
Domestic Abuse Laws in Minnesota

An Overview

This information brief summarizes the major features of Minnesota laws dealing with domestic abuse.

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Domestic Abuse Act

Minnesota's Domestic Abuse Act ([chapter 518B](#)) provides an action for an order for protection (OFP) in cases of domestic abuse; describes the relief available in OFP proceedings; establishes procedures for OFP proceedings; and contains the penalties for violation of an OFP. The provisions of Minnesota's Domestic Abuse Act apply to OFPs issued under the Domestic Abuse Act or a similar law of another state, the United States, tribal lands, or U.S. territories.

Domestic Abuse Act Definitions

Domestic abuse. The Domestic Abuse Act defines domestic abuse to mean the following conduct, if committed against a family or household member by a family or household member:

- ▶ physical harm, bodily injury, or assault
- ▶ the infliction of fear of imminent physical harm, bodily injury, or assault
- ▶ terroristic threats, within the meaning of [section 609.713](#), subdivision 1; or criminal sexual conduct, within the meaning of [sections 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

[Minn. Stat. § 518B.01](#), subd. 2¹

Family or household member. A “family or household member” means the following:

- ▶ spouses and former spouses
- ▶ parents and children
- ▶ persons related by blood
- ▶ persons who are presently residing together or who have resided together in the past
- ▶ persons who have a child in common regardless of whether they have been married or have lived together at any time
- ▶ 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

¹ If conduct meets this definition, a six-year statute of limitations for assault, battery, false imprisonment, or other tort applies. [Minn. Stat. § 541.05](#).

- ▶ persons involved in a significant romantic or sexual relationship

In determining involvement in a significant romantic or sexual relationship, the court must consider the length of the relationship; type of relationship; frequency of interaction between the parties; and, if the relationship has terminated, the length of time since the termination. [Minn. Stat. § 518B.01, subd. 2.](#)

Relief Available Under the Domestic Abuse Act

Petition for relief. A petition for relief under the Domestic Abuse Act is known as a petition for an OFP in cases of domestic abuse. A petition for relief may be made by any family or household member.

In the case of a minor, the petition may be made by a family or household member or guardian, or, if the court finds 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 who is age 16 or older may make the 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.

The petition must allege the existence of domestic abuse and be accompanied by an affidavit stating the specific facts and circumstances from which relief is sought. The petition must state whether the petitioner has ever had an OFP in effect against the respondent and provide information on other designated legal proceedings that are in effect between the parties. [Minn. Stat. § 518B.01, subd. 4.](#)

Relief available. In a proceeding for an OFP under the Domestic Abuse Act, the court may provide the following relief, upon notice and hearing:

- ▶ restrain the abusing party from committing acts of domestic abuse
- ▶ exclude the abusing party from the dwelling which the parties share or from the residence of the petitioner
- ▶ exclude the abusing party from a reasonable area surrounding the dwelling or residence
- ▶ award temporary custody or establish temporary visitation with regard to minor children of the parties on a basis which gives primary consideration to the safety of the victim and the children
- ▶ 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

- ▶ upon request of the petitioner, provide counseling or other social services for the parties, if married, or if there are minor children
- ▶ order the abusing party to participate in treatment or counseling services
- ▶ award temporary use and possession of property and make other orders regarding property
- ▶ exclude the abusing party from the place of employment of the petitioner or otherwise limit the abusing party's access to the petitioner at the petitioner's place of employment;
- ▶ order the abusing party to pay restitution to the petitioner
- ▶ order the continuance of all currently available insurance coverage without change in coverage or beneficiary designation
- ▶ order, in its discretion, other relief it deems necessary for the protection of a family or household member, including orders or directives to the sheriff or constable

Relief that is granted by the order is for a fixed period of time, not to exceed one year, except when the court determines a longer fixed period is appropriate.² [Minn. Stat. § 518B.01, subd. 6.](#)

Marriage dissolution issues. The part of an order that restrains the abusing party from committing acts of domestic abuse may not be vacated or modified in a proceeding for dissolution of marriage or legal separation. The court, however, upon notice of motion and motion, may hear a motion for modification of an OFP concurrently with a proceeding for dissolution of marriage. If the proceedings are consolidated and the motion to modify is granted, a separate order for modification of an OFP must be issued.

If a proceeding for dissolution of marriage or legal separation is pending between the parties, the court shall provide a copy of the OFP to the court with jurisdiction over the dissolution or separation proceeding. [Minn. Stat. § 518B.01, subd. 6.](#)

Dwelling issues. The part of an order excluding the abusing party from the dwelling that the parties share, or from the residence of the petitioner, is not voided by the admittance of the abusing party into the dwelling from which the abusing party is excluded. [Minn. Stat. § 518B.01, subd. 6.](#)

A person's right to apply for relief is not affected by the person's leaving the residence or household to avoid abuse. [Minn. Stat. § 518B.01, subd. 10.](#)

Other civil or criminal remedies. Proceedings under the Domestic Abuse Act are in addition to other civil or criminal remedies. [Minn. Stat. § 518B.01, subd. 16.](#)

² An order is also effective upon a referee's signature.

Application of OFP. An OFP that is granted under the Domestic Abuse Act applies throughout the state. Also, under the federal Violence Against Women Act of 1994, the OFP is enforceable in all 50 states, the District of Columbia, tribal lands, and U.S. territories. [Minn. Stat. § 518B.01, subd. 20](#); [18 U.S.C. § 2265](#).

A valid foreign protective order issued by an Indian tribe or a court in another state has the same effect and shall be enforced in the same manner as an OFP issued in this state. [Minn. Stat. § 518B.01, subd. 19a](#).

Distribution of OFP and change in residence. The court administrator is to forward each OFP to the local law enforcement agency with jurisdiction over the residence of the applicant within 24 hours of the order's issuance. Each law enforcement agency must make available to other law enforcement agencies information as to the existence and status of any OFP.

If the applicant notifies the court administrator of a change in the applicant's residence, which results in a different local law enforcement agency having jurisdiction over the residence, the OFP must be forwarded by the court administrator to the new law enforcement agency within 24 hours of the notice. Also, if the applicant notifies the new law enforcement agency that an OFP has been issued and the applicant has established a new residence within that agency's jurisdiction, the local law enforcement agency shall request a copy of the order from the court administrator within 24 hours. [Minn. Stat. § 518B.01, subd. 13](#).

Extensions of orders and subsequent orders. The court may extend the relief granted in an existing OFP or, if an earlier OFP is no longer in effect when an application for subsequent relief is made, grant a new order. An extension or new order may be granted upon a showing that:

- ▶ the respondent has violated a prior or existing OFP;
- ▶ the petitioner is reasonably in fear of physical harm from the respondent;
- ▶ the respondent has engaged in acts of harassment or stalking within the meaning of section 609.749, subdivision 2; or
- ▶ the respondent is incarcerated and about to be released, or has recently been released.

A petitioner does not need to show imminent physical harm to obtain an extension or subsequent order. [Minn. Stat. § 518B.01, subd. 6a](#).

Modification of orders. The court may modify the terms of an existing OFP upon application, notice to all parties, and hearing. [Minn. Stat. § 518B.01, subd. 11](#).

Ex parte orders. The court may grant an ex parte order (an order granted upon request of the petitioner, without notice to the respondent) where an application for relief alleges an immediate and present danger of domestic abuse. The court may grant the relief it deems proper, including:

- ▶ restraining the abusing party from committing acts of domestic abuse;
- ▶ excluding any party from the dwelling they share or from the residence of the other except by further order of the court;
- ▶ 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
- ▶ continuing all currently available insurance coverage without change in coverage or beneficiary designation.

If an ex parte order has been issued, a full hearing must take place at the request of the petitioner or respondent. The respondent has five days from the service of the order to request a hearing. The ex parte order shall be effective for a fixed period set by the court or until modified or vacated by the court pursuant to a hearing.³ [Minn. Stat. § 518B.01, subd. 7.](#)

If the petitioner seeks ex parte relief beyond asking the court to restrain the abusing party from committing acts of domestic abuse, the petitioner must request a hearing to seek the additional relief. [Minn. Stat. § 518B.01, subd. 7.](#)

Procedural Matters

Jurisdiction. An application for relief under the Domestic Abuse Act may be filed in any of the following:

- ▶ the court having jurisdiction over dissolution actions or the county of residence of either party
- ▶ the county in which a pending or completed family court proceeding involving the parties or their minor children was brought
- ▶ the county in which the alleged domestic abuse occurred

There are no residency requirements that must be met in order to petition for an OFP.

