consider a finding in OFP proceeding that domestic abuse has occurred. §518B.01 subd. 17.</p>
<p><b>PARENTING PLANS:</b>                      Not permitted. §518B.01 subd. 6(a)(4).</p>	<p><b>PARENTING PLANS:</b>                      Temporary support may be ordered while a parenting plan is being developed. §518.131 subd.11. Parenting plans may not be created by court if one parent has committed domestic abuse against other parent or child. §518.1705 subd.3. Non-judicial dispute resolution may not be required if there is an allegation of domestic abuse. Joint legal custody may not be required in a parenting plan if there has been domestic abuse, a pattern of emotional abuse of a child, or willful abandonment. §518.1705 subd.6.</p>
<p><b>PARENT EDUCATION CLASSES:</b>                      Court may order parents to attend if custody, support or parenting time is contested. The order shall set forth the manner in which parties may safely participate, and joint attendance shall not be required. §518.157 subd. 3.</p>	<p><b>PARENT EDUCATION CLASSES:</b>                      Attendance is mandatory if custody or parenting time contested. Court may order parents to attend if support is contested. If past or present domestic abuse is alleged, order shall set forth the manner in which parties may safely participate, and joint attendance shall not be required. §518.157 subd. 3.</p>

ORDER FOR PROTECTION	TEMPORARY RELIEF IN DISSOLUTION
<p><b>PARENTING TIME:</b>                      Awarded on basis that gives primary consideration to the safety of the victim and the children; if unsupervised or unrestricted parenting time will jeopardize safety of victim or children, the court shall condition or restrict parenting time as to time, place, duration, or supervision, or deny parenting time entirely to guard safety of victim and children. §518B.01 subd. 6(a)(4). Court shall advise petitioner of right to seek supervised parenting time under §518.175 subd. 1a. §518B.01 subd. 4(j).                      Petition and orders must advise respondent that OFP will be considered in future parenting time proceedings if requested by petitioner. §518B.01 subd. 8(d). Parenting plans are not permitted. §518B.01 subd. 6(a)(4).</p>	<p><b>PARENTING TIME:</b>                      Court shall be guided by the factors in §518.175. §518.131 subd. 7. Court shall, upon request of a parent, grant parenting time rights that will enable the child and the noncustodial parent to maintain a child to parent relationship that will be in the best interests of the child. Parenting time may be denied or restricted as to time, place, duration or third-party supervision if the court finds, after a hearing, that parenting time is likely to endanger the child's physical or emotional health or impair the child's emotional development. Child's age and relationship with noncustodial parent prior to proceeding are factors that shall be considered; non-payment of support due to inability to pay shall not be a factor. Order must include specific schedule if requested by either party. §518.175 subd. 1. Court must consider OFP if party being protected requests supervised parenting time or other consideration. §518.175 subd. 1a. and §518B.01 subd. 8(d).</p>
<p><b>TEMPORARY CHILD SUPPORT:</b>                      On same basis as dissolution §518B.01 subd. 6(a)(5).</p>	<p><b>TEMPORARY CHILD SUPPORT:</b>                      Court shall be guided by §518.551 (guidelines). §518.131 subd. 7.</p>
<p><b>TEMPORARY SPOUSAL MAINTENANCE:</b>                      On same basis as dissolution §518B.01 subd. 6(a)(5).</p>	<p><b>TEMPORARY SPOUSAL MAINTENANCE:</b>                      Court shall be guided by §518.552 (maintenance factors). §518.131 subd. 7.</p>
<p><b>COUNSELING:</b>                      Upon request of petitioner counseling or other social services may be provided; abusing party may be ordered to participate in treatment or counseling services. §518B.01 subd. 6(a)(6) &amp; (7).</p>	<p><b>COUNSELING:</b>                      No statutory provision.</p>
<p><b>PERSONAL PROPERTY:</b>                      Court may award temporary use and possession; restrain one or both parties from transferring, encumbering, concealing, or disposing of property; and order accounting of any transfer or other disposition made after the order is served or communicated to restrained party in open court §518B.01 subd. 6(a)(8).</p>	<p><b>PERSONAL PROPERTY:</b>                      Court may make temporary division. §518.131 subd. 1(e).</p>

ORDER FOR PROTECTION	TEMPORARY RELIEF IN DISSOLUTION
<p><b>INSURANCE &amp; MEDICAL SUPPORT:</b>                      Court may order continuance of all currently available insurance coverage without change in coverage or beneficiary §518B.01 subd. 6(a)(11)                      Every order for child support must contain provision for medical support. §518.171.</p>	<p><b>INSURANCE &amp; MEDICAL SUPPORT:</b>                      Every order for child support must contain provision for medical support. §518.171 subd. 1.                      Summons contains notice that all insurance coverage must be maintained without change; effective upon service until modified by court, dissolution is dismissed, or more than one year has passed since last document filed. §518.091 subd.1.</p>
<p><b>RESTITUTION:</b>                      Court may order abusing party to pay restitution §518B.01 subd.6(a)(10); Court shall advise petitioner of right to seek restitution under petition. §518B.01 subd. 4(h).</p>	<p><b>RESTITUTION:</b>                      No statutory provision.</p>
<p><b>ATTORNEY FEES &amp; COSTS:</b>                      Respondent may be ordered to pay filing fees, service costs, and costs of contempt action. §518B.01 subd. 3a &amp; 14(f).</p>	<p><b>ATTORNEY FEES &amp; COSTS:</b>                      Attorney fees, costs, and disbursements shall be awarded in an amount necessary to carry on or contest the proceeding if: (1) fees are necessary for good faith assertion of party's rights, and will not contribute unnecessarily to length &amp; expense of proceeding; (2) one party has the means to pay them; and (3) other party does not have means to pay. Fees also available against party who unreasonably contributes to length or expense of proceeding. §518.131 subd. 1(d) &amp; 7; §518.14 subd. 1.                      Fees may be awarded as a sanction for improper conduct, but only by separate motion that identifies the specific conduct and gives the party 21 days to correct before the motion is filed with court. §549.211; Minn. R. Civ.P. 11.</p>
<p><b>OTHER RELIEF:</b>                      Court may order other relief deemed necessary for the protection of a family or household member, including directives to law enforcement or corrections. §518B.01 subd. 6(a)(12).</p>	<p><b>OTHER RELIEF:</b>                      The court may require one or both of the parties to perform or to not perform such additional acts as will facilitate the just and speedy disposition of the proceeding, or will protect the parties or their children from physical or emotional harm. §518.131 subd. 1(j).</p>

ORDER FOR PROTECTION	TEMPORARY RELIEF IN DISSOLUTION
ORDERS	
<p><b>MANDATORY PROVISIONS OF ORDER:</b>            Court must make oral or written findings that domestic abuse occurred. <i>Andrasko v. Andrasko</i>, 443 N.W.2d 228 (Minn. App. 1989); <i>Mechtel v. Mechtel</i>, 528 N.W.2d 916 (Minn. App. 1995) [NOTE: Findings in <i>Andrasko</i> were required by a rule that no longer exists.] Applicant must be told to notify court administrator and law enforcement of any change in address, so that OFP may be forwarded to proper law enforcement agency, and that it will be forwarded within 24 hours of notice. §518B.01 subd. 13 (c).            Notices to respondent: OFP violation is misdemeanor, gross misdemeanor or felony, and the punishment ranges for each level; violation may also be a federal crime; respondent is forbidden to enter or stay at petitioner's residence even if invited, and in no event is OFP voided; peace officer must arrest without warrant and take into custody person whom officer has probable cause to believe has violated restraining order or exclusive occupancy order; if order is entered after a hearing, s/he may be prohibited from possessing, transporting, or accepting a firearm. §518B.01 subd. 18.</p>	<p><b>MANDATORY PROVISIONS OF ORDER:</b>            Appendix A is required. The court may waive portions of Appendix A relating to parenting rights if it finds it is necessary to protect the welfare of a party or child. §518.17 subd. 3(b) &amp; §518.68; Minn. Gen. R. Prac. 308.02.</p>
<p><b>DURATION OF ORDER:</b>            Fixed period not to exceed one year, except when court determines a longer fixed period is appropriate. §518B.01 subd. 6(b).            Ex parte order expires if court fails to meet timeline for hearing. <i>Burkstrand v. Burkstrand</i>, 632 N.W.2d 206 (Minn. 2001).            Ex parte order expires after 14 days unless personal service accomplished or affidavit for service by publications filed. If notice by publication is not completed within 28 days, order expires. §518B.01 subd. 7(d).</p>	<p><b>DURATION OF ORDER:</b>            Remains in effect until it is amended or vacated, the dissolution is dismissed, or the final decree is entered. If the dissolution is dismissed temporary custody order may continue if motion made by party, hearing is held and court finds circumstances of parties and best interests of child require custody order. §518.131 subd. 5 &amp; 6.</p>
<p><b>EFFECTIVE TIME OF ORDER:</b>            As soon as person restrained knows of order §518B.01 subd. 8a(a) &amp; subd. 14.            Order signed by referee is effective upon signing. §518B.01 subd. 6(b) &amp; 7(c)</p>	<p><b>EFFECTIVE TIME OF ORDER:</b>            When order is served; Court can make order effective when decision announced in court.</p>

ORDER FOR PROTECTION	TEMPORARY RELIEF IN DISSOLUTION
<b>MODIFICATION and EXTENSIONS</b>	
<p><b>MODIFICATION:</b> Upon application, notice, and hearing the court may modify the terms of an existing OFP. §518B.01 subd. 11.</p>	<p><b>MODIFICATION:</b> Available on the same grounds &amp; subject to same requirements as initial granting. §518.131 subd. 9(b). Temporary order cannot modify OFP restraining order prohibiting domestic abuse; motion to modify OFP may be heard concurrently with temporary hearing only if there is notice of motion and motion, and notice required by court rule shall not be waived. If proceedings consolidated and motion to modify granted, a separate order for modification of OFP shall be issued. §518.131 subd. 2(c).</p>
<p><b>EXTENSION:</b> Court may extend existing order or grant new order upon showing that respondent has violated OFP, petitioner is reasonably in fear of physical harm, respondent has engaged in acts of harassment or stalking; or respondent is about to be or has recently been released from incarceration. Physical harm need not be imminent. §518B.01 subd. 6a &amp; subd. 14(i).</p>	<p><b>EXTENSION:</b> Order is indefinite, so no extension is required. §518.131 subd. 5.</p>
<p><b>NEW ORDER:</b> A new order may be granted if the respondent violated a prior OFP which has now expired. §518B.01 subd. 14(h).</p>	<p><b>NEW ORDER:</b> Order does not expire, so a new order is not necessary. §518.131 subd. 5.</p>
<b>ENFORCEMENT</b>	
<p><b>LAW ENFORCEMENT ASSISTANCE:</b> Upon request of petitioner court shall order sheriff or constable to accompany petitioner in taking possession of dwelling or otherwise assist in execution of OFP. §518B.01 subd. 9. Within 24 hours of issuance the court administrator shall forward the OFP to the local law enforcement agency with jurisdiction over residence of applicant; if applicant moves court administrator must forward OFP to new law enforcement agency within 24 hours of notice of address change; if, after moving, applicant notifies new law enforcement agency of OFP, agency shall request copy of OFP from court administrator within 24 hours. §518B.01 subd. 13 (a) &amp; (b)</p>	<p><b>LAW ENFORCEMENT ASSISTANCE:</b> Order may provide for law enforcement officer to accompany parent seeking to enforce parenting time order. §518.175 subd. 1(b).</p>

ORDER FOR PROTECTION	TEMPORARY RELIEF IN DISSOLUTION
<p><b>VIOLATIONS:</b>                      Person to be restrained must know of order. Generally violation is a <b>misdemeanor</b>; conviction requires minimum of 3 days imprisonment and violator must be ordered to participate in counseling or other appropriate program. §518B.01 subd. 14 (b).                      Violation is a <b>gross misdemeanor</b> if within 5 years of discharge from sentence for prior OFP violation or certain other criminal convictions. Conviction requires minimum of 10 days imprisonment and violator must be ordered to participate in counseling or other appropriate program §518B.01 subd. 14(c).                      Violation is <b>felony</b> if respondent possessed dangerous weapon or had 2 or more convictions before expiration of 5 year period after discharge from sentence for prior OFP violation or certain other criminal convictions. Conviction requires minimum of 30 days imprisonment and violator must be ordered to participate in counseling or other appropriate program. §518B.01 subd. 14(d).                      Police shall make warrantless arrest if there is probable cause to believe person has violated restraining order, exclusive occupancy provision, or exclusion from petitioner's employment; even if violation did not occur in officer's presence. §518B.01 subd. 14(e).                      Violator shall be held in custody for at least 36 hours unless released by court. Officer acting in good faith is immune from civil liability. §518B.01 subd. 14(e).                      If respondent has violated order and court finds there is reason to believe respondent will commit further violations of restraining order or exclusion provisions court may require respondent to acknowledge obligation to comply with order on the record, and may require posting of bond not to exceed \$10,000; if respondent fails to comply court shall commit respondent to county jail for duration of term of OFP or until compliance. §518B.01 subd. 14 (f).                      Violation shall be referred by court to appropriate prosecuting authority. §518B.01 subd. 14 (g).</p>	<p><b>VIOLATIONS:</b>                      It is a misdemeanor to violate provisions of a temporary order which prohibits harassment or restraint of liberty, prohibits removal of child from state, or awards exclusive occupancy. §518.131 subd.10.</p>
<p><b>CONTEMPT OF COURT:</b>                      Violation of OFP is also contempt of court and an order to show cause may be issued by court upon affidavit of petitioner, peace officer, or interested party designated by court. Hearing may be held in county where either party resides or where violation occurred. §518B.01 subd. 14 (g).</p>	<p><b>CONTEMPT OF COURT:</b>                      Violation of an order for temporary relief is also contempt of court. §518.131 subd. 10. Contempt is initiated by order to show cause quoting the provision that has been violated and affidavit setting forth details. The contmnor has a right to present testimony. Minn. Gen. R. Prac. 309.</p>

