

Securing Safety through Subsequent and Extended Orders for Protection

By: Lilo Kaiser

The number of incidents of domestic violence in Minnesota remains stubbornly high. In Minneapolis, on average, police respond to 48 domestic-related 911 calls each day.ⁱ At its worst, domestic violence can lead to death. In 2014, at least 23 people, most of whom were women, died in Minnesota as a result of domestic violence.ⁱⁱ Nationally and locally, many agencies, governments, and courts are calling attention to the nearly epidemic levels of death by domestic violence.ⁱⁱⁱ

Obtaining an Order for Protection is frequently a battered woman's first step to saving her own life. In Minnesota, initial Orders for Protection are limited to situations where there has been physical violence, threats of physical violence, sexual assault, or interference with an emergency call. Relief granted under the initial Order for Protection is limited to two years unless the court determines that a longer period of time is necessary.^{iv}

Unfortunately, batterers will often continue to attempt to harm or control victims while their protective order is in place. The dynamics of domestic violence rotate around power and control. Batterers are masterful manipulators and have an entitled belief structure. In relationships where domestic violence exists, there are long-established patterns of control and manipulation. These cycles are not easily broken by the batterer, the victim, or the courts.

Some batterers are unable or unwilling to abide by no-contact provisions. Others continue to harass and intimidate in more subtle ways. In my experience, it is not uncommon that a batterer attempt to make contact with the victim within the first forty-eight hours of the issuance of the Order for Protection. Vigilant monitoring, stalking, and harassment are all common experiences for victims with protective orders already in place. In many cases, protection will be necessary beyond the initial two-year Order for Protection. Subsequent orders for protections can be valuable tools for securing safety.

EXTENSIONS OF EXISTING ORDERS AND SUBSEQUENT ORDERS

When an Order for Protection is still in effect, a petitioner can apply for an extension. Alternatively, when an Order for Protection has expired, a petitioner can apply for a new order. A lower threshold standard applies to these motions. A petitioner does not need to show that physical harm is imminent or that a new act of domestic abuse has occurred in order for the Court to extend the terms of an existing order or issue a subsequent order. An existing order may be extended, or a new order issued, upon a showing of any of the following:^v

1. Respondent violated the prior or existing Order for Protection; or
2. Petitioner is in reasonable fear of physical harm from the respondent; or

3. Respondent has engaged in the act of stalking within the definition of Minn. Stat. § 609.749, subd. 2;^{vi} or
4. Respondent is incarcerated and about to be released or has recently been released from incarceration.^{vii}

It is important to note that a subsequent or extended order may be applied for even if the original Order for Protection did not include a finding that domestic abuse occurred.^{viii} If awarded, extensions of the Order for Protection are frequently provided for an additional year or two. In some instances, it may be possible for the Petitioner to motion the court for even longer periods of protection.

UP TO 50-YEAR ORDERS FOR PROTECTION

The Court may issue an Order for Protection for a period of up to 50 years if the Court finds:

1. The respondent has violated a prior or existing Order for Protection two or more times; or
2. The petitioner has had two or more Orders for Protection in effect against the same respondent.

An order under this section may restrain the respondent from committing acts of domestic abuse against the petitioner or prohibit the respondent from having any direct or indirect contact with the petitioner.^{ix}

The Minnesota Supreme Court recently upheld the constitutionality of a 50-year Order for Protection on behalf of a mother and her children in *Rew v. Bergstrom*, 845 N.W.2d 764 (Minn. 2014). The Court found that Respondent's repeated violations and admissions of guilt supported a 50-year protective order where the district court had convicted the respondent of three OFP violations.

For orders issued under Minnesota Statute Section 518B.01, subd.6a(b), a respondent may bring a motion to modify the Order for Protection under certain conditions. The requirements for bringing such a motion are governed by special rules (found in §518B.01, subd.11), which require, among other things, personal service upon the petitioner at least 30 days in advance.

To conclude, domestic violence creates complex and dangerous circumstances for petitioners and their families. The Domestic Abuse Act as incorporated in Minnesota Statute 518B.01 wisely allows for subsequent and extended orders at a lower threshold to secure the safety of petitioners. It is critical that petitioners are made aware of this type of relief at the time their initial orders are awarded. Such knowledge may provide an incentive for petitioners to report violations in the future and safeguard the petitioner's well-being.

ⁱ Libor Jany, *Minneapolis Police Look to Domestic Abuse 'hot spots'*, Minneapolis Star Tribune, February 20, 2015.

ⁱⁱ 26th Annual Femicide Report from the Minnesota Coalition for Battered Women, released January 27, 2015, available at <http://www.mcbw.org/#!/femicide-report/ctod>.

ⁱⁱⁱ The Federal Bureau of Investigation reports that between 2001 and 2012, the number of American women who were murdered by current or ex intimate partners was 11,766.

^{iv} Minn. Stat. Stat. § 518B.01, subd.6(b).

^v Minn. Stat. Stat. § 518B.01, subd.6a.

^{vi} The respondent need not have intended his/her actions to be harassing to the petitioner. *Braend v. Braend*, 721 N.W. 2d 924 (Minn. Ct. App. 2006).

^{vii} Minn. Stat. § 518B.01, subd.6a(a).

^{viii} *McIntosh v. McIntosh*, 740 N.W.2d 1 (Minn. Ct. App. 2007).

^{ix} Minn. Stat. § 518B.01, subd. 6a(b).

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