Actions under the Domestic Abuse Act are to be given docket priority by the court. [Minn. Stat. § 518B.01, subd. 3.](#)

Filing fee. The filing fees for an OFP under the Domestic Abuse Act are waived for the petitioner. Also, the court administrator, sheriff, and law enforcement and corrections officers must perform their duties relating to service of process without charge to the petitioner.

³ An order is also effective upon a referee's signature.

Corrections officers include probation officers, court services officers, parole officers, and employees of jails or correctional facilities. [Minn. Stat. § 518B.01, subd. 3a.](#)

Service. The Domestic Abuse Act requires that the petition and any order issued under the act be served upon the respondent personally. In lieu of personal service of an OFP, a law enforcement officer may serve a respondent with a short form notification and the respondent must report to the nearest sheriff's office or county court to obtain a copy of the OFP. If personal service cannot be made, the court may order service of the petition and any order by alternative means or by publication. [Minn. Stat. § 518B.01, subds. 8 and 8a.](#)

Service of a petition under the Domestic Abuse Act may be made upon an employee at the employee's place of employment or upon a student at a postsecondary institution. [Minn. Stat. § 543.20.](#)

Sheriff assistance in service or execution. When the court issues an order upon request of the petitioner, the court must order the sheriff or constable to accompany the petitioner and assist the petitioner in obtaining possession of the dwelling or residence. The sheriff or constable also must assist in execution or service of the OFP. If the respondent is not in the county where the application for relief was brought, the sheriff must forward the pleadings necessary for service to the sheriff in the county in which the respondent is present. [Minn. Stat. § 518B.01, subd. 9.](#)

Court's duties. The court's duties include:

- ▶ providing simplified forms and clerical assistance to help with the writing and filing of a petition;
- ▶ advising the petitioner of the right to file a motion and affidavit and to sue *in forma pauperis*;
- ▶ assisting with the writing and filing of the motion and affidavit;
- ▶ advising the petitioner of the right to serve the respondent by published notice, if the respondent is avoiding personal service by concealment or otherwise, and assisting with the writing and filing of the motion and affidavit;
- ▶ advising the petitioner of the right to seek restitution under the petition for relief;
- ▶ advising the petitioner of the right to request a hearing and that the respondent may request a hearing if the petitioner does not request a hearing; and
- ▶ advising the petitioner of the right to request supervised parenting time.

[Minn. Stat. § 518B.01, subd. 4.](#)

Notice as to parenting time. A petition and order must include a notice to the respondent that, if an OFP is issued to protect the petitioner or a child of the parties, the court must, on request of the petitioner, consider the OFP when making parenting-time decisions. [Minn. Stat. § 518B.01, subd. 8.](#)

Hearing. Upon receipt of the petition, the court shall order a hearing held not later than 14 days from the date of the order for the hearing unless the order is ex parte. Service of the notice of hearing must be made not less than five days before the hearing. Personal service of an ex parte order may be made upon the respondent at any time up to 12 hours before the hearing, but the respondent may request a five-day continuance. [Minn. Stat. § 518B.01, subd. 5.](#)

Admissibility of testimony. Any testimony offered by a respondent in a hearing under the Domestic Abuse Act is inadmissible in a criminal proceeding. [Minn. Stat. § 518B.01, subd. 15.](#)

OFP notice provision. Each OFP granted under the Domestic Abuse Act must contain a conspicuous notice to the person to be restrained that:

- ▶ violation of an OFP is either a misdemeanor, gross misdemeanor, or felony;
- ▶ 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, and that in no event is the OFP voided;
- ▶ 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 OFP restraining the person or excluding the person from a residence;
- ▶ pursuant to the Violence Against Women Act of 1994, the order is enforceable in all 50 states, the District of Columbia, tribal lands, and U.S. territories;
- ▶ violation of the order may subject the respondent to federal charges and punishment; and
- ▶ 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 federal law.

[Minn. Stat. § 518B.01, subd. 18.](#)

Employer retaliation prohibited. An employer may not retaliate against an employee who takes time off from work to obtain or attempt to obtain an OFP. Except in cases of imminent danger or unless impracticable, the employee must give an employer 48 hours advance notice of taking leave. The employer may request that the employee provide verification that supports the reason for the absence. All information relating to the employee's leave must be kept confidential. An employer who violates these provisions is guilty of a misdemeanor and must pay back wages and offer job reinstatement to any employee wrongfully discharged. In addition,

an employee may bring a civil action against the employer. [Minn. Stat. § 518B.01, subd. 23.](#)

Violation of an OFP

Criminal penalties. Violation of an OFP is subject to criminal penalties. See [page 11](#) of this information brief for information on criminal penalties.

Contempt. A violation of an OFP also constitutes contempt of court and is subject to the penalties for contempt. [Minn. Stat. § 518B.01, subd. 14.](#)

Statement of obligation and bond. The court may require the respondent to acknowledge an obligation to comply with an OFP on the record if the court finds that (1) the respondent has violated an OFP, and (2) 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 also may require the respondent to post a bond sufficient to deter the respondent from committing additional violations.

If the respondent refuses to comply with an order to acknowledge the obligation or to post a bond, the court must commit the respondent to the county jail during the term of the OFP or until the respondent complies. [Minn. Stat. § 518B.01, subd. 14.](#)

Order to show cause. 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. This order may be issued upon the filing of an affidavit by the petitioner, a peace officer, or an interested party designated by the court, alleging that the respondent has violated an OFP. [Minn. Stat. § 518B.01, subd. 14.](#)

New order to replace expired order. If an OFP has expired between the time of an alleged violation and the court's hearing on the violation, the court may grant a new OFP based solely on the respondent's alleged violation of a prior order, which is effective until the hearing on the alleged violation of the prior order. If the court finds that the respondent has violated the order, the court may extend the relief granted in the new OFP for a fixed period, not to exceed one year, except when the court determines that a longer fixed period is appropriate. [Minn. Stat. § 518B.01, subd. 14.](#)

Firearm and/or pistol possession. See [page 24](#) of this information brief for information on restrictions on firearm and/or pistol possession stemming from violation of an OFP.

Domestic Abuse Counseling and Educational Programs

Court-ordered program. If the court stays imposition or execution of a sentence for a domestic abuse offense and places the offender on probation, the court must order that the offender participate in and successfully complete a domestic abuse counseling program or educational program as a condition of the stayed sentence. [Minn. Stat. § 518B.02](#).

Standards for domestic abuse counseling and educational programs. A domestic abuse counseling or educational program must require offenders and abusing parties to attend a minimum of 24 sessions or 36 hours of programming, unless a probation officer has recommended fewer sessions. Services must be provided in a group setting, unless the offender or abusing party would be inappropriate in such a setting. There must be separate sessions for male and female participants. The program must have a written policy that forbids program staff from offering or referring marriage or couples counseling until the offender or abusing party has completed the program and the staff reasonably believe that the violence, intimidation, and coercion has ceased and the victim feels safe to participate.

Each program must have a written policy requiring that counselors and facilitators report to the court and to the offender's probation officer any threats or acts of violence made by the offender or abusing party, any violation of court orders by the offender or abusing party, and any violation of program rules that resulted in the offender or abusing party's termination from the program. If the offender or abusing party is reported back to the court or terminated from the program, the program must notify the victim (unless the victim requests otherwise).

Each program must conduct an intake process with each offender or abusing party. During intake, the staff must look for possible chemical dependency problems and possible risks the offender or abusing party may pose to self or others. The program must have policies for chemical dependency treatment referrals. If the offender or abusing party poses a risk to self or others, the program must report this information to the court, the probation officer, and the victim. [Minn. Stat. § 518B.02](#).

Criminal Law

Violation of an OFP. Minnesota law provides misdemeanor, gross misdemeanor, and felony penalties for a violation of an OFP issued under the Domestic Abuse Act or under a similar law of another state, the District of Columbia, tribal lands, or U.S. territories. In addition, any violation of an OFP constitutes contempt of court and is subject to the penalties for contempt.

A knowing violation of an OFP is a misdemeanor.⁴ The penalty is a gross misdemeanor if the person knowingly violates an OFP within ten years of a previous qualified domestic violence-related offense conviction or adjudication of delinquency. The penalty is a five-year felony if

⁴ A "knowing violation" means that the respondent knows of the existence of the order. [Laws 2002, ch. 282, § 1](#).

the person knowingly violates the order within ten years of the first of two or more previous qualified domestic violence-related offense convictions or adjudications of delinquency. Felony penalties also apply to persons who commit the violation while possessing a dangerous weapon.