ORDER FOR PROTECTION	TEMPORARY RELIEF IN DISSOLUTION
<p><b>INTERSTATE ENFORCEMENT:</b>                      Federal law requires state or Indian tribe to give full faith and credit to protection order issued consistent with law. OFP issued against petitioner is not entitled to full faith and credit unless a counter petition was filed and the court made findings that respondent is entitled to order. 18 U.S.C. §2265.                      U.C.C.J.E.A. and Parental Kidnapping Prevention Act govern another state's enforcement of Minnesota custody provision. §518D; 28 U.S.C. §1738A.                      Uniform Interstate Family Support Act governs another state's enforcement of child support order. §518C.                      Violation of OFP restraining order in another state or Indian reservation is federal crime. 18 U.S.C. §2262.</p>	<p><b>INTERSTATE ENFORCEMENT:</b>                      U.C.C.J.E.A. and Parental Kidnapping Prevention Act govern another state's enforcement of Minnesota custody provision. §518D; 28 U.S.C. §1738A.                      Uniform Interstate Family Support Act governs another state's enforcement of child support order. §518C.</p>
<p><b>FIREARMS:</b>                      It is illegal for anyone subject to an OFP to possess a firearm or ammunition if the OFP was issued after a hearing and the person received notice (exception allowed for on-duty federal or state law enforcement officers and members of military) 18 U.S.C. §922(d)(8) &amp; (g)(8) and §925(a).                      Upon conviction for violation of OFP using a firearm the court may prohibit defendant from owning any firearm for 3 years to life, and firearm used shall be forfeited. §518B.01 subd. 14 (j) &amp; (m).                      For other violations defendant is prohibited from possessing pistol for 3 years, or longer if there have been subsequent violations; violations are gross misdemeanors. Property rights may not be abated but court can restrict access. §518B.01 subd. 14(l).</p>	<p><b>FIREARMS:</b>                      Treated as personal property; no statutory authority for prohibition on possession of firearms.</p>
<b>MISCELLANEOUS</b>	
<p><b>STATUTORY CONSTRUCTION:</b>                      518B is remedial statute and should be liberally construed in favor of the victim to advance its remedial purpose. <i>Swenson v. Swenson</i>, 490 N.W.2d 668 (1992).</p>	<p><b>STATUTORY CONSTRUCTION:</b></p>

ORDER FOR PROTECTION	TEMPORARY RELIEF IN DISSOLUTION
<b>REVIEW</b>	
<p><b>BY TRIAL COURT:</b>                      OFP actions are special proceedings and a motion for new trial is not authorized. <i>Steeves v. Campbell</i>, 508 N.W. 2d 817 (Minn. App. 1993).                      Generally a judge may review a referee's order [§484.70 subd.7(d)(e)]], but this right of review has been suspended indefinitely in Ramsey County. Minn. Sup. Ct. Ord. 6/3/2002.</p>	<p><b>BY TRIAL COURT:</b>                      Generally a judge may review a referee's order [§484.70 subd.7(d)(e)]], but this right of review has been suspended indefinitely in Ramsey County. Minn. Sup. Ct. Ord. 6/3/2002.</p>
<p><b>BY APPELLATE COURT:</b>                      OFP is a final order and is appealable. <i>Sweep v. Sweep</i>, 358 N.W.2d 451 (Minn. App. 1984).                      Even if OFP has expired, appellate courts may review if the issue is capable of repetition yet evading review. <i>Burkstrand v. Burkstrand</i>, 632 N.W.2d 206, FN2 (2001).</p>	<p><b>BY APPELLATE COURT:</b>                      Orders for temporary relief are not appealable. They may be reviewed on appeal of dissolution judgment only if the temporary order involves the merits and affects the judgment. <i>Korf v. Korf</i>, 553 N.W.2d 706 (Minn. App. 1996); Minn. R. Civ. App. P. 103.04.</p>

**ADDITIONAL COMMENTS:**

For a discussion by the Minnesota Supreme Court on the danger of "muddling ... three distinct and targeted statutory schemes" [Domestic Abuse Act, Marriage Dissolution chapter 518, and chapter 257], see *Baker v. Baker*, 494 N.W.2d (Minn. 1992).

"Judges considering actions brought under the Domestic Abuse Act should consider the uniqueness of the remedies available under the statute, as well as the potentially devastating consequences if such relief is not granted." *Mechtel v. Mechtel*, 528 N.W.2d 916 (Minn.Ct.App. 1995)

**SOURCE:**

This comparison chart was originally developed in 1997 as part of a technical assistance research project for the Second Judicial District Family and Juvenile Court judges and referees as part of the Ramsey County Unified Court Pilot Program. This chart was developed primarily by Southern Minnesota Regional Legal Services as part of the research organized by the Children's Law Center of Minnesota, and reviewed by many others.

The comparison chart was updated in April 2005 by Southern Minnesota Regional Legal Services, 166 East Fourth St. Suite 200, St. Paul, MN 55101.

Quick Reference Guide to Minnesota and Federal Firearms Bans in Domestic Violence Cases

Person Prohibited from Possessing a Firearm	Type of Firearms Prohibited	Length of the Prohibition	Statutory Authority & Maximum Penalty	Special Notes
Persons convicted of misdemeanor or gross misdemeanor VOPF under 518B.01, subd. 22	Any pistols	3 years from the date of conviction	518B.01, subd. 14(1) Up to 365 days & \$3000 fine	Court "shall" issue this ban upon a conviction. Ban applies even if the court does not notify defendant of the ban. 518B.01, subd. 14(k)
Persons convicted of 5 <sup>th</sup> Degree Domestic Assault under 609.2242 or 5 <sup>th</sup> Degree Assault under 609.224 if the victim was a family or household member	Any pistols	3 year from the date of conviction	609.2242, subd. 3(e) Up to 365 days & \$3000 fine	Court "shall" issue this ban upon a conviction. Ban applies even if the court does not notify defendant of the ban. 609.2242, subd. 3(d) Family or household members under 518B.01, subd. 2 are: spouses or former spouses, person related by blood, persons residing together or who have resided together in the past, co-parents, and persons involved in a significant romantic or sexual relationship
Person convicted of 5 <sup>th</sup> Degree Assault under 609.224 within 3 years of a prior assault conviction	Any pistols	3 year from the date of conviction	609.224, subd. 3(b) Up to 365 days & \$3000 fine	Statute does not provide that the ban is still in effect even if the defendant is not notified of the ban by the court. Prior assault conviction must be for 1 <sup>st</sup> , 2 <sup>nd</sup> , 3 <sup>rd</sup> , or 5 <sup>th</sup> degree assault
Persons convicted of harassment/stalking under 609.749	Any pistols	3 years from the date of conviction	609.749, subd. 8(c) Up to 365 days & \$3000 fine	Court "shall" issue this ban upon a conviction. Ban applies even if the court does not notify defendant of the ban. 609.749, subd. 8(b)
Respondent in a valid and qualifying OPF or RO	Any firearm or ammunition	While the OPF or RO is in effect	18 U.S.C. 922(g)(8) Up to 10 years & \$250,000 fine	Must verify that the Order is a qualifying order. (See reverse side) Military and Law enforcement personnel are exempted from this ban while on duty and when acting in an official capacity
Person convicted of a qualifying misdemeanor crime of domestic violence	Any firearm or ammunition	1 life, unless the conviction has been set aside or expunged	18 U.S.C. 922(g)(9) Up to 10 Years & \$250,000 fine	Must verify that the conviction is a qualifying conviction (See reverse side)

NOTE: Persons receiving a 609.13 disposition that has been vacated and dismissed would no longer be considered to have been convicted of the offense, so any firearms ban would end if and when the conviction is vacated and dismissed.

Created and distributed by the Hennepin County Family Violence Coordinating Council in July 2004. Drafted by Assistant Minneapolis City Attorney Michelle Jacobson. If you have questions about the applicability of these laws to a particular situation, please contact a legal advisor. For comments on the document, please contact the Family Violence Coordination Council.

**Quick Reference Guide to Minnesota and Federal Firearms Bans in Domestic Violence Cases**

Under **Minn. Stat. §624.712, Subd. 2**, a “pistol” is a weapon designed to be fired by the use of a single hand and with an overall length less than 26 inches, or having a barrel or barrels of a length less than 18 inches in the case of shotgun or having a barrel of a length less than 16 inches in the case of a rifle (a) from which may be fired or ejected one or more solid projectiles by means of a cartridge or shell or by the action of an explosive or the igniting of flammable or explosive substances; or (b) for which the propelling force is a spring, elastic band, carbon dioxide, air or other gas, or vapor. “Pistol” does not include a device firing or ejecting a shot measuring .18 of an inch, or less, in diameter and commonly known as a “BB gun”, a scuba gun, a stud gun or nail gun used in the construction industry or children’s pop guns or toys.

Under **18 U.S.C. 921(A)(3)**, the term “firearm” means (A) any weapon (including a starter gun) which will or is designed to or may readily be converted to expel a projectile by the action of an explosive; (b) the frame or receiver of any such weapon; (C) any firearm muffler or firearm silencer, or (D) any destructive device. Such term does not include an antique firearm.

Under **18 U.S.C. 921(a)(4)**, the term “destructive device” means---

- (A) any explosive, incendiary, or poison gas ---
  - (i) bomb,
  - (ii) grenade,
  - (iii) rocket having a propellant charge of more than four ounces,
  - (iv) missile having an explosive or incendiary charge of more than one-quarter ounce,
  - (v) mine, or
  - (vi) device similar to any of the devices described in the preceding clauses.
- (B) any type of weapon (other than shotgun or a shotgun shell which the Attorney General finds is generally recognized as particularly suitable for sporting purposes) by whatever name known which will, or which may be readily converted to, expel a projectile by the action of any explosive or other propellant, and which has been readily converted to, expel a projectile by the action of any explosive or other propellant, and which has any barrel with a bore of more than one-half inch in diameter; and
- (C) Any combination of parts either designed or intended for use in converting any device into any destructive device described in subparagraph (A) or (B) and from which a destructive device may be readily assembled.

Under **18 U.S.C. 921 (17)(A)**, the term “ammunition” means ammunition or cartridge cases, primers, bullets, or propellant powder designed for use in any firearm.

Under **18 U.S.C. 922 (G)(8)**, an **order is a qualifying order**, if all of the following are true:

1. The Respondent must have had actual notice of the hearing and an opportunity to participate in it.
2. The Petitioner for the Order is a current or former spouse, a co-parent, or one who cohabits or has cohabited with the subject of the protection order.
3. The order must prohibit either or both of the following:
  - Harassing, stalking or threatening an intimate partner or child of such partner OR
  - Engaging in other conduct which would place an intimate partner in reasonable fear of bodily injury to self or child.
4. The Order must also contain either or both of the following:
  - a finding that the person or subject to the order represents a credible threat or the physical safety of an intimate partner or child; OR
  - an explicit prohibition against the use, attempted use, or threat of physical force against an intimate partner or child which would be reasonably expected to cause bodily injury.

Under **18 U.S.C. 922 (g)(9)**, a **domestic assault conviction is a qualifying conviction**, if all of the following are true:

1. The crime convicted of is a federal, state or local offense that is a misdemeanor under federal or state law.
2. The crime convicted of has an element of either the use of attempted use of physical force, or the threatened use of a deadly weapon;
3. Was committed by a current or former spouse, parent, or guardian of the victim; a person with whom the victim shares a child in common; a person who is cohabiting or has cohabited with the victim as spouse, parent or guardian of the victim; or a person similarly situated to the spouse, parent, or guardian of the victim.
4. The conviction was obtained after the defendant had an attorney or knowingly waived the right to an attorney.
5. The conviction was obtained after the defendant either had a jury trial or knowingly and intelligently waived the right to a jury trial
6. The conviction has not been set aside or expunged, or the person has not been pardoned.

