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State of Minnesota

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HOUSE OF REPRESENTATIVES

EIGHTY-SIXTH
SESSION

HOUSE FILE No. **1396**

March 5, 2009

Authored by Paymar and Hayden

The bill was read for the first time and referred to the Committee on Civil Justice

March 8, 2010

Committee Recommendation and Adoption of Report:

To Pass and re-referred to the Committee on Public Safety Policy and Oversight

March 23, 2010

Committee Recommendation and Adoption of Report:

To Pass as Amended

Read Second Time

1.1 A bill for an act
1.2 relating to domestic abuse; authorizing courts to include pets and companion
1.3 animals in protective orders; amending Minnesota Statutes 2008, section
1.4 518B.01, subdivisions 6, 7.

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

1.6 Section 1. Minnesota Statutes 2008, section 518B.01, subdivision 6, is amended to read:

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

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

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

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

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

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

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

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

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

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

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

2.19 (10) order the abusing party to have no contact with the petitioner whether in
2.20 person, by telephone, mail, or electronic mail or messaging, through a third party, or
2.21 by any other means;

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

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

2.25 (13) order, in its discretion, other relief as it deems necessary for the protection of
2.26 a family or household member, including orders or directives to the sheriff or other law
2.27 enforcement or corrections officer as provided by this section;

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

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

2.35 (b) Any relief granted by the order for protection shall be for a period not to exceed
2.36 two years, except when the court determines a longer period is appropriate. When a

3.1 referee presides at the hearing on the petition, the order granting relief becomes effective
3.2 upon the referee's signature.

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

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

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

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

3.18 Sec. 2. Minnesota Statutes 2008, section 518B.01, subdivision 7, is amended to read:

3.19 Subd. 7. **Ex parte order.** (a) Where an application under this section alleges an
3.20 immediate and present danger of domestic abuse, the court may grant an ex parte order for
3.21 protection and granting relief as the court deems proper, including an order:

3.22 (1) restraining the abusing party from committing acts of domestic abuse;

3.23 (2) excluding any party from the dwelling they share or from the residence of the
3.24 other except by further order of the court;

3.25 (3) excluding the abusing party from the place of employment of the petitioner or
3.26 otherwise limiting access to the petitioner by the abusing party at the petitioner's place of
3.27 employment;

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

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

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

3.34 (7) directing the respondent to refrain from physically abusing or injuring any pet or
3.35 companion animal, without legal justification, known to be owned, possessed, kept, or

4.1 held by either party or a minor child residing in the residence or household of either party
4.2 as an indirect means of intentionally threatening the safety of such person.

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

4.6 (c) Subject to paragraph (d), an ex parte order for protection shall be effective for
4.7 a fixed period set by the court, as provided in subdivision 6, paragraph (b), or until
4.8 modified or vacated by the court pursuant to a hearing. When signed by a referee, the ex
4.9 parte order becomes effective upon the referee's signature. Upon request, a hearing, as
4.10 provided by this section, shall be set. Except as provided in paragraph (d), the respondent
4.11 shall be personally served forthwith a copy of the ex parte order along with a copy of
4.12 the petition and, if requested by the petitioner, notice of the date set for the hearing. If
4.13 the petitioner does not request a hearing, an order served on a respondent under this
4.14 subdivision must include a notice advising the respondent of the right to request a hearing,
4.15 must be accompanied by a form that can be used by the respondent to request a hearing
4.16 and must include a conspicuous notice that a hearing will not be held unless requested
4.17 by the respondent within five days of service of the order.

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

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

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