The law provides minimum sentences upon misdemeanor, gross misdemeanor, and felony convictions. The law also requires the court to order the defendant to participate in counseling or other appropriate programs selected by the court. [Minn. Stat. § 518B.01, subd. 14.](#)

No-contact order. A court may issue a domestic abuse no-contact order against a defendant in a criminal proceeding for domestic abuse, harassment or stalking of a family or household member, violation of an OFP, or violation of a prior no-contact order.

A knowing violation of a no-contact order is a misdemeanor.⁵ If a person violates a no-contact order within ten years of a previous qualified domestic violence-related offense, the person is guilty of a gross misdemeanor. A person is guilty of a five-year felony if the person violates a no-contact order: (1) within ten years of the first two or more previous qualified domestic violence-related offense convictions or adjudications of delinquency; or (2) while possessing a dangerous weapon. The law provides minimum sentences upon gross misdemeanors and felony convictions. The court may also order the defendant to participate in counseling. [Minn. Stat. § 518B.01, subd. 22.](#)

Qualified domestic violence-related offense. The term “qualified domestic violence-related offense” includes the following offenses:

- ▶ violation of domestic abuse order for protection
- ▶ violation of domestic abuse no-contact order
- ▶ murder in the first and second degree
- ▶ assault in the first through fifth degree
- ▶ domestic assault
- ▶ domestic assault by strangulation
- ▶ criminal sexual conduct in the first through fourth degree
- ▶ malicious punishment of a child
- ▶ terroristic threats
- ▶ violation of harassment restraining order

⁵ A “knowing violation” means the defendant knows of the existence of the no-contact order. [Laws 2002,](#)

- ▶ harassment/stalking
- ▶ interference with an emergency call
- ▶ similar laws of other states, the United States, the District of Columbia, tribal lands, and U.S. territories

[Minn. Stat. § 609.02](#), subd. 16.

A qualified domestic violence-related offense may be used to enhance the crimes of domestic assault, assault in the fifth degree, violation of a restraining order, harassment, and violation of an order for protection.

Domestic assault. It is a misdemeanor to intentionally inflict or attempt to inflict bodily harm against a family or household member, or to commit an act with intent to cause fear of immediate bodily harm or death against a family or household member. The penalty for the assault becomes a gross misdemeanor if the actor commits the assault within ten years of a previous qualified domestic violence-related offense conviction or adjudication of delinquency against a family or household member. The penalty for the assault becomes a five-year felony if the actor commits the assault within ten years of two or more previous qualified domestic violence-related offense convictions or adjudications of delinquency. **[Minn. Stat. § 609.2242](#).**

Sentencing for domestic assaults. A person who is convicted of a gross misdemeanor domestic assault must be sentenced to a minimum of 20 days imprisonment, and at least 96 hours of the sentence must be served consecutively. The minimum sentence may be stayed on the condition that the person sentenced complete anger therapy or counseling and fulfill any other condition ordered by the court. In sentencing a person who is convicted of a domestic assault felony, the court must presume that a stay of execution with at least a 45-day period of incarceration as a condition of probation shall be imposed and that at least 15 days must be served consecutively. Also, in felony cases, if the defendant's criminal history score indicates a presumptive executed sentence, that sentence must be imposed unless the court departs from the sentencing guidelines as provided by law. **[Minn. Stat. § 609.2243](#).**

Presentence domestic abuse investigations. A presentence domestic abuse investigation must be conducted and a report must be submitted to the court by the corrections agency responsible for conducting the investigation:

- ▶ when a defendant is convicted of an offense described in subdivision 2 of the Domestic Abuse Act;⁶

[ch. 282](#), § 2.

⁶ Subdivision 2 of the Domestic Abuse Act ([section 518B.01](#)) describes the following conduct as domestic abuse 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 [sections 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.

- ▶ when a defendant is arrested for committing an offense described in subdivision 2 of the Domestic Abuse Act, but is convicted of another offense arising out of the same circumstances surrounding the arrest; or
- ▶ when a defendant is convicted of (a) violating a Domestic Abuse Act OFP, (b) violating a harassment restraining order against a family or household member, (c) making terroristic threats against a family or household member, or (d) making harassing or obscene telephone calls against a family or household member.

The report must include the circumstances of the offense; its impact on the victim; and the defendant's prior record, characteristics and history of alcohol and chemical use problems, and amenability to domestic abuse programs. The report also must include recommendations on limitations on contact with the victim and other measures to ensure the victim's safety; recommendations for domestic abuse counseling or education, or other programming for the defendant; and consequences for failure to abide by conditions set up by the court.

If no level of care or action is recommended, the report must explain why no recommendation is made. [Minn. Stat. § 609.2244](#).

Fifth-degree assault. It is a gross misdemeanor to assault *the same victim* within ten years of a previous qualified domestic violence-related offense conviction or adjudication of delinquency. It is also a gross misdemeanor to assault *any person* within three years of a previous qualified domestic violence-related offense conviction or adjudication of delinquency.

A five-year felony applies under the above circumstances if the offender had two or more previous qualified domestic violence-related offense convictions or adjudications of delinquency. [Minn. Stat. § 609.224](#).

Domestic assault by strangulation. A person is guilty of a three-year felony if the person assaults a family or household member by strangulation. "Strangulation" is defined as "intentionally impeding normal breathing or circulation of the blood by applying pressure on the throat or neck or by blocking the nose or mouth of another person." [Minn. Stat. § 609.2247](#).

First-degree murder. A person is guilty of murder in the first degree if the person causes the death of another, without premeditation or intent, while committing domestic abuse if the perpetrator has engaged in a past pattern of domestic abuse upon the victim or upon another family or household member and the death occurs under circumstances manifesting an extreme indifference to human life. [Minn. Stat. § 609.185](#).

Second-degree murder. A person is guilty of murder in the second degree if the person causes the death of another, while intentionally inflicting or attempting to inflict bodily harm upon the victim, when the perpetrator is restrained under an OFP and the victim is designated to receive

protection under the order. For the purposes of second-degree murder, an order for protection includes an OFP issued under [chapter 518B](#), a harassment restraining order issued under section [609.748](#), a court order setting conditions of pretrial release or conditions of a criminal sentence or juvenile court disposition, a restraining order issued in a marriage dissolution action, and any order issued by a court of another state or of the United States that is similar to any of these orders. [Minn. Stat. § 609.19](#).

Criminal harassment. Minnesota law provides gross misdemeanor and felony penalties for various types of harassing conduct. “Harass” means engaging in intentional conduct which (1) the actor knows, or has reason to know, would cause the victim to feel frightened, threatened, oppressed, persecuted, or intimidated; and (2) does cause this reaction on the part of the victim. For a conviction under this law, the prosecutor does not need to prove that the actor intended to cause the victim to feel frightened, threatened, oppressed, persecuted, or intimidated.

Gross misdemeanor harassment crimes include making threats, stalking or pursuing another, returning to the property of another without claim of right to the property or consent, making repeated phone calls or inducing a victim to make phone calls, making someone’s telephone repeatedly ring, repeatedly mailing or delivering objects to a person (including electronically), repeatedly sending messages to a person, or knowingly making false allegations against a peace officer concerning the officer’s performance of official duties with intent to influence or tamper with the officer’s performance of official duties.

Felony penalties apply to persons who commit repeat violations of the harassment laws; commit certain “aggravated” harassment crimes, such as engaging in harassing conduct in order to tamper with a juror or judicial proceeding, or retaliate against a judicial officer or attorney in connection with a judicial proceeding; engage in a pattern of harassment that is directed at an individual person or household and that causes the victim to feel terrorized or fear bodily harm; or harass a victim who is under the age of 18, if the actor is more than 36 months older than the victim. [Minn. Stat. § 609.749](#).

A mandatory minimum penalty applies when a person used a dangerous weapon in any way during the commission of the crime. If the dangerous weapon is a firearm, a three-year penalty applies for the first offense, and a five-year penalty applies to subsequent offenses. The penalty for firearms applies even if the firearm is possessed, but not used, at the time of the offense. If the dangerous weapon is not a firearm, a one-year and a day penalty applies to the first offense, and a three-year penalty applies to subsequent offenses. [Minn. Stat. § 609.11](#).

Violation of a harassment restraining order. Victims of harassment may seek and obtain civil relief from harassment under the harassment restraining order law. Harassment can include harassing acts directed toward a family or household member, but there is no requirement that the person for whom protection is sought be a family or household member. The procedures for obtaining a harassment restraining order are similar to the procedures for obtaining an OFP.