Created & distributed by the Hennepin County Family Violence Coordinating Council in July 2004. Drafted by Assistant Minneapolis City Attorney Michelle Jacobson. If you have questions about the applicability of these laws to a particular situation, please contact a legal advisor. For comments on the document contact the Family Violence Coordinating Council.

<p><b>Domestic Child Abuse</b></p> <p>Under Minn Stat. §626.556, cited in the form order for the <i>Ex Parte</i> Order for Protection, “physical abuse” means any physical injury inflicted by other than accidental means, but abuse does not include reasonable or moderate physical discipline of a child administered by a parent which does not result in injury. Actions which are not reasonable moderate include (but are not limited to) any of the following that are done in anger and without regard to the safety of the child: throwing, kicking, burning, tying, or cutting a child; striking a child with a closed fist, shaking a child under three; striking and causing injury to a child under 18 months; unreasonably interfering with the child’s breathing; threatening a child with a weapon; alcohol or dangerous, harmful, or controlled substances; using unreasonable physical confinement or restraint not permitted as reasonable force to restrain or correct a child including but not limited to tying, caging, or chaining a child. “Mental injury” to a child means an injury to the psychological capacity or emotional stability of a child as evidenced by an observable or substantial impairment in the child’s ability to function within a normal range of performance and behavior with due regard to the child’s culture. “Threatened injury” of a child means a statement or overt act or condition or status that represents a substantial risk of physical abuse or sexual abuse or mental injury.</p>	
<p><b>Terroristic Threats</b></p> <p>The definition of Terroristic Threats is to threaten, directly or indirectly, to commit any crime of violence with the purpose to terrorize another or in reckless disregard for the risk of causing such terror. This constitutes a substantial expansion of what is usually understood as domestic abuse. The crimes of violence listed in the referenced statute are: murder, manslaughter, criminal vehicular homicide or injury, assault, distribution/administration of drug(s) resulting in great bodily harm, robbery, kidnapping, false imprisonment, murder/manslaughter of an unborn child, criminal sexual conduct, tampering with a witness, arson, burglary of an occupied dwelling, burglary while armed, drive-by shooting, adulteration of food/drink/drug, shooting at/in a bus, shooting at/in a bus shelter, felony committed for the benefit of a gang, felony malicious punishment of a child, felony neglect of a child, felony endangerment of a child, felony harassment, felony stalking.</p>	

<p><b>Sexual Offenses</b></p> <p>Sexual offenses included in the definition of domestic abuse include: sexual penetration accompanied by threat with a weapon (or a dummy weapon), sexual penetration causing personal injury, sexual penetration under circumstances causing reasonable fear of harm, sexual penetration of a child between 13-15 where there is a position of authority, sexual contact accompanied by a weapon(or dummy weapon), sexual contact causing personal injury, sexual contact under circumstances causing reasonable fear of harm, sexual contact of a child under 13, sexual contact of a child 13-15 where there is a position of authority, sexual penetration with force, sexual penetration with coercion, sexual penetration of a child between 13-15, sexual penetration of a child between 16-18 where there is a position of authority, sexual penetration of a child between 16-18 where there is a significant relationship, sexual contact with force, sexual contact with coercion, sexual contact with a child between 13-15, sexual contact with a child between 16-18 where there is a position of authority, sexual contact with a child 16-18 where there is a significant relationship non-consensual sexual contact, masturbation to a child under 16, exhibition of masturbation to a child under 16.</p>	
<p><b>Interference with an Emergency Call</b></p> <p>The definition of domestic abuse includes the following: intentionally interrupting an emergency call, intentionally disrupting an emergency call, intentionally impeding an emergency call, intentionally interfering with an emergency call, intentionally preventing another from placing an emergency call, intentionally hindering another from placing an emergency call.</p>	

### MINIMUM WAGE CALCULATION

*It is presumed that a child support obligor is able-bodied and capable of being gainfully employed. If there is insufficient information to determine actual income, or if the obligor is voluntarily unemployed or underemployed, the Court may set child support based on 150% of minimum wage. Minn. Stat. §518.551 subd. 5b(d) & (e). Minimum wage moves from \$5.15 per hour to \$6.15 per hour effective August 1, 2005. Minn. Stat. §177.24 subd. 1(b); 2005 Minn. Sess. Law chapter 44. Child support is calculated as follows:*

40 hours X \$6.15/hr X 150% =	\$ 369.00 gross income per week
\$369 X 52 weeks =	\$ 19,188.00 gross income per year
\$19,188 divided by 12=	\$ 1,599.00 gross income per month

Monthly Gross Income	\$ 1599.00
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Federal Taxes <sup>1</sup>	- 256.32
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Net Monthly Income	- 62.00
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Net Monthly Income	\$ 1280.68
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Guideline Child Support for:

1 child=	\$1280.68 X 25% =	\$320.17
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2 children =	\$1280.68 X 30% =	\$384.04
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3 children =	\$1280.68 X 35% =	\$448.24
--------------	-------------------	----------

4 children =	\$1280.68 X 39% =	\$499.47
--------------	-------------------	----------

5 children =	\$1280.68 X 43% =	\$550.69
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6 children =	\$1280.68 X 47% =	\$601.92
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7+ children =	\$1280.68 X 50% =	\$640.34
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<sup>1</sup>Tax deductions are from 2005 tax tables, for single person with 1 exemption. "Federal Taxes" include amounts withheld for income, social security and medicare taxes.

# Child Support Calculation Guide

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**Supplemental materials  
essential to complete calculation  
are available online at:**

**[www.minncle.org/summaryguides/  
06childsupportcalculation/index.htm](http://www.minncle.org/summaryguides/06childsupportcalculation/index.htm)**

Visit this website to find the following information:

- Glossary of Terms
- Wage Chart
- Child and Dependent Care – Federal and Minnesota Tax Credit Tables
- Income Shares Guideline – Effective January 1, 2007
- MinnesotaCare Premium Table
- Child Care Assistance Co-Payment Table
- Federal Poverty Guidelines
- Financial Affidavit
- Minnesota Statutes 518 and 518A



For more information, please contact the  
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published by  
Minnesota Continuing Legal Education  
A division of the Minnesota State Bar Association



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80-267-07-01

## Frequently Asked Questions

**Q. Is everyone who is currently ordered to pay child support entitled to an automatic re-calculation using the new guidelines?**

No. A change in the law alone is not a basis for a change in an order. See Minn. Stat. Sec. 518A.39, subd. 2(i). In addition, until January 1, 2008, modifications will only be granted in limited situations set out in the law. See Minn. Stat. Sec. 518A.39, subd. 2(j).

**Q. When does the law apply?**

The provisions used to calculate parties' support obligations apply to actions or motions filed after January 1, 2007. Minnesota Session Laws 2006 Chapter 280, Section 44.

**Q. For cases filed after January 1, 2007, does the law apply to the calculation of past support (that accrued before January 1, 2007)?**

Yes. Past support will be calculated under the new law in cases filed after January 1, 2007, even if the time period is before January 1, 2007. Minnesota Session Laws 2006 Chapter 280, Section 44.

**Q. What is the purpose of the six-month review hearing?**

The court must review whether child support is current and whether both parties are complying with the parenting time provisions of the order. See Minn. Stat. § 518.1781(d).

**Q. Can the court require a residential parent to provide health care coverage or contribute to the cost of coverage provided by the other parent?**

Yes. Either parent may be ordered to provide health care coverage. See Minn. Stat. § 518A.26, subd. 14 and 518A.41, subd. 4. Both parents will typically be ordered to contribute to the cost of the coverage. (There are exceptions.) See Minn. Stat. § 518A.41, subd. 5 for both general rule and exceptions.

**Q. How will the court obtain information about each party's income?**

The law requires each party to file a financial affidavit with their pleadings. If a party does not serve and file a financial affidavit the court may set income for that party based on credible evidence before the court or may determine the party's potential income. See Minn. Stat. § 518A.28(a). A financial affidavit form has been drafted by the Department of Human Services as required by law. It can be found in supplemental materials or [www.dhs.state.mn.us](http://www.dhs.state.mn.us).

**Q. If a parent is primarily staying home to care for a child or children (i.e. not working, or working less than full-time) will income be attributed to that parent?**

Possibly, if home to care for a joint child. Definitely, if home to care for a nonjoint child. The law includes a rebuttable presumption that a parent can be gainfully employed on a full-time basis. What used to be called "imputed income" is now called "potential income." See Minn. Stat. § 518A.32, subd. 5.

**Q. When does the parenting expense adjustment apply?**

There must be a court order for parenting time or parenting time is being determined in the current proceeding. See Minn. Stat. § 518A.36, subd. 1.

## Checklists

### Information needed for child support calculation:

- Gross income of both parents.  
*See Minn. Stat. Sec. 518A.29*
- Number of joint children
- Percentage of court ordered parenting time
- Amount of any child support either parent is ordered to pay for nonjoint children.
- Amount of spousal maintenance either parent pays (in this case or any other).  
*Remember that spousal maintenance received (in this case or any other) should have been included in the recipient's gross income.*
- Number of nonjoint children
- Cost of dependent health care coverage (dependent portion only - not the entire "family coverage" premium)
- Cost of child care, if any

### Best practices

- Use a paystub to calculate gross wage or salary (not the W-2 form) since income spent on pre-tax accounts/benefits, must be included in gross.
- Find out if your client has health care coverage "available" even if not currently enrolled (or child not enrolled). It does not have to be group coverage to be "available."
- Bring the Summary of Benefits and documentation of the cost for any health care plan available.
- Submit the required Financial Affidavit.  
*See supplemental materials or [www.dhs.state.mn.us](http://www.dhs.state.mn.us)*
- Submit verification of child care cost, if any
- If your client is ordered to pay child support for a nonjoint child and/or spousal maintenance on another case, provide a copy of the most recent order addressing that issue.

# Child Support Guidelines Worksheet

For purposes of this worksheet, "Parent A" is the parent without primary physical custody. "Parent B" is the parent with primary physical custody. If both parents share presumptively equal parenting time, enter the name of the parent with the higher income as "Parent A."

PARENT A: \_\_\_\_\_

PARENT B: \_\_\_\_\_ NUMBER OF JOINT CHILDREN: \_\_\_\_\_

*For more detailed instructions on calculating monthly amounts, see instructions at [www.dhs.state.mn.us](http://www.dhs.state.mn.us)*

		PARENT A	PARENT B	COMBINED
<b>Income</b>	1a. <b>Monthly Income.</b> (Minn. Stat. § 518A.29) Enter monthly income received for each parent. (For self-employed income see Minn. Stat. § 518A.30.)			
	1b. <b>Social Security / Veterans' Benefits.</b> Enter the joint children's benefit amount in the column of the parent on whose eligibility the benefits are based. Leave blank if not applicable.			
	1c. <b>Potential Monthly Income.</b> (Minn. Stat. § 518A.32) Enter potential income, if any, for each parent.			
	1d. <b>Spousal Maintenance.</b> (Minn. Stat. § 518A.29(g)) Enter the amount either parent is ordered to pay to a former spouse or to the other party of this action.			
	1e. <b>Child Support Orders.</b> (Minn. Stat. § 518A.29(g)) Enter the monthly amount of all court ordered child support either parent is to pay for nonjoint children.			
	1f. <b>Total of Gross Monthly Income.</b> Add lines 1a + 1b - 1c - 1d - 1e for each parent.			
<b>Adjustments</b>	2a. <b>Number of Nonjoint Children.</b> Enter the number (up to 2 children) primarily residing with each parent AND for whom the parent does not have a court ordered support obligation.			
	2b. <b>Deduction for Nonjoint Children.</b> (Minn. Stat. § 518A.33) Take each parent's total income from line 1f and the number of nonjoint children from line 2a and apply the guidelines chart from the supplemental materials. Divide that amount by 2 and enter the amount of the deduction for each parent.			
	3. <b>Parental Income for Child Support (PICS).</b> (Minn. Stat. § 518A.26, subd. 15) Subtract line 2b from line 1f for each parent. Combine amounts for Parent A and Parent B and enter in third column.			
	4. <b>Percentage Share of Combined PICS.</b> Divide each parent's income from line 3 by the combined PICS in line 3, column 3.		%	%
	5. <b>Combined Basic Support Obligation.</b> Take combined PICS from line 3 and number of joint children and apply the guidelines chart from the supplemental materials. Enter amount from guidelines chart in combined column.			
	6. <b>Basic Support Obligation.</b> (Minn. Stat. § 518A.34) If court ordered parenting time is between 0 and 45%, multiply line 5 by line 4 for Parent A and enter results in Parent A's column. Enter zero for Parent B. If joint child(ren) does not reside with either parent, multiply line 5 by line 4 for each parent and enter the results in each Parent's column. If parents have presumptively equal parenting time, multiply line 5 by .75 and enter results in combined column.			
	7. <b>Parenting Expense Adjustment.</b> (Minn. Stat. § 518A.36) If court ordered parenting time is between 10% and 45%, multiply the amount in line 6 for Parent A by 12%. If court ordered parenting time is equal to or greater than 45.1%, multiply the amount listed on line 6 in the combined column by the percentages listed on line 4 for each parent and enter the amounts for each parent. If parenting time is less than 10% or no court ordered parenting time exists, enter zero for Parent A.			