A person who knowingly violates a harassment restraining order commits a misdemeanor. The penalty is a gross misdemeanor if the person knowingly violates the restraining order within ten years of a previous qualified domestic violence-related offense conviction or adjudication of

delinquency. The penalty is a five-year felony if the person knowingly violates the order within ten years of the first of two or more previous qualified domestic violence-related offense convictions or adjudications of delinquency. Felony penalties also apply to persons:

- who commit an offense by falsely impersonating another;
- while possessing a dangerous weapon;
- against a victim under age 18, if the respondent is more than 36 months older than the victim;
- with an intent to influence or tamper with a juror or judicial proceeding or officer of the court in connection with judicial proceedings; or
- because of the victim's or another's actual or perceived race, color, religion, sex, sexual orientation, disability, age, or national origin.

[Minn. Stat. § 609.748.](#)

Terroristic threats. A person who threatens to commit any crime of violence with the purpose to terrorize another, to cause evacuation of a building, or in reckless disregard of the risk of causing such terror is guilty of a five-year felony. A person who displays, exhibits, brandishes, or otherwise employs a replica firearm or a BB gun in a threatening manner, is guilty of a one-year felony if, in doing so, the person either causes or attempts to cause terror in another person, or acts in reckless disregard of the risk of causing terror in another person. This law applies to a person who commits a crime against a family or household member or any other person. [Minn. Stat. § 609.713.](#)

Trespass on battered women's shelter property. It is a gross misdemeanor to trespass on the grounds of a battered women's shelter or a facility providing transitional housing for battered women and their children, without claim of right or consent, and to refuse to depart on the demand of one who has the right to consent. [Minn. Stat. § 609.605, subd. 2.](#)

Interference with facility access. It is a gross misdemeanor to intentionally and physically obstruct any individual's access to or egress from a facility. The term "facility" is defined broadly to include a variety of places providing health and safety services and includes a battered women's shelter and facilities providing transitional housing for battered women and their children. [Minn. Stat. § 609.7495.](#)

Criminal Procedure Provisions

Arrest Issues

Warrantless arrest. A peace officer may arrest a person anywhere without a warrant, including at the person's residence, if the peace officer has probable cause to believe that the person has committed domestic abuse within the preceding 12 hours. The arrest may be made even though the domestic abuse did not take place in the presence of the peace officer. [Minn. Stat. § 629.341](#).

A peace officer must arrest without a warrant and take into custody a person whom the officer has probable cause to believe has violated an OFP 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 order's existence can be verified by the officer. [Minn. Stat. § 518B.01, subd. 14](#).

An officer who acts in good faith and exercises due care in making an arrest is immune from civil liability that might otherwise result from the officer's action. [Minn. Stat. §§ 518B.01, subd. 14, and 629.341](#).

Arrest and detention. An arresting officer may not issue a citation in lieu of arrest and detention to an individual charged with domestic abuse, harassment, violation of an OFP, or violation of a no-contact order. An individual who is arrested on any of these charges must be brought to the police station or county jail where a citation must be issued in lieu of continued detention by the officer in charge of the police station or the county sheriff in charge of the jail, unless it reasonably appears to the officer or sheriff that release of the person poses a threat to the alleged victim, another family or household member, or public safety; or there is a substantial likelihood the arrested person will fail to respond to a citation. If a citation is not issued to the arrested person, the arrested person must be brought before a judge without unnecessary delay. [Minn. Stat. § 629.72](#).

A person who is arrested for violation of an OFP must 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. [Minn. Stat. § 518B.01, subd. 14](#).

Police report required. An officer who investigates an allegation that domestic abuse has occurred must make a written police report of the alleged incident, whether or not an arrest is made. A copy of this report must be provided upon request, at no cost, to the victim, the victim's attorney, or designated organizations that provide services to domestic abuse victims. [Minn. Stat. § 629.341](#).

Bail and Other Pretrial Release Issues

Pretrial bail evaluation. The local corrections department, or its designee, must conduct a pretrial bail evaluation of each defendant arrested and detained for committing a crime of violence, a gross misdemeanor fifth-degree assault or domestic assault crime, or a nonfelony violation of an OFP or harassment restraining order or harassment, fourth-degree assault, or fifth-degree criminal sexual assault crime. [Minn. Stat. § 629.74.](#)

Pretrial release hearing. If a person who is arrested for domestic abuse, harassment, violation of an OFP, or violation of a no-contact order is not released on citation, the judge is to review the facts surrounding the arrest and detention at a hearing. The prosecutor or some other appropriate person must present relevant information involving the victim's or the victim's family's account of the alleged crime to the judge to be considered in determining the arrested person's release.

In making a decision concerning pretrial release conditions, the judge shall determine and make findings on the record whether: (1) release of the person poses a threat to the alleged victim, another family or household member, or public safety; or (2) there is a substantial likelihood the person will fail to appear at subsequent proceedings. [Minn. Stat. § 629.72.](#)

Pretrial release conditions. If the judge decides release is not advisable the judge may impose any conditions of release or bail to protect the alleged victim or other family or household member and to ensure the appearance of the person at subsequent proceedings. These conditions may include:

- ▶ enjoining the person from threatening to commit or committing acts of domestic abuse or harassment, or from violating an OFP or no-contact order;
- ▶ prohibiting the person from harassing, annoying, contacting, or communicating with the alleged victim;
- ▶ directing the person to vacate or stay away from the alleged victim's home or place of employment;
- ▶ prohibiting the person from possessing a firearm or other weapon;
- ▶ prohibiting the person from possessing or consuming alcohol or controlled substances; and
- ▶ specifying any other requirement that the court deems necessary.

If conditions of release are imposed, the judge shall state the conditions in a written order. [Minn. Stat. § 629.72.](#)

Amount of bail. In setting bail, the maximum cash bail that may be required for a person charged with a misdemeanor or gross misdemeanor domestic assault or violation of an OFP is six times the highest cash fine that may be imposed for the offense. [Minn. Stat. § 629.471.](#)

No-contact orders. The judge may impose, as a condition of release, a requirement that the person have no contact with the victim of the alleged domestic abuse, harassment, violation of an OFP, or violation of a no-contact order. The court may also, on its own motion or that of the prosecutor or on request of the victim, issue an ex parte temporary OFP or harassment restraining order. The temporary order is effective until the defendant is convicted or acquitted, or the charge is dismissed, provided that, upon request, a defendant is entitled to a full hearing. [Minn. Stat. § 629.72.](#)

Arrest for violation of a condition of pretrial release. If the judge who released the arrested person (1) receives an application alleging that the arrested person has violated the conditions of release; and (2) finds that probable cause exists to believe that the conditions of release have been violated, the judge must issue a warrant directing the person to be arrested and taken immediately before the judge for a hearing. [Minn. Stat. § 629.72.](#)

Victim Notice Provisions

Notice of assistance to victim. At the time of arrest, a peace officer is required to tell a victim of domestic abuse whether a shelter or other services are available in the community and to provide the victim with notice of the legal rights and remedies available to the victim. The officer must give the victim a notice that includes the resource listing, including telephone number, for the area battered women's shelter. The notice also must include a statement that:

- ▶ advises the victim that the victim can ask the city or county attorney to file a criminal complaint; and
- ▶ advises the victim of the right to go to court and file a petition requesting an OFP from domestic abuse.

[Minn. Stat. § 629.341.](#)

In situations where an officer does not make an arrest when the officer has probable cause to believe that a person is committing or has committed domestic abuse or violated an OFP, the officer shall provide immediate assistance to the victim, including:

- ▶ assisting the victim in obtaining necessary medical treatment; and
- ▶ advising the victim of the victim's rights to request prosecution and to pursue an OFP.

A peace officer who acts in good faith and exercises due care in providing assistance to a victim is immune from civil liability that might otherwise result from the officer's action. [Minn. Stat. § 629.342.](#)

Notice of bail hearings. When a court is scheduled to review a person arrested or detained for domestic assault or harassment for release from pretrial detention, the court must make a reasonable good faith effort to notify the victim of the time and place of the review and the fact that the victim and the victim's family may attend the review. At the review, the prosecutor shall present relevant information involving the victim's account of the alleged offense. [Minn. Stat. § 629.72](#).

Notice of release from pretrial detention. Before releasing a person arrested or detained for domestic abuse, harassment, violation of an OFP, violation of a no-contact order, or a crime of violence or an attempted crime of violence, the custodial law enforcement agency must make a reasonable and good faith effort to orally inform the alleged victim, other involved law enforcement agencies, and, if requested by the victim, any battered women's program, domestic abuse program, or sexual assault program, of the following matters:

- ▶ the time of the release
- ▶ any conditions imposed for the release
- ▶ the time and place of the next court appearance and the victim's right to attend
- ▶ the location and telephone number of the area battered women's shelter or sexual assault program, if appropriate

The law enforcement agency also is required to mail written notice of the above listed information to the alleged victim as soon as practical after the release. [Minn. Stat. §§ 629.72 and 629.73](#).