		PARENT A	PARENT B	COMBINED
<b>Basic Child Support Obligation</b>	8. <b>Basic Support Obligation After Parenting Expense Adjustment.</b> Subtract line 7 from line 6 for Parent A and enter results in Parent A's column. For presumptively equal parenting time, subtract the lower amount from the higher amount on line 7 and enter in the column of the parent with the greater parental income.			
<b>Child Care Obligation</b>	9a. <b>Child Care Obligation for Joint Children.</b> (Minn. Stat. § 518A.40) Enter the actual monthly costs before tax credits in column for Parent B.			
	9b. <b>Tax Credits.</b> Federal and state limit for child care costs tax credit is \$250 for 1 child and \$500 for 2 or more children actually receiving child care. Enter either the limit amount (\$250 or \$500) or the actual costs from line 9a, whichever amount is less, in column for Parent B.			
	9c. <b>Federal Tax Credit of PICS.</b> Use the federal tax chart from the supplemental materials to find the percentage of tax credit for PICS on line 3 for Parent B.	%	%	
	9d. Multiply line 9b by line 9c for Parent B and enter results.			
	9e. <b>State Tax Credit of PICS.</b> Use the state tax chart from the supplemental materials to find the amount of tax credits for PICS on line 3 for Parent B.			
	9f. <b>Adjusted Child Care Costs.</b> Add amounts on line 9d and line 9e together and subtract this amount from line 9a. Enter this amount in Parent B's column.			
	9g. <b>Proportionate Share of Child Care Costs.</b> Multiply line 9f by Parent A's percentage share on line 1.			
	9h. <b>Low Income Obligor.</b> (Minn. Stat. § 518A.40, subd. 2) If Parent B receives child care assistance, and Parent A meets income limits for child care assistance, enter the monthly co-payment using the sliding scale fee from the Child Care Assistance Co-payment Table from the supplemental materials for Parent A.			
	9i. Compare the amounts of line 9g and line 9h and enter the smaller amount in Parent A's column.			
<b>Medical Support Obligation</b> Minn. Stat. § 518A.41	<i>If one parent will be ordered to provide private health care coverage for the joint child(ren), complete lines 10a – 10c. Do not complete line 11a or 11b. If neither parent has appropriate health care coverage available, skip lines 10a – 10c and complete either line 11a or 11b.</i>			
<b>Appropriate Insurance Available</b>	10a. <b>Monthly Cost of Health Care Coverage for Joint Child(ren).</b>			
	10b. <b>Proportionate Share of Health Care Coverage Costs.</b> Multiply line 10a by line 4 for each parent.			
	10c. Enter the amount from line 10b for the parent who is not providing coverage. Enter zero for the parent who is providing coverage.			
<b>No Appropriate Insurance Available</b>	11a. If the joint child(ren) receive(s) or is/are eligible for public coverage, apply Parent A's PICS from line 3 to the MinnesotaCare Premium Table from the supplemental materials; enter the corresponding amount. If Parent A's PICS exceeds the eligibility requirements, use the premium for the highest eligible income listed on the MinnesotaCare Premium Table. Leave Parent B's column blank. (Minn Stat. § 518A.41, subd. 4(f)(2)).			
	11b. If neither parent has appropriate health care coverage available and the joint child(ren) is/are not receiving MA or MNCare, enter zero in each Parent's column. Go to line 12 for each Parent's monthly medical expense obligation.			
<b>Uninsured/Unreimbursed Expenses</b>	12. Enter the percentage from line 4 for each parent to show the apportionment of unreimbursed or uninsured medical expenses.	%	%	

	PARENT A	PARENT B	COMBINED
<b>13. Sum of Basic Support, Child Care and Medical Support.</b> Add lines 8 + 9i + 10c or 11a or 11b and enter result in column for Parent A. Enter amount from line 10c, if any, in Parent B's column. If parents have presumptively equal parenting time, include the amount on line 8 for Parent B, if any.			
<b>Benefits Adjustment</b> 14. If Social Security or Veteran's benefits are received by Parent B as representative payee for joint child(ren) as a result of Parent A's disability or retirement, enter the amount of the joint child(ren)'s benefit in Parent A's column.			
<b>Computing a Final Obligation</b> 15. <b>Presumptive Child Support Obligation.</b> Subtract line 14 from line 13 for each parent; if negative value, enter zero.			
<b>Ability to Pay Calculation</b> 16a. Enter gross monthly income from line 1f for each parent.			
16b. <b>Self Support Reserve.</b> 120% of Federal Poverty Guidelines for 2006. * See supplemental materials for 2007 and subsequent years.		2007 FS \$102400*	
16c. <b>Income Available for Child Support.</b> Subtract line 16b from line 16a for each parent.			
17. <b>Monthly Support Obligation.</b> (Minn. Stat. § 518A.42) <ul style="list-style-type: none"> <li>If line 16c is greater than line 15, enter the figure from line 15. This is the Monthly Support Obligation to be ordered. Do not complete any more of the worksheet.</li> <li>If line 16c is negative, or less than \$50.01 for 1-2 joint children, \$75.01 for 3-4 joint children or \$100.01 for 5 or more joint children, skip to line 23a, 23b or 23c.</li> <li>If line 16c is higher than the amounts in the second bullet above but less than line 15, skip to line 18.</li> </ul>			
18. Enter amount from line 16c.			
<b>Support Obligation Adjustment</b> Reduce the amounts for medical support, child care support, and basic support in that order in lines 19 through 21 until the total reductions equal the amount on line 18.	<b>Original Amount Owed</b>	<b>Amount Adjusted</b>	<b>New Amount Owed</b>
19. Medical Support (if applicable) from line 10c or 11a.			
20. Child Care Obligation (if applicable) from line 9i.			
21. Basic Support (if applicable) from line 8.			
22. <b>Adjusted Monthly Support Obligation.</b> Add the amounts in column 3 for lines 19, 20 and 21. This is the monthly support obligation to be ordered. Do not complete lines 23a - 23c.			
<b>Presumptive Minimum Order - Order is for Basic Support Only</b> <b>For 1 or 2 joint children:</b> 23a. Order \$50 per month. This is the Monthly Support Obligation to be ordered. <b>For 3 or 4 joint children:</b> 23b. Order \$75 per month. This is the Monthly Support Obligation to be ordered. <b>For 5 or more joint children:</b> 23c. Order \$100 per month. This is the Monthly Support Obligation to be ordered.			

## Determining Monthly Support Obligation

Calculate Monthly Income Available for Support:

Gross Monthly Income (line 1)  
 - 120% Federal Poverty Guideline  
 = Income Available for Support

120% of FPG (2006) for a person or family of 1 is \$11,760 per year or \$980 per month.

For Federal Poverty Guidelines see supplemental materials.

**HELPFUL TIP**

If an obligor's gross monthly income is less than 120% FPG, the minimum order will be the presumptive order.

IF THE RESULT IS:

RESULTING MONTHLY SUPPORT OBLIGATION IS:

	1 - 2 Children	3 - 4 Children	5 or More Children
Negative (income less than 120% FPG)	\$50 (minimum order)	\$75 (minimum order)	\$100 (minimum order)
Less than minimum order for number of children	\$50 (minimum order)	\$75 (minimum order)	\$100 (minimum order)
More than self-support reserve plus applicable minimum order, but less than guidelines	Medical support, child care support and basic support must be reduced in that order until the total of the 3 obligations equals the income available for support.		
Equal to or greater than guidelines	Guidelines		

## Calculating Percentage of Parenting Time (Annual Basis)

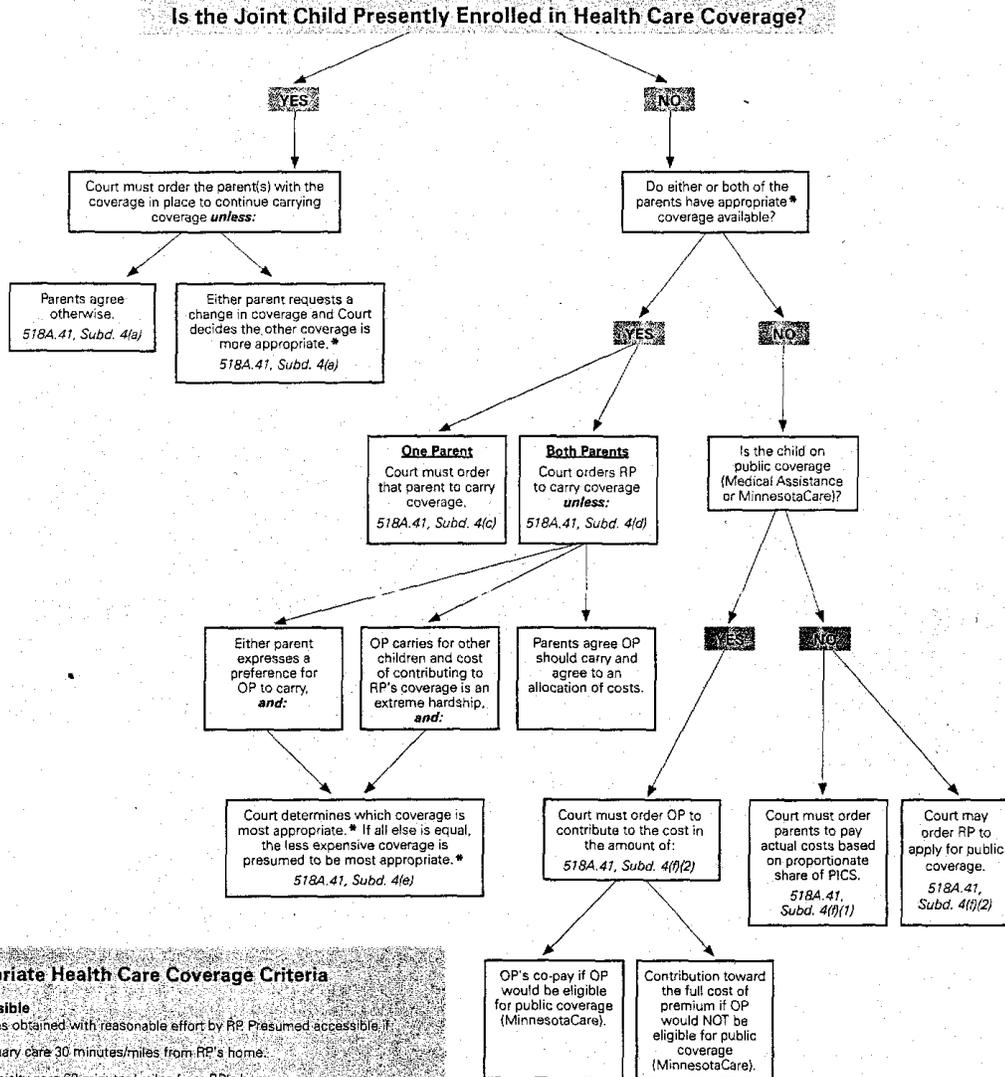
	PARENT A	PARENT B	COMBINED
<b>Number of Overnights (annually)</b> Enter the number of overnights per year each child spends with each parent. Each child's numbers should total 365.			
1. Child #1			
2. Child #2			
3. Child #3			
4. Child #4			
5. Child #5			
6. Child #6			
7. <b>Total Parenting Overnights.</b> Enter the total number of overnights each parent spends with the minor child(ren).			
8. <b>Total Overnights Available.</b> Multiply the total number of joint children by 365 to calculate total overnights available per year.			
9. <b>Percentage of Parenting Time.</b> Divide line 7 by line 8. Enter resulting percentage for each parent.	%	%	

## Parenting Expense Adjustment

PARENTING TIME (usually overnights)	NUMBER OF OVERNIGHTS PER YEAR	ADJUSTMENT
Less than 10%	36 overnights per year (approximately 3 overnights / month)	None
10% to 45%	37 - 164 overnights per year	12%
45.1% or more	165+ overnights per year	Presumptively equal parenting time formula

# Steps for Ordering Health Care Coverage

Minn. Stat. 518A.41, Subd. 4



**\* Appropriate Health Care Coverage Criteria**

1. **Accessible**  
Services obtained with reasonable effort by RP. Presumed accessible, if:
  - a. Primary care 30 minutes/miles from RP's home.
  - b. Specialty care 60 minutes/ miles from RP's home.
  - c. Coverage through an employer and parent expected to remain employed.
  - d. No pre-existing conditions that would delay coverage.
2. **Comprehensive**  
Presumed comprehensive if it includes medical and hospital coverage and provides for preventative, emergency, acute and chronic care.
3. **Affordable**  
Available at a reasonable cost.
4. **Special Medical Needs**  
Court must consider the child's special medical needs.

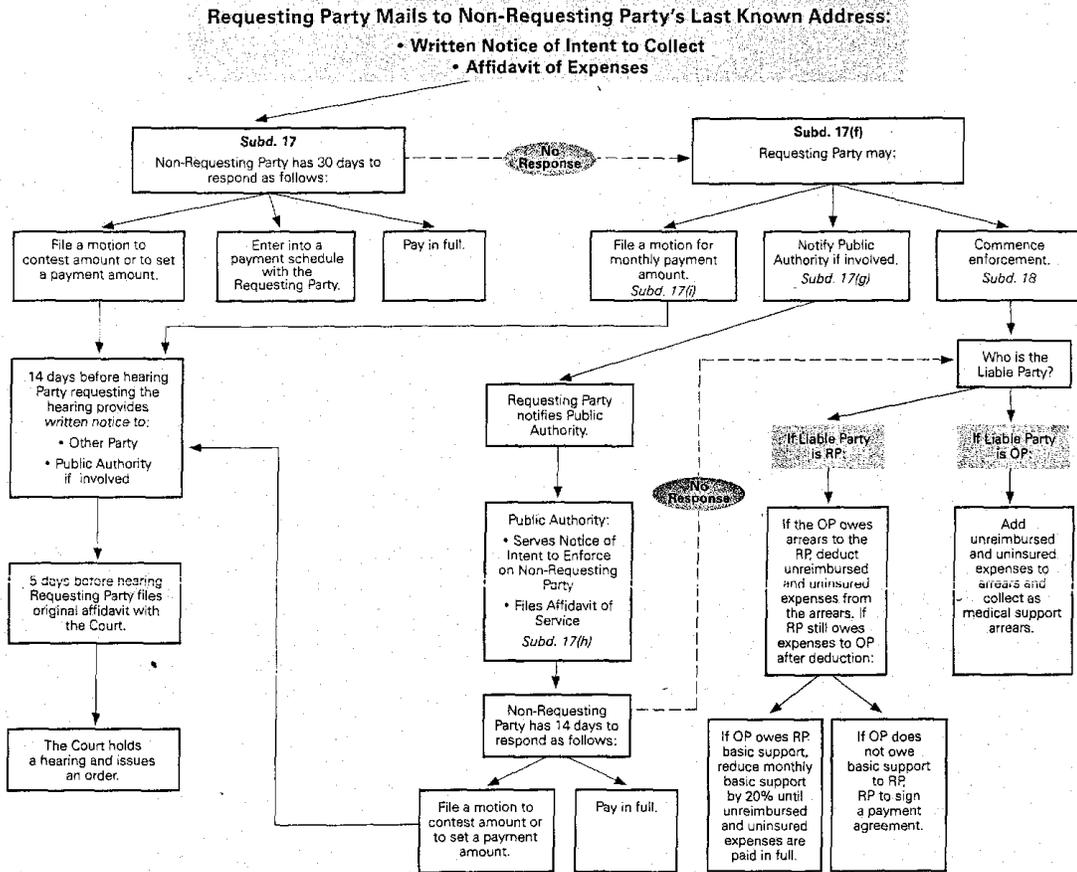
518A.41, Subd. 3(a)

**RP= Residential Parent:**  
a/k/a – Parent with whom the child resides; f/k/a – CP or custodial parent

**OP= Other Parent:**  
a/k/a – Parent with whom the child does not reside; f/k/a – NCP or noncustodial parent

# Collecting Unreimbursed and Uninsured Medical or Dental Expenses from the Last Two (2) Years\*

*Minn. Stat. 5518A.41, Subds. 17 and 18*



**RP= Residential Parent:**

a/k/a – Parent with whom the child resides; f/k/a – CP or custodial parent

**OP= Other Parent:**

a/k/a – Parent with whom the child does not reside; f/k/a – NCP or noncustodial parent

- You can only collect unreimbursed and uninsured expenses if there was a court order creating the obligation to contribute. Any unreimbursed and uninsured expenses greater than two (2) years cannot be collected. This limitation applies to court orders signed before January 1, 2007. *Minn. Stat. 5518A.41, Subd. 17(b)*

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**W**hy does domestic violence turn to murder? Can we measure the risk of death for a battered woman? Which women in abusive relationships are most likely to be killed?

One helpful tool for finding answers to these questions is called the Danger Assessment.<sup>1</sup> The series of 15 questions on the Danger Assessment is designed to measure a woman's risk in an abusive relationship. (See figure 1.)

### Figure 1: The Danger Assessment Tool

The Danger Assessment Tool was developed in 1985 and revised in 1988 after reliability and validity studies were done. Completing the Danger Assessment can help a woman evaluate the degree of danger she faces and consider what she should do next. Practitioners are reminded that the Danger Assessment is meant to be used with a calendar to enhance the accuracy of the battered woman's recall of events. The Danger Assessment can be printed from <http://www.son.jhmi.edu/research/CNR/homicide/DANGER.htm>, which also gives directions regarding permission for use.

**DANGER ASSESSMENT**  
*Jacquelyn C. Campbell, Ph.D., R.N.*  
 Copyright 1985, 1988

Several risk factors have been associated with homicides (murders) of both batterers and battered women in research conducted after the murders have taken place. We cannot predict what will happen in your case, but we would like you to be aware of the danger of homicide in situations of severe battering and for you to see how many of the risk factors apply to your situation.

Using the calendar, please mark the approximate dates during the past year when you were beaten by your husband or partner. Write on that date how bad the incident was according to the following scale:

1. Slapping, pushing, no injuries and/or lasting pain
2. Punching, kicking; bruises, cuts, and/or continuing pain
3. "Beating up"; severe contusions, burns, broken bones
4. Threat to use weapon; laceration, internal injury, permanent injury
5. Use of weapon; wounds from weapon

(If any of the descriptions for the higher number apply, use the higher number.)

Mark Yes or No for each of the following. ("He" refers to your husband, partner, ex-husband, ex-partner, or whoever is currently physically hurting you.)

1. Has the physical violence increased in frequency over the past year?
2. Has the physical violence increased in severity over the past year and/or has a weapon or threat from a weapon ever been used?
3. Does he ever try to choke you?
4. Is there a gun in the house?
5. Has he ever forced you to have sex when you did not wish to do so?
6. Does he use drugs? By drugs, I mean "uppers" or amphetamines, speed, angel dust, cocaine, "crack," street drugs, or mixtures.
7. Does he threaten to kill you and/or do you believe he is capable of killing you?
8. Is he drunk every day or almost every day? (In terms of quantity of alcohol.)
9. Does he control most or all of your daily activities? For instance: does he tell you who you can be friends with, how much money you can take with you shopping, or when you can take the car? (If he tries, but you do not let him, check here: )
10. Have you ever been beaten by him while you were pregnant? (If you have never been pregnant by him, check here: )
11. Is he violently and constantly jealous of you? (For instance, does he say "If I can't have you, no one can.")
12. Have you ever threatened or tried to commit suicide?
13. Has he ever threatened or tried to commit suicide?
14. Is he violent toward your children?
15. Is he violent outside of the home?

Total "Yes" Answers

**Thank you. Please talk to your nurse, advocate, or counselor about what the Danger Assessment means in terms of your situation.**

#### References:

- Campbell, Jacquelyn C., *Assessing Dangerousness: Violence by Sexual Offenders, Batterers, and Child Abusers*, Newbury Park, CA: Sage Publications, 1995.
- Campbell, Jacquelyn C., Phyllis W. Sharps, and Nancy Glass, "Risk Assessment for Intimate Partner Violence," in *Clinical Assessment of Dangerousness: Empirical Contributions*, ed. Georges-Franck Pinard and Linda Pagani, New York: Cambridge University Press, 2000: 136-157.

*A tool like the Danger Assessment—or another risk assessment process—may assist women (and the professionals who help them) to better understand the potential for danger and the level of their risk.*

A team of researchers studied the Danger Assessment and found that despite certain limitations, the tool can with some reliability identify women who may be at risk of being killed by their intimate partners. The study found that women who score 8 or higher on the Danger Assessment are at very grave risk (the average score for women who were murdered was just under 8). Women who score 4 or higher are at great risk (the average score for abused women was just over 3). The findings indicate that the Danger Assessment tool can assist in assessing battered women who may be at risk of being killed as well as those who are not.

The study also found that almost half the murdered women studied did not recognize the high level of their risk. Thus, a tool like the Danger Assessment—or another risk assessment process—may assist women (and the professionals who help them) to better understand the potential for danger and the level of their risk.

#### Limitations and Caveats

Eighty-three percent of the women who were killed had scores of 4 or higher, but so did almost 40 percent of the women who were *not* killed. This finding indicates that practitioners can use the Danger Assessment (like all intimate partner violence risk assessment tools) as a guide in the process rather than as a precise actuarial tool.<sup>2</sup>

It also indicates the need for a more precise cutoff score. Perhaps giving greater weight to certain questions, such as those related to guns and threats, could accomplish greater precision.

Cutoff scores should identify those who are at great risk of being killed, not miscategorize women who are not likely to be killed. Both categories are important because if the cutoff score is too high, women in extreme danger

may be missed. If the cutoff score is too low, women with a lower risk of being murdered may be scared unnecessarily, and potential perpetrators' liberty may be restricted unfairly. Although finding a realistic cutoff score is difficult, it is crucial and something the researchers will continue to study.

#### High Correlations: Guns and Threats to Kill

Previous studies have looked at the relationship of gun ownership or possession to intimate partner homicide, particularly when the partners live apart.<sup>3</sup> The Danger Assessment study found that women who were threatened or assaulted with a gun or other weapon were 20 times more likely than other women to be murdered. Women whose partners threatened them with murder were 15 times more likely than other women to be killed. When a gun was in the house, an abused woman was 6 times more likely than other abused women to be killed. (See figure 2.)

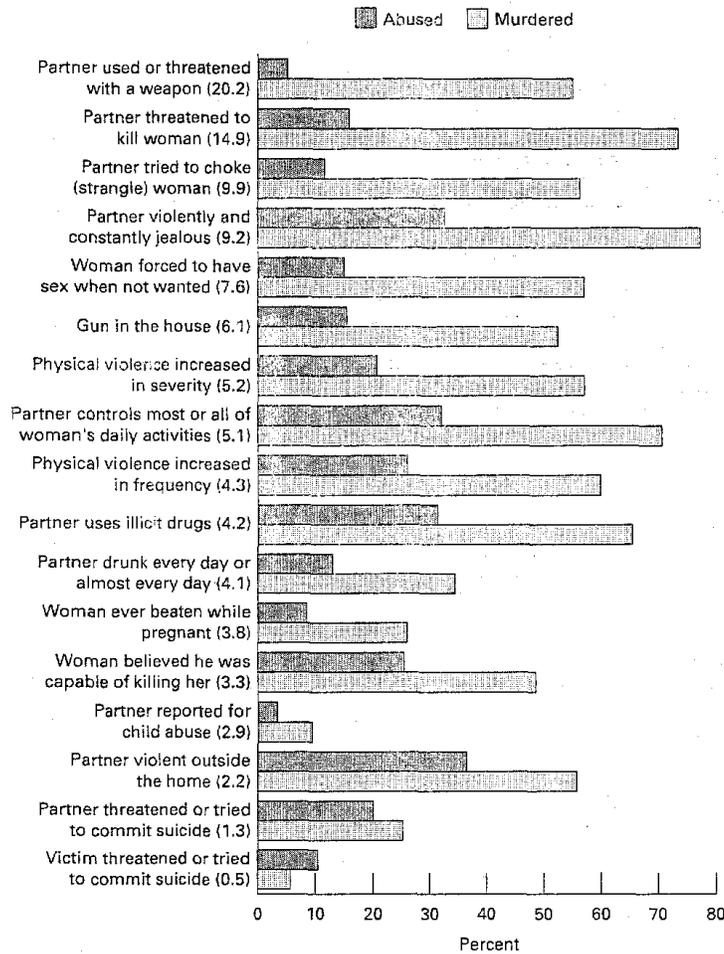
Although drug abuse or serious alcohol abuse (where the abuser was drunk every day or almost every day) also translates into increased risk and tends to separate batterers from intimate partners who kill, threats to kill, extreme jealousy, attempts to choke, and forced sex present higher risks.<sup>4</sup>

#### Low Correlation: Threatened or Attempted Suicide

Threatened or attempted suicide by either males or females in the study were not found to be predictors of intimate partner homicide. However, there is an increased risk of homicide when the man is suicidal and there has not been any physical abuse. Approximately one-third of the murders studied were homicide-suicides. Further analysis is needed to learn how a man's potential for suicide increases his partner's risk of becoming a homicide-suicide victim.