Notice of intent not to prosecute. A prosecutor must make every reasonable effort to notify a victim of domestic abuse, a criminal sexual conduct offense, or harassment of a decision to decline prosecution of the case or to dismiss criminal charges filed against the defendant. The prosecutor also shall inform the victim of the method and benefits of seeking an OFP under the Domestic Abuse Act or a harassment restraining order and that the victim may seek an order without paying a fee. If a suspect is in custody, the notification attempt must be made before the suspect is released from custody. When criminal charges are dismissed, a record of the specific reasons for the dismissal must be made. If the dismissal is due to the unavailability of the prosecuting witness, the prosecutor shall indicate the specific reason that the witness is unavailable. [Minn. Stat. § 611A.0315](#).

Victim input regarding pretrial diversion. Prosecutors must make every reasonable effort to notify and seek input from the victim before referring persons accused of domestic assault, terroristic threats, sexual assault, criminal stalking, and other designated serious crimes into a pretrial diversion program in lieu of prosecution. [Minn. Stat. § 611A.031](#).

Admissibility of Evidence and Docket Priority

Admissibility of similar conduct evidence. Evidence of similar conduct by the accused against the victim of domestic abuse, or against other family or household members, is admissible in court unless the probative value is substantially outweighed by the danger of unfair prejudice, confusion of the issue, or misleading the jury; or by considerations of undue delay, waste of time, or needless presentation of cumulative evidence. The evidence that is admissible under this provision includes evidence of the following against a family or household member:

- ▶ domestic abuse
- ▶ violation of an OFP
- ▶ violation of a harassment restraining order
- ▶ harassment or stalking
- ▶ making harassing or obscene telephone calls

[Minn. Stat. § 634.20.](#)

Admissibility of battered woman syndrome evidence. Expert testimony on battered woman syndrome is admissible to show self-defense. Expert testimony may be used to describe battered woman syndrome and the characteristics of the syndrome; expert testimony is not allowed on whether a particular individual suffers from battered woman syndrome. *State v. Hennum*, 441 N.W.2d 793 (Minn. 1989).

Admissibility of battered woman syndrome evidence by the prosecution. Expert testimony on battered woman syndrome also is admissible as part of the prosecution's case-in-chief:

- ▶ when it is presented after the alleged victim's credibility has been attacked by the defense;
- ▶ when it meets the requirements of Rule 702 of the Minnesota Rules of Evidence;
- ▶ when it helps the jury understand the alleged victim's behavior; and
- ▶ where, in accordance with *State v. Hennum*, 441 N.W.2d 793 (Minn. 1989), the expert testimony is limited to a description of the syndrome and its characteristics, and the expert does not testify on the ultimate fact of whether the alleged victim actually suffered from battered woman syndrome.

State v. Grecinger, 569 N.W.2d 189 (Minn. 1997).

Docket priority. Criminal cases involving domestic abuse where the defendant is free on bail must be given docket priority over other cases on the district court's docket except for cases

where the defendant is in custody and child abuse cases where the defendant is free on bail. [Minn. Stat. § 630.36](#).

Victim Safety Provisions

Funding Provisions

Funding for battered women’s shelters and services. Battered women’s shelters and services receive funding through the collection of fines. Courts are required to collect fines under the criminal code and to forward 70 percent of each mandatory minimum fine collected to a local victim assistance program that provides services locally in the county in which the crime was committed. A “victim assistance program” means victim witness programs within county attorney offices or crime victim crisis centers, victim-witness programs, battered women’s shelters and nonshelter programs, and sexual assault programs. [Minn. Stat. § 609.101](#).

Battered women’s shelters and services also receive funding through the Department of Corrections.⁷ The Commissioner of Corrections is required to award grants to programs that provide emergency shelter services to battered women and support services to battered women, domestic abuse victims, and their children. The commissioner also is to award grants for training, technical assistance, and for the development and implementation of educational programs to increase public awareness of the causes of battering, the solutions to preventing and ending domestic violence, and the problems faced by battered women and domestic abuse victims. The grants are to be awarded in a manner that ensures that they are equitably distributed to programs serving metropolitan and nonmetropolitan populations.

Any public or private nonprofit agency may apply for a grant. The application must comply with the statutory guidelines. Every public or private nonprofit agency that receives a grant to provide services must comply with all rules established by the commissioner related to the administration of pilot programs. [Minn. Stat. § 611A.32](#).

Funding for parenting-time centers. The Commissioner of Education⁸ is authorized to award grants of up to \$50,000 for the purpose of creating or maintaining parenting-time centers. These centers are designed to reduce children’s vulnerability to violence and trauma related to parenting time when there is a history of domestic violence or abuse within the family. Grants

⁷ In 1998, Governor Carlson issued a reorganization order that transferred the crime victim services functions of the Department of Corrections, Department of Administration, and the Department of Public Safety to the Crime Victim Ombudsman and, ultimately, to a new office known as the Center for Crime Victim Services. In 2003, Governor Pawlenty consolidated crime victim services further by creating the Crime Victim Services Unit in the Office of Justice Programs. The explanation continues to refer to the Department of Corrections because the statute has not been updated.

⁸ In 2003, as part of Governor Pawlenty’s Reorganization Order No. 187, the responsibility for overseeing the parenting-time centers was transferred from the Department of Children, Families and Learning (now renamed the Department of Education) to the Department of Public Safety. The explanation of the program refers to the Department of Education because the statute has not been updated.

are to be provided to the greatest possible number of centers and to provide the broadest possible geographic distribution of centers throughout the state. Proposed centers must meet standards developed by the commissioner to ensure the safety of the custodial parent and children. These centers serve as a healthy interactive environment for parents who are separated or divorced and for parents with children in foster care to visit with their children. The centers also are used as a neutral place where parents who are ordered to have no contact with one another can exchange children for visitation. Centers also may provide parenting and child development classes and offer support groups to participating custodial parents. The centers may hold regular classes designed to assist children who have experienced domestic violence and abuse.

Centers are required to have on staff, on their board, or otherwise available to them for consultation, an individual knowledgeable about or experienced in the provision of services to battered women and domestic abuse victims. [Minn. Stat. § 119A.37](#).

Battered Women's Programs

Battered Women Advisory Council. The Battered Women Advisory Council is a 12-member advisory council that advises the Commissioner of Corrections⁹ on the implementation and continued operation of matters related to battered women and domestic abuse victims. This council also serves as a liaison between the commissioner and organizations that provide services to battered women and domestic abuse victims. [Minn. Stat. § 611A.34](#).

The commissioner must consider the advisory council's recommendations before awarding grants or adopting policies regarding programs and services for battered women and domestic abuse victims. The commissioner also must notify the council of intended action before action is taken, except for day-to-day administrative operations. [Minn. Stat. § 611A.345](#).

Battered women's program director. The battered women's program director, who is appointed by the Commissioner of Corrections, administers funds, consults with and provides staff to the advisory council, and performs other duties related to battered women's programs as the commissioner may assign. [Minn. Stat. § 611A.35](#).

Battered women's shelters. The director of the Center for Crime Victim Services¹⁰ is authorized to provide grants that reimburse local programs for the costs of providing battered women and their children with food, lodging, and safety. A shelter facility means a secure crisis shelter, housing network, or safe home. [Minn. Stat. §§ 611A.37 to 611A.373](#).

Domestic violence and sexual assault prevention. In 2000, the legislature created the position of director of domestic violence and sexual assault prevention. The director must promote prevention by:

⁹ See *supra* note 7.

¹⁰ See *supra* note 7.

- ▶ advocating for the rights of victims;
- ▶ increasing public education and awareness about prevention of domestic violence and sexual assault;
- ▶ encouraging and improving accountability at all levels of the system;
- ▶ supporting prosecution and civil litigation;
- ▶ initiating policy changes;
- ▶ coordinating resources and promoting immediate community responses to serve victims;
- ▶ building partnerships among law enforcement, prosecutors, defenders, advocates, and courts;
- ▶ encouraging and supporting health care providers, mental health professionals, employers, educators, clergy, and the public to raise awareness and prevent domestic violence and sexual assault;
- ▶ coordinating and maximizing the use of federal, state, and local resources to prevent domestic violence and sexual assault;
- ▶ serving as a liaison between the Center for Crime Victims Services and Department of Health and overseeing how the Department of Health spends its sexual violence prevention federal block grant; and
- ▶ studying issues involving domestic violence and sexual assault as they pertain to both men and women.¹¹

[Minn. Stat. § 611A.201.](#)

Restrictions on Firearm Possession

Restrictions on firearm possession in cases of domestic assault. No person who has been convicted of domestic assault in Minnesota or elsewhere or of violating a domestic abuse OFP may possess a pistol unless three years have elapsed since the date of conviction and, during that time, the person has not been convicted of any other assault crime or OFP violation.