**Figure 2: Danger Assessment Risk Factors Among Murder Victims and Abused Women**

(The numbers in parentheses are unadjusted odds ratios and indicate the likelihood of being in the homicide versus the abused group.)\*



\* All items had significant odds ratio (95 percent confidence interval excludes the value of 1), except the last two factors (partner and victim suicidality).

*The Danger Assessment study found that women who were threatened or assaulted with a gun were 20 times more likely than other women to be murdered. Women whose partners threatened them with murder were 15 times more likely than other women to be killed.*

*In safety planning,  
an abuser's threats  
with a weapon or  
threats to kill  
should be rated  
as particularly  
serious, as  
should a possible  
murderer's access  
to a gun.*

### THE NUMBERS

Women are killed by intimate partners—husbands, lovers, ex-husbands, or ex-lovers—more often than by any other category of killer.<sup>1</sup> It is the leading cause of death for African-American women aged 15 to 45 and the seventh leading cause of premature death for U.S. women overall.<sup>2</sup> Intimate partner homicides make up 40 to 50 percent of all murders of women in the United States, according to city- or State-specific databases (as opposed to the Federal Supplementary Homicide Reports).<sup>3</sup> Significantly, the Federal report doesn't have an ex-boyfriend/ex-girlfriend category, which accounts for as much as 11 percent of intimate partner homicides of women and for 2 to 3 percent of intimate partner homicides committed by women.

In 70 to 80 percent of intimate partner homicides, no matter which partner was killed, the man physically abused the woman before the murder.<sup>4</sup> Thus, one of the primary ways to decrease intimate partner homicide is to identify and intervene promptly with abused women at risk.

1. Mercy, James A., and Linda E. Saltzman, "Fatal Violence Among Spouses in the United States, 1975-85," *American Journal of Public Health* 79 (1989): 595-599; Bailey, James E., Arthur L. Kellermann, Grant W. Somes, Joyce G. Banton, Frederick P. Rivara, and Norman B. Rushforth, "Risk Factors for Violent Death of Women in the Home," *Archives of Internal Medicine* 157(7) (1997): 777-782; and Bachman, Ronet, and Linda E. Saltzman, *Violence Against Women: Estimates From the Redesigned Survey*, Washington, DC: U.S. Department of Justice, Bureau of Justice Statistics and National Institute of Justice, 1995 (NCJ 154348).
2. Office of Justice Programs, *Violence by Intimates: Analysis of Data on Crimes by Current or Former Spouses, Boyfriends, and Girlfriends*, Bureau of Justice Statistics Factbook, Washington, DC: U.S. Department of Justice, March 1998 (NCJ 167237).
3. Campbell, Jacquelyn C., "If I Can't Have You, No One Can: Power and Control in Homicide of Female Partners," in *Femicide: The Politics of Woman Killing*, ed. Jill Radford and Diana E.H. Russell, New York: Twayne Publishers, 1992: 99-113; and Langford, Linda, Nancy Isaac, and Stacey Kabat, "Homicides Related to Intimate Partner Violence in Massachusetts," *Homicide Studies* 2(4) (1998): 353-377.
4. Pataki, George, *Intimate Partner Homicides in New York State*, Albany, NY: State of New York, 1997; Office of Justice Programs, *Violence by Intimates*; Campbell, "If I Can't Have You"; McFarlane, Judith M., Jacquelyn C. Campbell, Susan A. Wilt, Carolyn J. Sachs, Yvonne Ulrich, and Xiao Xu, "Stalking and Intimate Partner Femicide," *Homicide Studies* 3(4) (1999): 300-316; and Campbell, Jacquelyn C., *Assessing Dangerousness: Violence by Sexual Offenders, Batterers, and Child Abusers*, Newbury Park, CA: Sage Publications, 1995.

This study did not examine the risk faced by men of intimate partner homicide when the woman was suicidal, so this factor's weight was not determined.<sup>5</sup> However, since the question of whether a woman is suicidal is important for prevention efforts, the researchers recommend that it remain on the assessment.

### The Safety Plan

In safety planning, an abuser's threats with a weapon or threats to kill should be rated as particularly serious, as should a possible murderer's access to a gun. Thus, the researchers suggest that the legal prohibition against gun ownership

for those convicted of domestic violence is especially important to enforce, and any protection order should include firearms search-and-seizure provisions.

However, criminal justice practitioners making decisions about an alleged batterer's bail or sentencing should keep in mind that more than a third of women who had a score of 4 or higher were not murdered. The research showed that only a score of 8 or 9 reliably identified those women who were killed. Thus, while the current cutoff score of 4 suggests the need for great caution and for protective action, it does not reliably identify a woman's risk of death.

NCJ 196547

*In safety planning, an abuser's threats with a weapon or threats to kill should be rated as particularly serious, as should a possible murderer's access to a gun. Thus, the researchers suggest that the legal prohibition against gun ownership for those convicted of domestic violence is especially important to enforce, and any protection order should include firearms search-and-seizure provisions.*

#### For more information

- Background information on the Danger Assessment plus the full text of the questionnaire is available at <http://www.son.jhmi.edu/research/CNR/homicide/DANGER.htm>.

#### Notes

1. Pataki, George, *Intimate Partner Homicides in New York State*, Albany, NY: State of New York, 1997; Campbell, Jacquelyn C., Phyllis W. Sharps, and Nancy Glass, "Risk Assessment for Intimate Partner Violence," in *Clinical Assessment of Dangerousness: Empirical Contributions*, ed. Georges-Franck Pinard and Linda Pagani, New York: Cambridge University Press, 2000: 136-157; Bennett, Lauren, Lisa Goodman, and Mary Ann Dutton, "Risk Assessment Among Batterers Arrested for Domestic Violence," *Violence Against Women: An International and Interdisciplinary Journal* 6(11) (2000): 1190-1203; and Weisz, Arlene N., Richard M. Tolman, and Daniel G. Saunders, "Assessing the Risk of Severe Domestic Violence: The Importance of Survivors' Predictions," *Journal of Interpersonal Violence* 15(1) (2000): 75-90.
2. An actuarial instrument is one that provides weightings and published scores that have been shown through formal and independent research to predict violent outcomes. See Roehl, Jan, and Kristin Guertin, *Current Use of Dangerousness Assessments in Sentencing Domestic Violence Offenders*, Pacific Grove, CA: State Justice Institute, 1998; and Quinsey, Vernon L., Grant T. Harris, Marnie E. Rice, and Catherine A. Cormier, *Violent Offenders: Appraising and Managing Risk* (1st ed.), Washington, DC: American Psychological Association, 1998.
3. Campbell, Jacquelyn C., Daniel Webster, Jane Koziol-McLain, Carolyn Rebecca Block, Doris Williams Campbell, Faye Gary, Judith M. McFarlane, Carolyn Sachs, Phyllis W. Sharps, Yvonne Ulrich, Susan A. Wilt, Jennifer Manganello, Xiao Xu, Janet Schollenberger, and Victoria Frye, "Risk Factors for Femicide in Abusive Relationships: Results From a Multisite Case Control Study," *American Journal of Public Health* (93) (2003): 1089-1097.
4. See Sharps, Phyllis W., Jacquelyn C. Campbell, Doris Williams Campbell, Faye Gary, and Daniel Webster, "The Role of Alcohol Use in Intimate Partner Femicide," *American Journal on Addictions* 10(2) (2001): 1-14, for a complete multivariate analysis of substance abuse of both the perpetrator and victim in these data.
5. Browne, Angela, Kirk R. Williams, and Donald G. Dutton, "Homicide Between Intimate Partners," in *Homicide: A Sourcebook of Social Research*, ed. M. Dwayne Smith and Margaret A. Zahn, Thousand Oaks, CA: Sage Publications, 1999: 149-164.

STATE OF MINNESOTA  
IN SUPREME COURT

C2-87-1089

In re Domestic Abuse Advocates

ORDER

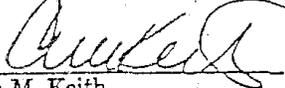
Pursuant to the recommendations of the Minnesota Supreme Court Task Force for Gender Fairness in the Courts,

IT IS HEREBY ORDERED:

1. In all proceedings before the trial court under Minnesota Statutes 518B, domestic abuse advocates shall be allowed to attend and sit at counsel table, confer with the victim, and, at the judge's discretion, address the court.
2. In criminal trial court proceedings, domestic abuse advocates shall be allowed to accompany the victim, confer with the victim and, at sentencing, at the judge's discretion, be heard by the judge.
3. Court administrators shall allow domestic abuse advocates to assist victims of domestic violence in the preparation of petitions for protection orders.
4. When they assist victims of domestic violence as specified in this order, domestic abuse advocates are not engaged in the unauthorized practice of law.

DATED: February 5, 1991

BY THE COURT



A.M. Keith  
Chief Justice

OFFICE OF  
APPELLATE COURTS

FEB 05 1991

**FILED**

**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](#); criminal sexual conduct, within the meaning of section [609.342](#), [609.343](#), [609.344](#), [609.345](#), or [609.3451](#); or interference with an emergency call within the meaning of section [609.78, subdivision 2](#).

(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.

(c) "Qualified domestic violence-related offense" has the meaning given in section [609.02, subdivision 16](#).

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. There are no residency requirements that apply to a petition for an order for protection. 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, the sheriff of any county in this state, and other law enforcement and corrections officers 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 or other law enforcement or corrections officer 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.

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

**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 for hearing unless an ex parte order is issued.

(b) If an ex parte order has been issued under subdivision 7 and the petitioner seeks only the relief under subdivision 7, paragraph (a), a hearing is not required unless:

- (1) the court declines to order the requested relief; or
- (2) one of the parties requests a hearing.

(c) If an ex parte order has been issued under subdivision 7 and the petitioner seeks relief beyond that specified in subdivision 7, paragraph (a), or if the court declines to order relief requested by the petitioner, a hearing must be held within seven days. Personal service of the ex parte order may be made upon the respondent at any time up to 12 hours prior to the time set for the hearing, provided that the respondent at the hearing may request a continuance of up to five days if served fewer than five days prior to the hearing which continuance shall be granted unless there are compelling reasons not to.

(d) If an ex parte order has been issued only granting relief under subdivision 7, paragraph (a), and the respondent requests a hearing, the hearing shall be held within ten days of the court's receipt of the respondent's request. 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 subdivision, the court may set a new hearing date no more than five days later.

(e) If for good cause shown either party is unable to proceed at the initial hearing and requests a continuance and the court finds that a continuance is appropriate, the hearing may be continued. Unless otherwise agreed by the parties and approved by the court, the continuance shall be for no more than five days. If the court grants the requested continuance, the court shall also issue a written order continuing all provisions of the ex parte order pending the issuance of an order after the hearing.

(f) Notwithstanding the preceding provisions of this subdivision, 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 or other law enforcement or corrections officer 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 (d).

**Subd. 6. Relief by 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 parenting time with regard to minor children of the parties on a basis which gives primary consideration to the safety of the victim and the children. In addition to the primary safety considerations, the court may consider particular best interest factors that are found to be relevant to the temporary custody and parenting time award. Findings under section [257.025](#), [518.17](#), or [518.175](#) are not required with respect to the particular best interest factors not considered by the court. If the court finds that the safety of the victim or the children will be jeopardized by unsupervised or unrestricted parenting time, the court shall condition or restrict parenting time as to time, place, duration, or supervision, or deny parenting time entirely, as needed to guard the safety of the victim and the children. The court's decision on custody and parenting time shall in no way delay the issuance of an order for protection granting other relief provided for in this section. The court must not enter a parenting plan

Appendix-IX

under section [518.1705](#) as part of an action for an order for protection;

(5) on the same basis as is provided in chapter 518 or 518A, 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 518A;

(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, including requiring the abusing party to successfully complete a domestic abuse counseling program or educational program under section [518B.02](#);

(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 have no contact with the petitioner whether in person, by telephone, mail, or electronic mail or messaging, through a third party, or by any other means;

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

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

(13) 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 other law enforcement or corrections officer as provided by this section;

(14) direct the care, possession, or control of a pet or companion animal owned, possessed, or kept by the petitioner or respondent or a child of the petitioner or respondent; and

(15) direct the respondent to refrain from physically abusing or injuring any pet or companion animal, without legal justification, known to be owned, possessed, kept, or held by either party or a minor child residing in the residence or household of either party as an indirect means of intentionally threatening the safety of such person.

(b) Any relief granted by the order for protection shall be for a period not to exceed two years, except when the court determines a longer 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) or (3), 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.**

(a) 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;

(3) the respondent has engaged in the act of stalking within the meaning of section [609.749, subdivision 2](#); or

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

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

(b) Relief granted by the order for protection may be for a period of up to 50 years, if the court finds:

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

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

An order issued under this paragraph may restrain the abusing party from committing acts of domestic abuse; or prohibit the abusing party from having any contact with the petitioner, whether in person, by telephone, mail or electronic mail or messaging, through electronic devices, through a third party, or by any other means.