¹¹ The director also served as the chair of the Interagency Task Force on Domestic Violence and Sexual Assault Prevention. The task force expired on June 30, 2005. [Minn. Stat. § 611A.202.](#)

Additionally, if the sentencing court determined that the person used a firearm in any way during the commission of the domestic assault or OFP violation, the sentencing court may prohibit the person from possessing any type of firearm for at least three years and up to the remainder of the person's life. It is a gross misdemeanor offense to violate these restrictions. [Minn. Stat. §§ 518B.01, subd. 14; 609.2242, subd. 3; and 624.713.](#)

Restrictions on firearm possession in cases of stalking or harassment. No person who has been convicted of a stalking or harassment crime may possess a pistol unless three years have elapsed since the date of conviction and, during that time, the person has not been convicted of any other stalking or harassment crime. Additionally, if the sentencing court determined that the person used a firearm in any way during the commission of the crime, the sentencing court may prohibit the person from possessing any type of firearm for at least three years and up to the remainder of the person's life. It is a gross misdemeanor offense to violate these restrictions. [Minn. Stat. § 609.749, subd. 8.](#)

Exclusions from Application of Other Laws

The following laws specifically exempt proceedings under the Domestic Abuse Act from their application.

Judicial arbitration. The establishment of a mandatory, nonbinding arbitration system within a judicial district to assist the court in disposing of controversies may not be used to handle proceedings under the Domestic Abuse Act. [Minn. Stat. § 484.73.](#)

Minnesota Civil Mediation Act. The Minnesota Civil Mediation Act does not apply to proceedings under the Domestic Abuse Act. [Minn. Stat. § 572.40.](#)

Alternative dispute resolution program. Minnesota's alternative dispute resolution program for civil cases may not be required in proceedings under the Domestic Abuse Act. [Minn. Stat. § 484.76.](#)

Community dispute resolution program. Minnesota's community dispute resolution program does not apply to proceedings under the Domestic Abuse Act. [Minn. Stat. § 494.03.](#)

Conciliation court jurisdiction. Conciliation courts do not have jurisdiction over proceedings under the Domestic Abuse Act. [Minn. Stat. § 491A.01.](#)

Streamlined marriage dissolution procedure. A couple may not dissolve their marriage through a streamlined procedure if either party has been a victim of domestic abuse by the other. [Minn. Stat. § 518.195.](#)

Other Safety Provisions

Electronic monitoring to protect domestic abuse victims. Courts may not order an offender convicted of a designated crime¹² against a family or household member, as a condition of a stay of imposition or execution of a sentence, to use an electronic monitoring device to protect a victim's safety.¹³

Stay conditions for assaulting spouse. If a person is convicted of assaulting a spouse or another person with whom the person resides, and the court places the defendant on probation, the court must condition the stay upon the defendant's participation in counseling or another program selected by the court. [Minn. Stat. § 609.135](#).

Electronic monitoring for offenders on work release. An offender who is sentenced for a domestic abuse offense is not eligible for electronic monitoring if on work release. Between times of employment, the inmate must be confined in jail, unless the court directs otherwise. [Minn. Stat. § 631.425, subd. 4](#).

Tenant's right to seek police and emergency assistance. A landlord cannot (1) bar or limit tenant calls for police or emergency assistance; or (2) penalize a tenant for making calls to request emergency assistance. A tenant cannot waive the right to make calls for assistance.

Inconsistent local ordinances or rules are preempted by this state law, including, without limitation, any ordinance or rule that (1) requires an eviction after a specified number of calls by a tenant for police or emergency assistance in response to domestic abuse or any other conduct; or (2) provides that calls by a tenant for police or emergency assistance in response to domestic abuse or any other conduct may be used to penalize or charge a fee to a landlord. The law does not preempt any local ordinance or rule that penalizes a landlord for, or requires a landlord to abate, conduct on the premises that constitutes a nuisance or other disorderly conduct as defined by local ordinance or rule.

A tenant may bring a civil action for a violation of this section and recover from the landlord \$250 or actual damages, whichever is greater, and reasonable attorneys' fees. The attorney general may investigate and prosecute violations of this section. [Minn. Stat. § 504B.205](#).

Right of domestic abuse victims to terminate lease. A tenant who is a victim of domestic abuse and fears imminent abuse may terminate a residential lease agreement without penalty if the tenant provides advanced written notice to the landlord and pays rent for the full month in which the tenancy terminates, plus an additional month's rent. The written notice must state the

¹² Designated crimes include violation of an OFP; assault in the first, second, third, or fifth degree and domestic assault; criminal damage to property; disorderly conduct; harassing telephone calls; burglary; trespass; criminal sexual conduct in the first, second, third, fourth, or fifth degree; and terroristic threats.

¹³ Pursuant to statute, this prohibition applied until the Commissioner of Corrections adopted standards governing electronic monitoring devices to protect victims of domestic abuse. In January 1993, the Department of Corrections submitted its findings to the legislature. Based on its findings, the DOC concluded that no standards should be adopted because the use of reverse electronic monitoring would not protect the safety of victims of domestic abuse.

specific date the tenancy will terminate and be accompanied by an OFP or no- contact order. The lease continues for any remaining tenants. The landlord may not disclose any information provided by the tenant pertaining to the domestic abuse. The right of a domestic abuse victim to terminate a lease may not be waived. [Minn. Stat. § 504B.206](#).

Address confidentiality program. A victim of domestic violence, sexual assault, or stalking may apply to the secretary of state to participate in the address confidentiality program. As a participant, the victim may designate the secretary of state as an agent for purposes of service of process and for receiving mail. A person may apply on behalf of a minor or incapacitated person. The program started September 1, 2007. [Minn. Stat. §§ 5B.01 to 5B.08](#)

Proximity to level III sex offenders. If an owner or property manager of a hotel, motel, apartment, or other lodging establishment has an agreement with an agency that arranges or provides shelter to victims of domestic abuse, the owner or manager may not knowingly rent rooms to both level III sex offenders and victims of domestic abuse at the same time. The owner or manager may evict the level III sex offender upon discovery of the situation. [Minn. Stat. § 244.052, subd. 4a](#).

Family violence coordinating councils. In 1997, the legislature set guidelines for family violence coordinating councils and authorized a judicial district to establish a council for the purpose of promoting innovative efforts to deal with family violence issues.

The chief judge of the district is to appoint members of the council. The council is to develop a plan for coordinating activities of its membership relating to family violence issues and improving activities and services, including training and system issues, the delivery of services, approaches and needs in different demographic populations, protocols for investigation and prosecution of domestic abuse, coordination of city and county prosecutorial efforts, evaluation of the handling of domestic abuse matters, and coordination for family, juvenile, and criminal court proceedings involving family violence issues. [Minn. Stat. § 484.79](#).

The 1997 law requires the Commissioner of Public Safety to make a grant to the Fourth Judicial District (Hennepin County) for the planning of a family violence coordinating council. [Laws 1997, ch. 239, art. 2, § 13](#).

Domestic fatality review team. In 1999, the legislature authorized the fourth judicial district to establish a domestic fatality review team as a 30-month pilot project. The project was extended in 2002, 2004, and 2006, and is currently authorized through December 31, 2008.

The purpose of the project is to review domestic violence deaths in order to develop recommendations for policies and protocols for community prevention and intervention initiatives to reduce and eliminate the incidence of domestic violence and resulting fatalities. The review team members must include a medical examiner, a judge or referee, a county and city attorney, a public defender, the county sheriff, a peace officer, a family court representative, a representative from the Department of Corrections, a public citizen, a mental health professional, and domestic violence advocates or shelter workers. [Laws 1999, ch. 216, art. 2, § 27](#); [Laws 2000, ch. 468, §§ 30-32](#); [Laws 2002, ch. 266, § 1](#); [Laws 2004, ch. 290, § 38](#); [Laws 2006, ch. 260, art. 5, § 53](#).