**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, including a

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reasonable area surrounding the dwelling or residence, which area shall be described specifically in the order, 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;

(4) ordering the abusing party to have no contact with the petitioner whether in person, by telephone, mail, e-mail, through electronic devices, or through a third party;

(5) continuing all currently available insurance coverage without change in coverage or beneficiary designation;

(6) directing the care, possession, or control of a pet or companion animal owned, possessed, or kept by a party or a child of a party; and

(7) directing the respondent to refrain from physically abusing or injuring any pet or companion animal, without legal justification, known to be owned, possessed, kept, or held by either party or a minor child residing in the residence or household of either party as an indirect means of intentionally threatening the safety of such person.

(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. When signed by a referee, the ex parte order becomes effective upon the referee's signature. Upon request, a hearing, as provided by this section, shall be set. 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; notice.**

(a) The petition and any order issued under this section shall be served on the respondent personally. In lieu of personal service of an order for protection, a law enforcement officer may serve a person with a short form notification as provided in subdivision 8a.

(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, including the short form notification, 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 parenting time proceeding, the court shall consider the order for protection in making a decision regarding parenting time.

**Subd. 8a. Short form notification.**

(a) In lieu of personal service of an order for protection under subdivision 8, a law enforcement officer may serve a person with a short form notification. The short form notification must include the following clauses: the respondent's name; the respondent's date of birth, if known; the petitioner's name; the names of other protected parties; the

date and county in which the ex parte order for protection or order for protection was filed; the court file number; the hearing date and time, if known; the conditions that apply to the respondent, either in checklist form or handwritten; and the name of the judge who signed the order.

The short form notification must be in bold print in the following form:

The order for protection is now enforceable. You must report to your nearest sheriff office or county court to obtain a copy of the order for protection. You are subject to arrest and may be charged with a misdemeanor, gross misdemeanor, or felony if you violate any of the terms of the order for protection or this short form notification.

(b) Upon verification of the identity of the respondent and the existence of an unserved order for protection against the respondent, a law enforcement officer may detain the respondent for a reasonable time necessary to complete and serve the short form notification.

(c) When service is made by short form notification, it may be proved by the affidavit of the law enforcement officer making the service.

(d) For service under this section only, service upon an individual may occur at any time, including Sundays, and legal holidays.

(e) The superintendent of the Bureau of Criminal Apprehension shall provide the short form to law enforcement agencies.

**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 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. 9a. Service by others.**

Peace officers licensed by the state of Minnesota and corrections officers, including, but not limited to, probation officers, court services officers, parole officers, and employees of jails or correctional facilities, may serve an order for protection.

**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. Modifying or vacating order.**

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

(b) If the court orders relief under subdivision 6a, paragraph (b), the respondent named in the order for protection may request to have the order vacated or modified if the order has been in effect for at least five years and the respondent has not violated the order during that time. Application for relief under this subdivision must be made in the county in which the order for protection was issued. Upon receipt of the request, the court shall set a hearing date. Personal service must be made upon the petitioner named in the order for protection not less than 30 days before the date of the hearing. At the hearing, the respondent named in the order for protection has the burden of proving by a preponderance of the evidence that there has been a material change in circumstances and that the reasons upon which the court relied in granting or extending the order for protection no longer apply and are unlikely to occur. If the court finds that the respondent named in the order for protection has met the burden of proof, the court may vacate or modify the order. If the court finds that the respondent named in the order for protection has not met the burden of proof, the court shall deny the request and no request may be made to vacate or modify the order for protection until five years have elapsed from the date of denial. An order vacated or modified under this paragraph must be personally served on the petitioner named in the 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 and any continuance of 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 and any continuance of an 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) A person who violates an order for protection issued by a judge or referee 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 by a judge or referee or pursuant to a similar law of another state, the United States, the District of Columbia, tribal lands, or United States territories, and the respondent or person to be restrained knows of the existence 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 within ten years of a previous qualified domestic violence-related offense conviction or adjudication of delinquency. 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) within ten years of the first of two or more previous qualified domestic violence-related offense convictions or adjudications of delinquency; 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.

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(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, the United States, the District of Columbia, tribal lands, or United States territories 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 probable cause required under this paragraph includes probable cause that the person knows of the existence of the order. If the order has not been served, the officer shall immediately serve the order whenever reasonably safe and possible to do so. An order for purposes of this subdivision, includes the short form order described in subdivision 8a. When the order is first served upon the person at a location at which, under the terms of the order, the person's presence constitutes a violation, the person shall not be arrested for violation of the order without first being given a reasonable opportunity to leave the location in the presence of the peace officer. A person arrested under this paragraph 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 United States, the District of Columbia, tribal lands, or United States territories, 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, the United States, the District of Columbia, tribal lands, or United States

territories, 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.

**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 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.**

(a) 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 either (i) a misdemeanor punishable by imprisonment for up to 90 days or a fine of up to \$1,000, or both, (ii) a gross misdemeanor punishable by imprisonment of up to one year or a fine of up to \$3,000, or both, or (iii) a felony punishable by imprisonment of up to five years or a fine of up to \$10,000, 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).

(b) If the court grants relief under subdivision 6a, paragraph (b), the order for protection must also contain a conspicuous notice to the respondent or person to be restrained that the respondent must wait five years to seek a modification of the order.

**Subd. 19. Recording required.**

Proceedings under this section must be recorded.

**Subd. 19a. Entry and enforcement of foreign protective orders.**

(a) As used in this subdivision, "foreign protective order" means an order for protection entered by a court of another state; an order by an Indian tribe or United States territory that would be a protective order entered under this chapter; a temporary or permanent order or protective order to exclude a respondent from a dwelling; or an order that establishes conditions of release or is a protective order or sentencing order in a criminal prosecution arising from a domestic abuse assault if it had been entered in Minnesota.

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(b) A person for whom a foreign protection order has been issued or the issuing court or tribunal may provide a certified or authenticated copy of a foreign protective order to the court administrator in any county that would have venue if the original action was being commenced in this state or in which the person in whose favor the order was entered may be present, for filing and entering of the same into the state order for protection database.

(c) The court administrator shall file and enter foreign protective orders that are not certified or authenticated, if supported by an affidavit of a person with personal knowledge, subject to the penalties for perjury. The person protected by the order may provide this affidavit.

(d) The court administrator shall provide copies of the order as required by this section.

(e) A valid foreign protective order has the same effect and shall be enforced in the same manner as an order for protection issued in this state whether or not filed with a court administrator or otherwise entered in the state order for protection database.

(f) A foreign protective order is presumed valid if it meets all of the following:

(1) the order states the name of the protected individual and the individual against whom enforcement is sought;

(2) the order has not expired;

(3) the order was issued by a court or tribunal that had jurisdiction over the parties and subject matter under the law of the foreign jurisdiction; and

(4) the order was issued in accordance with the respondent's due process rights, either after the respondent was provided with reasonable notice and an opportunity to be heard before the court or tribunal that issued the order, or in the case of an ex parte order, the respondent was granted notice and an opportunity to be heard within a reasonable time after the order was issued.

(g) Proof that a foreign protective order failed to meet all of the factors listed in paragraph (f) is an affirmative defense in any action seeking enforcement of the order.

(h) A peace officer shall treat a foreign protective order as a valid legal document and shall make an arrest for a violation of the foreign protective order in the same manner that a peace officer would make an arrest for a violation of a protective order issued within this state.

(i) The fact that a foreign protective order has not been filed with the court administrator or otherwise entered into the state order for protection database shall not be grounds to refuse to enforce the terms of the order unless it is apparent to the officer that the order is invalid on its face.

(j) A peace officer acting reasonably and in good faith in connection with the enforcement of a foreign protective order is immune from civil and criminal liability in any action arising in connection with the enforcement.

(k) Filing and service costs in connection with foreign protective orders are waived.

### **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 and Domestic Abuse, 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.

Subd. 22.

[Repealed, [2010 c 299 s 15](#)]

**Subd. 23. Prohibition against employer retaliation.**

(a) An employer shall not discharge, discipline, threaten, otherwise discriminate against, or penalize an employee regarding the employee's compensation, terms, conditions, location, or privileges of employment, because the employee took reasonable time off from work to obtain or attempt to obtain relief under this chapter. Except in cases of imminent danger to the health or safety of the employee or the employee's child, or unless impracticable, an employee who is absent from the workplace shall give 48 hours' advance notice to the employer. Upon request of the employer, the employee shall provide verification that supports the employee's reason for being absent from the workplace. All information related to the employee's leave pursuant to this section shall be kept confidential by the employer.

(b) An employer who violates paragraph (a) is guilty of a misdemeanor and may be punished for contempt of court. In addition, the court shall order the employer to pay back wages and offer job reinstatement to any employee discharged from employment in violation of paragraph (a).

(c) In addition to any remedies otherwise provided by law, an employee injured by a violation of paragraph (a) may bring a civil action for recovery of damages, together with costs and disbursements, including reasonable attorneys fees, and may receive such injunctive and other equitable relief, including reinstatement, as determined by the court.

**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](#); [1997 c 96 s 3](#); [1997 c 239 art 7 s 11-15](#); [1998 c 367 art 5 s 1-5](#); [2000 c 437 s 1-4](#); [2000 c 444 art 1 s 7](#); [art 2 s 42,43](#); [2000 c 445 art 2 s 8](#); [1Sp2001 c 8 art 10 s 1-5](#); [2002 c 282 s 1,2](#); [2002 c 304 s 9-11](#); [2004 c 145 s 1](#); [2004 c 164 s 1](#); [2004 c 228 art 1 s 72](#); [2005 c 10 art 2 s 4](#); [2005 c 76 s 1](#); [2005 c 136 art 8 s 20](#); [art 17 s 5](#); [2005 c 164 s 29](#); [1Sp2005 c 7 s 28](#); [2006 c 260 art 1 s 10,11](#); [art 5 s 48](#); [2006 c 280 s 45](#); [2007 c 54 art 2 s 1](#); [2008 c 316 s 1-5](#); [2010 c 299 s 4,5,14](#)

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**609.748 HARASSMENT; RESTRAINING ORDER.**

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**Subdivision 1. Definition.**

For the purposes of this section, the following terms have the meanings given them in this subdivision.

(a) "Harassment" includes:

(1) a single incident of physical or sexual assault or 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, regardless of the relationship between the actor and the intended target;

(2) targeted residential picketing; and

(3) a pattern of attending public events after being notified that the actor's presence at the event is harassing to another.

(b) "Respondent" includes any adults or juveniles alleged to have engaged in harassment or organizations alleged to have sponsored or promoted harassment.

(c) "Targeted residential picketing" includes the following acts when committed on more than one occasion:

(1) marching, standing, or patrolling by one or more persons directed solely at a particular residential building in a manner that adversely affects the safety, security, or privacy of an occupant of the building; or

(2) marching, standing, or patrolling by one or more persons which prevents an occupant of a residential building from gaining access to or exiting from the property on which the residential building is located.

**Subd. 2. Restraining order; jurisdiction.**

A person who is a victim of harassment may seek a restraining order from the district court in the manner provided in this section. The parent, guardian, or stepparent of a minor who is a victim of harassment may seek a restraining order from the district court on behalf of the minor.

**Subd. 3. Contents of petition; hearing; notice.**

(a) A petition for relief must allege facts sufficient to show the following:

(1) the name of the alleged harassment victim;

(2) the name of the respondent; and

(3) that the respondent has engaged in harassment.

A petition for relief must state whether the petitioner has had a previous restraining order in effect against the respondent. The petition shall be accompanied by an affidavit made

under oath stating the specific facts and circumstances from which relief is sought. The court shall provide simplified forms and clerical assistance to help with the writing and filing of a petition under this section and shall advise the petitioner of the right to sue in forma pauperis under section [563.01](#). The court shall advise the petitioner of the right to request a hearing. 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. Upon receipt of the petition and a request for a hearing by the petitioner, the court shall order a hearing. Personal service must be made upon the respondent not less than five days before the hearing. If personal service cannot be completed in time to give the respondent the minimum notice required under this paragraph, the court may set a new hearing date. Nothing in this section shall be construed as requiring a hearing on a matter that has no merit.

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

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

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

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

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

**Subd. 3a. Filing fee; cost of service.**

The filing fees for a restraining order under this section are waived for the petitioner if the petition alleges acts that would constitute a violation of section [609.749, subdivision 2](#) or 3, or sections [609.342](#) to [609.3451](#). 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. 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. 4. Temporary restraining order.**

(a) The court may issue a temporary restraining order ordering the respondent to cease or avoid the harassment of another person or to have no contact with that person if the petitioner files a petition in compliance with subdivision 3 and if the court finds reasonable grounds to believe that the respondent has engaged in harassment. When a petition alleges harassment as defined by subdivision 1, paragraph (a), clause (1), the petition must further allege an immediate and present danger of harassment before the court may issue a temporary restraining order under this section. When signed by a referee, the temporary order becomes effective upon the referee's signature.