Educational and Other Programming

Judicial education. The Minnesota Supreme Court's judicial education program must include ongoing training for judges on domestic abuse, harassment, stalking, child and adolescent sexual abuse, and related civil and criminal court issues. The program must include education on the impacts of domestic abuse and domestic abuse allegations on children and the importance of considering these impacts when making parenting time and child custody decisions. The program also must include information on alleged and substantiated reports of domestic abuse, including information on Department of Human Services survey data. The program must emphasize the need to coordinate services and include education on the domestic abuse policies and programs within law enforcement agencies, prosecutor offices, and the courts. [Minn. Stat. § 480.30.](#)

Violence prevention education. The Commissioner of Education, in consultation with several other programs, must assist school districts, on request, in developing or implementing a violence prevention program. The purpose of the program is to help students learn how to resolve conflicts effectively within their families and communities in nonviolent ways. [Minn. Stat. § 120B.22.](#)

Child protection worker training. The Commissioners of Human Services and Public Safety must cooperate in the development of a joint program for training child abuse service professionals. The program must include information on the dynamics of child abuse and neglect within family systems and the appropriate methods for interviewing parents in the course of the assessment or investigation, including training in recognizing cases in which one of the parents is a victim of domestic abuse and in need of special legal or medical services. Training also must be provided on the protective social services that are available to protect alleged victims from further abuse, the prevention of child abuse and domestic abuse, and coordinating services for these victims. [Minn. Stat. § 626.559.](#)

Home-visiting program. The Commissioner of Health must establish a program to fund family home-visiting programs designed to prevent child abuse and neglect, reduce juvenile delinquency, promote positive parenting and resiliency in children, and promote family health and economic self-sufficiency. Programs must be targeted to families with:

- ▶ a history of child abuse, domestic abuse, or other types of violence; and
- ▶ a history of domestic abuse, rape, or other forms of victimization.

[Minn. Stat. § 145A.17.](#)

Child Protection Issues

Custody and Visitation

Marriage dissolution petition. A petition for dissolution of marriage or legal separation must allege whether an OFP that governs the parties or a party and a minor child of the parties is in effect and, if so, the district court or similar jurisdiction in which it was entered. [Minn. Stat. § 518.10](#).

Custody disputes. In a proceeding where two or more parties seek custody of a child, the court must consider and evaluate all relevant factors in determining the best interests of the child. One of the relevant factors set forth in Minnesota law is the effect on the child of the actions of abuse that has occurred between the parents or the parties. [Minn. Stat. §§ 257.025; 257C.04; and 518.17](#).

When joint legal or physical custody is contemplated, the court must consider whether domestic abuse has occurred between the parents. If domestic abuse has occurred between the parents, the court must apply a rebuttable presumption that joint legal or physical custody is not in the best interests of the child. [Minn. Stat. § 518.17](#).

Parenting plan. Upon the request of both parents, a parenting plan may be created in lieu of an order for child custody. A parenting plan must include a schedule of time each parent spends with the child, a designation of decision-making responsibilities, and a method of dispute resolution. The court may not require a parenting plan that provides for joint legal custody or the use of dispute resolution processes (other than the judicial process) if the court finds that either parent has engaged in acts of domestic abuse or child abuse. [Minn. Stat. § 518.1705](#).

In determining custody, a court must consider a finding under the Domestic Abuse Act or under a similar law of another state that domestic abuse has occurred between the parties. [Minn. Stat. § 518B.01, subd. 17](#).

Parenting time. Upon the request of either parent, the court must grant parenting time on behalf of the child and parent to enable them to maintain a parent-child relationship that will be in the best interests of the child. If the court finds, however, after a hearing, that parenting time is likely to endanger the child's physical or emotional health or impair the child's emotional development, the court must restrict parenting time and may deny parenting time entirely, if the circumstances warrant.

If a parent requests supervised parenting time and an OFP is in effect, the judge or judicial officer must consider the OFP in making a decision regarding parenting time. [Minn. Stat. § 518.175](#).

Modification of parenting time. If a parent specifically alleges that parenting time places the parent or child in danger of harm, the court must hold a hearing at the earliest possible time to determine the need to modify the order granting parenting time. The court must modify an order granting or denying parenting time whenever modification would serve the best interests of the

child. Parenting time may not be restricted unless the parenting time is likely to endanger the child's physical or emotional health or impair the child's emotional development or the parent has chronically and unreasonably failed to comply with court-ordered parenting time. [Minn. Stat. § 518.175](#).

Additional parenting time to provide child care. The court may allow additional parenting time to provide child care while the other parent is working, subject to reasonableness and the best interests of the child. In making this determination, the court must consider whether domestic abuse has occurred between the parties. [Minn. Stat. § 518.175](#).

Move to another state. If a parenting-time order is in effect, the court must look at the effect of domestic abuse on the safety and welfare of the child and the parent when considering a request from a parent to move a child to another state. The burden of proof is upon the parent requesting the move, except that if the court finds that the person requesting the move is a victim of domestic violence, the burden of proof is on the parent opposing the move. [Minn. Stat. § 518.175](#).

Custody and parenting time of children to unmarried persons. A proceeding by a father whose paternity has been recognized under Minnesota law to petition for rights of parenting time or custody may not be combined with a proceeding under the Domestic Abuse Act. [Minn. Stat. § 257.541](#).

Also, a petition by certain other individuals (e.g., grandparents or a person with whom a child has resided) for visitation rights may not be combined with a proceeding under the Domestic Abuse Act. [Minn. Stat. § 257C.08](#).

Participation in a parenting plan when a person is convicted of certain offenses. If a person seeking child custody or parenting time has been convicted of an applicable crime,¹⁴ the person seeking custody or parenting time has the burden to prove that custody or parenting time is in the best interests of the child. This provision applies if the conviction occurred within the preceding five years; the person currently is incarcerated, on probation or under supervised release for the offense; or the victim of the crime was a family or household member. In these cases, the court may not grant custody or parenting time to the person unless it finds that the custody or parenting time is in the best interests of the child. [Minn. Stat. § 518.179](#).

Also, if a person who has court-ordered custody of a child or parenting-time rights is convicted of an applicable crime and no action is pending regarding custody or parenting time, the sentencing court must refer the matter to the appropriate family court for action. The family court must:

- ▶ grant temporary custody to the noncustodial parent, unless it finds that another custody arrangement is in the best interests of the child; or

¹⁴ Applicable crimes include murder; manslaughter; certain assaults; kidnapping; depriving another of custodial or parental rights; soliciting, inducing, or promoting prostitution involving a minor; certain criminal sexual conduct; solicitation of a child to engage in sexual conduct; incest; malicious punishment of a child; neglect of a child; terroristic threats; and felony harassment or stalking.

- ▶ suspend parenting-time rights, unless it finds that parenting time with the convicted person is in the best interests of the child.

Proceedings under this law must be expedited. The defendant has the burden of proving that continued custody or parenting time is in the best interests of the child. [Minn. Stat. § 631.52](#).

If the victim of the crime was a family or household member, the standard of proof is clear and convincing evidence. [Minn. Stat. §§ 518.179 and 631.52](#).

Temporary orders and restraining orders. A temporary order in a proceeding brought for custody, dissolution, legal separation, or related matters may not vacate or modify an order granted under the Domestic Abuse Act restraining an abusing party from committing acts of domestic abuse. Upon proper motion the court may, however, hear a motion for modification of an OFP concurrently with a proceeding for dissolution of marriage. [Minn. Stat. § 518.131](#).

Guardian ad litem. In all child custody, marriage dissolution, or legal separation proceedings in which custody or parenting time of a minor child is an issue, the court must appoint a guardian ad litem if the court has reason to believe that the minor child is a victim of domestic child abuse or neglect. The guardian ad litem must represent the interests of the child and provide advice to the court on custody and parenting time. [Minn. Stat. § 518.165](#).

Adoption

Adoption study. An adoption study, complete background study, and written report must be completed before a child is placed in a prospective adoptive home. The study must examine several factors, including a check on felony convictions for spousal and child abuse. [Minn. Stat. § 259.41](#).

Domestic Child Abuse

Domestic child abuse. “Domestic child abuse” means:

- ▶ any physical injury to a minor family or household member inflicted by an adult family or household member other than by accidental means; or
- ▶ subjection of a minor family or household member by an adult family or household member to any act which constitutes a violation of sections [609.321 to 609.324](#) (prostitution crimes), [609.342](#) (first-degree criminal sexual conduct), [609.343](#) (second-degree criminal sexual conduct), [609.344](#) (third-degree criminal sexual conduct), [609.345](#) (fourth-degree criminal sexual conduct), or [617.246](#) (use of minors in sexual performance).

Minn. Stat. § 260C.007, subd. 13.