(b) Notice need not be given to the respondent before the court issues a temporary restraining order under this subdivision. A copy of the restraining order must be served on the respondent along with the order for hearing and petition, as provided in subdivision 3. If the respondent is a juvenile, whenever possible, a copy of the restraining order, along with notice of the pendency of the case and the time and place of the hearing, shall also be served by mail at the last known address upon any parent or guardian of the juvenile respondent who is not the petitioner. A temporary restraining order may be entered only against the respondent named in the petition.

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

(d) If the temporary restraining order has been issued and the respondent requests a hearing, the hearing shall be scheduled by the court upon receipt of the respondent's request. 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 the 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 subdivision, the court may set a new hearing date.

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

**Subd. 5. Restraining order.**

(a) The court may grant a restraining order ordering the respondent to cease or avoid the harassment of another person or to have no contact with that person if all of the following occur:

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

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

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

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

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

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

**Subd. 6. Violation of restraining order.**

(a) A person who violates a restraining order 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), when a temporary restraining order or a restraining order is granted under this section and the respondent knows of the order, violation of the order is a misdemeanor.

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

(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 the order:

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

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

(3) by falsely impersonating another;

(4) while possessing a dangerous weapon;

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

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

(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 issued under subdivision 4 or 5 if the existence of the order can be verified by the officer.

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

(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 an order issued under subdivision 4 or 5, the court may issue an order to the respondent requiring the respondent to appear within 14 days and show cause why the respondent should not be held in contempt of court. The court also shall refer the violation of the order to the appropriate prosecuting authority for possible prosecution under paragraph (b), (c), or (d).

**Subd. 7. Copy to law enforcement agency.**

An order granted under 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 issued under this section.

**Subd. 8. Notice.**

(a) An order granted under this section must contain a conspicuous notice to the respondent:

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

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

(3) that a peace officer must arrest without warrant and take into custody a person if the peace officer

has probable cause to believe the person has violated a restraining order.

(b) If the court grants relief for a period of up to 50 years under subdivision 5, the order must also contain a conspicuous notice to the respondent that the respondent must wait five years to seek a modification of the order.

**Subd. 9. Effect on local ordinances.**

Nothing in this section shall supersede or preclude the continuation or adoption of any local ordinance which applies to a broader scope of targeted residential picketing conduct than that described in subdivision 1.

**Subd. 10. Prohibition against employer retaliation.**

(a) An employer shall not discharge, discipline, threaten, otherwise discriminate against, or penalize an employee regarding the employee's compensation, terms, conditions, location, or privileges of employment, because the employee took reasonable time off from work to obtain or attempt to obtain relief under this section. Except in cases of imminent danger to the health or safety of the employee or the employee's child, or unless impracticable, an employee who is absent from the workplace shall give 48 hours' advance notice to the employer. Upon request of the employer, the employee shall provide verification that supports the employee's reason for being absent from the workplace. All information related to the employee's leave pursuant to this section shall be kept confidential by the employer.

(b) An employer who violates paragraph (a) is guilty of a misdemeanor and may be punished for contempt of court. In addition, the court shall order the employer to pay back wages and offer job reinstatement to any employee discharged from employment in violation of paragraph (a).

(c) In addition to any remedies otherwise provided by law, an employee injured by a violation of paragraph (a) may bring a civil action for recovery of damages, together with costs and disbursements, including reasonable attorneys fees, and may receive such injunctive and other equitable relief, including reinstatement, as determined by the court.

**History:**

[1990 c 461 s 5](#); [1991 c 170 s 1,2](#); [1992 c 571 art 6 s 15-17](#); [1993 c 326 art 2 s 14-21](#); [1Sp1993 c 5 s 4](#); [1994 c 636 art 2 s 48](#); [1995 c 226 art 6 s 13](#); [1995 c 259 art 3 s 17](#); [1997 c 96 s 5](#); [1997 c 239 art 11 s 5](#); [1998 c 367 art 5 s 8,9](#); [2000 c 476 s 1-3](#); [1Sp2001 c 8 art 10 s 13,14](#); [1Sp2003 c 2 art 8 s 14-16](#); [2004 c 145 s 2](#); [2004 c 228 art 1 s 72](#); [2005 c 136 art 8 s 21](#); [2005 c 136 art 17 s 44-45](#); [2006 c 260 art 1 s 28](#); [2008 c 316 s 6-8](#)

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## Supervised Visitation or Safe Exchange

In domestic abuse cases, when considering whether to order a family/friend/community member or a professional provider, to facilitate **supervised visitation** or **safe exchange**, there may be concerns that:

- 1) The child(ren) will be harmed;
- 2) Inappropriate subjects will be discussed with the child(ren);
- 3) The child(ren) will witness abuse; and/or
- 4) The adult victim may not be safe from direct offense.

### Family/Friend/Community Member –vs- Professional Provider

- A) If there is concern about the physical or emotional safety of the child(ren), supervised visitation through a professional provider becomes important.

Here are a few things to consider:

- Family members and friends are ill-equipped and not trained to intervene when something may be said or done that could potentially hurt the child.
  - Because of how we are socialized to “mind our own business,” it’s hard enough for professional visitation staff to intervene quickly and when necessary, to interrupt or end the visit. It is even harder for volunteers, family members, or friends to intervene when needed.
  - Having come from the same family or community system, family/friend supervisors may have a limited understanding of what constitutes healthy, safe interactions with these children during times of high conflict and danger.
  - It may be uncomfortable for the parent to be supervised by someone who is or may have been a peer or friend. It may be even harder on the visiting parent to be supervised by a friend or relative of the other parent, whom they consider to be at odds with their interests in a visitation/custody battle.
  - It may be difficult to capture impartial observations of situations, should incidents occur.
- B) If the **only** concern in an unsupervised environment is that without supervision of visits or exchanges, the adult victim may not be safe from a direct offense OR face-to-face contact may cause the children to witness abuse, THEN a family/community member facilitator for supervised visitation or safe exchange may offer a solution. (The only way this type of third party supervised visitation could be recommended as a viable solution is if there is no concern that the child(ren) could be harmed in any way by the third party’s supervision and that both parents are free from immediate harm while under the third party supervision.)

If a family/community member or friend facilitates supervised visitation, here are a few

things to consider:

- The third party must be able to garner the trust of both adult parties in order for peaceful compliance of the visit or exchange to occur in a regular and timely manner. This can be difficult to maintain for an extended period. It is nearly impossible to retain the trust of both parties in the long run when the third party is a relative or friend.
- It is difficult for the third party/family or friend to hold both adult parties accountable because of how that action may impact their personal relationship with either or both parties.
- Should the court find an impartial observation valuable for future custody/visitation considerations, it can be difficult to gain an impartial observation from family/community members.
- This third party should understand the commitment they are making to regular and consistent schedule of visits. This is true of the time they commit and their ability to hold each party accountable to the visitation schedule. This is often a greater responsibility than the family/community member realizes. They should end the arrangement should accountability in visitation schedule become difficult for either parents or supervisor.
- In some cases, the third party could become susceptible to manipulation by one or the other parent. That third party must immediately resign their supervisory capacity should they begin to feel misused in anyway.

In general, this arrangement should be reconsidered as soon as either party has a problem with contact, reliability, availability, fairness, allegations, etc. Additionally, some contend that if there's a risk of direct or indirect harm to anyone, a professional provider may be the only solution for visits or exchanges.

## **Myths or Stigma about Supervised Visitation through a Professional Provider**

**Too Expensive** – Children’s Safety Center (CSC) has a variety of service levels that range in cost to clients from \$10 for exchanges, \$15 for transitional visits, \$30 for level B supervised visits and up to \$60 per parent for Level A supervised visits. CSC also has a sliding fee available through philanthropic grants that further reduces those co-pays by up to 60%.

**Only for kids directly abused** - Children suffer from the affects of domestic violence whether they are experiencing physical abuse or not. In fact, there are studies indicating greater damage sustained by children experiencing emotional abuse.

**Waiting list** – With 4 locations and services 7 days and 5 evenings a week, CSC almost always has visitation slots available. Sometimes a client may need to take a second choice time or location until their first choice opens up. Almost without exception, our only waiting list is for those that want to change time or location.

**Sterile/penal environment** – CSC functions from a basis of non-judgment and respect for all involved. It is our goal to make it a healthy, happy place for children while providing the safety that’s needed for these circumstances. 90-95% of clients routinely indicate through surveys that they’ve been treated respectfully and feel safe during services at CSC.

**CSC is for women** – We value family and the opportunity for children to have safe access to their parents. We are impartial to gender or custodial status, but put the safety of victims, whether adult or child, at the top of our priorities.

**Not culturally relevant** – While we still have some way to go, we are working with communities of color to assist us in making our services culturally relevant, with particular emphasis on the Hmong, Somali, and Spanish-speaking communities.

- a) **Language** – though somewhat more limited, we offer services in Spanish currently and are working to develop Hmong and Somali language visits.
- b) **They take care of it in their own communities** – some communities have very different understandings of domestic violence and it could be very difficult for victims to get the protection and support they need within their own community. It also could cause them great embarrassment within their own community.

**Only for kids 3-10 years** – CSC serves children ages 0 – 17 through four different visitation rooms that are age appropriate, including ping-pong, air hockey, pool table, and even limited use of Sony Playstation.

**One service fits all** – We offer a continuum of services including three levels of supervised visitation, safe exchanges, supervised phone calls, and monitored mail, trying to meet the real needs of the families.

**Transportation barrier** –

- a) **Too far** – 4 locations
- b) **Kids out of county** – 4 locations
- c) **Petitioner has no car** - We have always been on a busline and see less than a handful of clients using that form of transportation in any given year. They seem to choose friends and family, instead. When the bus is used, we work with the clients to assure safe arrival and departure.

**McDonald's works just fine** – It lead to a false sense of security and often erupts into arguments in front of the children.

**It’s best to keep it in the family** – It can seem easiest and most friendly to the child to have a family member supervise. Considering the tendency children have toward pleasing adults and loved ones, the contrast could be

actually true. This can be most difficult for the child, confused by divided loyalties they may feel. They may feel limited in expressing or showing the extent of their feelings if they think another family member may object.

**It's not fair to the father** – We've been accused of being "for moms" or "for dads." The reality is that we believe that children benefit from having regular contact and a relationship with both parents, as long as that can be safe and healthy. We are never neutral on victim safety, but we are impartial between the genders and custodial status. This needs to be a safe environment for all parties.

**It's not comfortable for the kids** – We are a very kid-friendly environment. We find that the children frequently get excited about coming to the safety center. Even the older children and teens find activities and the equipment enjoyable while here. It tends to be the parents who have a harder time adjusting to the discomfort of being observed in their parenting. The parent's comfort usually increases after a few visits with us as well. They soon discover that we are not here to judge them, but support them in having a relationship with their child.

**He/she shouldn't have (doesn't deserve) access at all** – This is a statement we hear somewhat routinely, particularly when some harm has come to the children. While there is certainly benefit for the visiting parent using CSC, we don't believe that it is as much an entitlement of the parent, but instead a right of the child to have access to his/her parent.

**If petitioner doesn't ask, we can't order** – Since the existence and benefits of supervised visitation isn't broadly known, some guidance in this area could prove very valuable to the families. Because of this, some courts make orders for supervised visitation regardless of whether it's been requested by the parties.

**Petitioners and their attorneys know all that they need** – The field of supervised visitation is very young and extremely underfunded, therefore has not been able to reach out to the community to the degree that would be most appreciated. The general public has little to no understanding of supervised visitation and attorneys sometimes have limited knowledge and misunderstanding of the services. The service also varies some from one provider to another as there are no regulating or certifying bodies in Minnesota. So even if they are aware of the service, they have little opportunity to be good consumers of supervised visitation services. Standards of practice can be found through the website of our multinational professional association, Supervised Visitation Network (SVN), [www.svnetwork.net](http://www.svnetwork.net).

**Observation notes will tell us what we need to know for further custody and visitation decisions.** - Professional supervised visitation providers should not be confused with evaluators of anyone's ability to parent their child. The only thing providers can attest to is that the visitation took place with or without incident in a closely supervised environment. This is no testament to parenting outside of this supervision. One might conclude that a parent that behaves him/herself in this environment may be more likely to practice good behavior outside of close supervision.

**With a year or more of good observation notes, respondent would be considered safe for unsupervised visits.** – Each case will have different needs and should be reviewed with some frequency to best meet the needs of the families. CSC has three levels of supervised visitation in which families can progress to less restrictive environments as they indicate success at higher levels. Some families might also go on to safe exchange as they gain skills and safety risks reduce. A family can start at any level, go toward greater or lesser restrictions as the case or the court indicates. This can serve as a better tool to determine the next steps than trying to predetermine length of time the service is needed. Families can stay with CSC as long as they deem our services valuable.