Jurisdiction. The juvenile court has original and exclusive jurisdiction in proceedings concerning children in need of protection or services (CHIPS), and specifically, any alleged acts of domestic child abuse. Proceedings involving domestic child abuse are given docket priority by the court. **Minn. Stat. § 260C.101, subd. 3.**

Relief. The juvenile code sets forth the procedures and relief in cases of domestic child abuse. The relief available in a domestic child abuse proceeding is similar to the relief available under the Domestic Abuse Act. **Minn. Stat. §§ 260C.148; and 260C.201, subd. 3.**

Child Exposed to Domestic Violence

Agency investigation. If a local welfare agency receives a report that alleges neglect, physical abuse, or sexual abuse of a child by a parent, guardian, caretaker, sibling, or person with a significant relationship to the child, the local welfare agency must immediately conduct a family assessment or investigation. When determining whether there is a need for child protective services, the local welfare agency must take into account:

- ▶ the child's sex and age, prior to reports of maltreatment, level of developmental functioning, and credibility;
- ▶ alleged offender's age and prior record of maltreatment and criminal charges and convictions;
- ▶ other medical or secondary evidence of abuse; and
- ▶ the existence of domestic abuse or substance abuse in the home.

Minn. Stat. § 626.556, subd. 10.

Procedural Issues

Admissibility of child hearsay statements. If certain statutory requirements are met, an out-of-court statement that is not otherwise admissible by statute or rule of evidence is admissible in evidence in a (1) CHIPS proceeding; (2) neglected and in foster care proceeding; (3) domestic child abuse proceeding; or (4) termination of parental rights proceeding. An out-of-court statement includes a video, audio, or other recorded statement. **Minn. Stat. § 260C.165.**

Testimony of witnesses. A parent or the parent's minor child may not be examined as to any communication made in confidence by the minor to the minor's parent. A communication is confidential if made out of the presence of persons who are not members of the child's immediate family living in the same household. This provision does not apply to:

- ▶ a civil action or proceeding by one spouse against the other or by a parent or child against the other;
- ▶ a proceeding to commit either the child or parent to whom the communication was made or to place the person or property or either under the control of another because of an alleged mental or physical condition;
- ▶ a criminal action or proceeding in which the parent is charged with a crime committed against the person or property of the communicating child, the parent's spouse, or a child of either the parent or the parent's spouse;
- ▶ a proceeding in which a child is charged with a crime or act of delinquency committed against the person or property of a parent or a child of a parent;
- ▶ an action or proceeding for termination of parental rights; or
- ▶ any other action or proceeding on a petition alleging child abuse, child neglect, abandonment, or nonsupport by a parent.

The statute provides for waiver of the privilege. [Minn. Stat. § 595.02](#).

Criminal Justice System Improvement

Photos attached to OFPs and no-contact orders. OFPs and no-contact orders must be included in the criminal justice data communications network. (The data network enables criminal justice agencies to share criminal justice information.) In addition, a no-contact order must be accompanied by an offender's photograph to aid in the enforcement of the order. [Minn. Stat. § 299C.46](#).

Centralized OFP tracking system study. The criminal and juvenile justice information policy group was directed to study and make recommendations to the legislature regarding the development of a centralized tracking system for domestic abuse OFPs. The statewide OFP database was implemented in 2000. [Minn. Stat. § 299C.65](#).

Model arrest policies. Each law enforcement agency must develop, adopt, and implement a written policy regarding arrest procedures for domestic abuse incidents. These policies must be developed through consultation with domestic abuse advocates, community organizations, and other law enforcement agencies with expertise in the recognition and handling of domestic abuse incidents. The policies must (1) discourage dual arrests; (2) include consideration of whether one of the parties acted in self-defense; and (3) provide guidance to officers concerning instances in which officers should remain at the scene of a domestic abuse incident until the likelihood of further imminent violence has been eliminated.

The law also requires designated agencies to develop a written model policy regarding arrest

procedures for domestic abuse incidents for use by local law enforcement agencies. Law enforcement agencies are allowed to adopt the model policy in lieu of developing their own policies. [Minn. Stat. § 629.342](#).

Domestic abuse prosecution plans. Each county and city attorney must develop and implement a written plan to expedite and improve the efficiency and just disposition of domestic abuse cases. The plan is required to state goals and contain policies and procedures to address: (1) early contact between the prosecutor and the victim; (2) coordination of the prosecutor's efforts with those of the domestic abuse or victim advocate and facilitation of the early advocacy services to the victim; (3) procedures to encourage the prosecution of all domestic abuse cases; (4) methods to identify, gather, and preserve evidence in addition to the victim's in-court testimony; and (5) procedures for annual review of the plan. [Minn. Stat. § 611A.0311](#).

Commissioner of Corrections; victim services information. The Commissioner of Corrections, in cooperation with the executive director of the Crime Victims Reparations Board, must develop a plan to provide victims with information concerning victim services in the geographic area where the crime occurred. This information must include information on domestic violence shelters and programs. The initial notice of crime victims rights must be distributed by a peace officer to each victim at the time of initial contact with the victim. [Minn. Stat. § 611A.02](#).

Peace officer standards and training (POST) board; courses on domestic violence cases. In 2007, the legislature directed the POST board to revise and update training courses related to no-contact orders in domestic violence cases. The training must include instruction on how to conduct risk assessments of the escalating factors of lethality in domestic violence cases. The board is required to consult with a statewide domestic violence organization in developing courses.

Data Issues

Data on Domestic Abuse Act petitions. All data collected, created, received, or maintained by law enforcement agencies and courts under the Domestic Abuse Act is confidential until the temporary OFP is executed or served on the respondent/data subject. [Minn. Stat. § 13.80](#).

Data collected in domestic abuse investigation. The report that is prepared as part of a domestic abuse investigation is private data. Victim impact statements are confidential. [Minn. Stat. §§ 13.02, subd. 12; 13.871, subd. 3\(b\); and 609.2244](#).

Data collected in domestic abuse police reports. Data that identifies a victim in a police report involving an allegation of domestic abuse is private data. [Minn. Stat. § 629.341](#).

Protection of petitioner's location or residence. Upon the petitioner's request in a Domestic Abuse Act proceeding, information maintained by the court regarding the petitioner's location or residence is not accessible to the public. This information 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.](#)

Data on recipients of emergency shelter and support services. All data maintained by grantees of battered women emergency shelter and support services from which the identity of any battered woman can be determined is private data on individuals. [Minn. Stat. §§ 13.871, subd. 5\(c\) and \(d\); and 611A.371.](#)

Data collection. The Commissioner of Corrections must, by rule, prescribe a uniform method for the collection of data on domestic abuse victims to document the incidence of assault on domestic abuse victims. All data collected by the commissioner under this procedure is summary data within the meaning of the Data Practices Act. [Minn. Stat. §§ 13.02 and 611A.36.](#)

Every local law enforcement agency must collect data related to domestic abuse victims in the form required by the commissioner and report this information to the commissioner, as the commissioner requires. [Minn. Stat. § 611A.36.](#)

Open meeting law. Meetings of governmental bodies that are normally open to the public must be closed when there is discussion of identifying data regarding victims and reporters of domestic abuse. [Minn. Stat. § 13D.05.](#)

Miscellaneous

Insurance practices. It is an unfair method of competition and an unfair and deceptive act or practice to refuse to offer, sell, or renew coverage, limit coverage, or charge a rate different from that normally charged for the same coverage under a life insurance policy or health plan because the applicant who is also the proposed insured has been or is a victim of domestic abuse.

An insurer, however, may underwrite a risk on the basis of the physical or mental history of an individual if the insurer does not take into consideration whether the individual's condition was caused by an act of domestic abuse. [Minn. Stat. § 72A.20, subd. 8.](#)

Unemployment benefits. An applicant who quit employment is disqualified from all unemployment benefits except under certain circumstances. One of these circumstances includes when the applicant or the applicant's minor child was a victim of domestic abuse, and the abuse necessitated the applicant's quitting employment. Domestic abuse may be shown by one or more of the following: an OFP, a police record, a conviction record, medical documentation, or a written statement provided by a social worker, clergy member, shelter worker, attorney, or other professional who assisted the applicant in dealing with the abuse. [Minn. Stat. § 268.095.](#)

Minnesota family investment program (MFIP). A victim of family violence is exempt from the 60-month limit on cash assistance if the caregiver qualifies for a family violence waiver and complies with his or her employment plan. In order to qualify for a family violence waiver, an individual must provide documentation of past or current family violence that may prevent the individual from participating in certain employment activities. Upon qualification, the participant must develop or revise an employment plan that takes into account family violence issues and

seeks to ensure the safety of the caregiver and children. County agencies must notify all applicants and recipients of MFIP of the family violence waiver. In addition, counties must ensure that domestic violence victims have access to persons trained in domestic violence. **Minn. Stat. §§ 256J.08; 256J.42, subd. 4; 256J.50, subds. 10 and 12; 256J.521, subd. 3; and 256J.545.**

For more information about abuse issues, visit the criminal justice area of our web site, www.house.mn/hrd/issinfo/crime.htm.