

**TITLE 19-A
DOMESTIC RELATIONS**

**PART 4
PROTECTION FROM ABUSE**

**CHAPTER 101
PROTECTION FROM ABUSE**

§4006. Hearings

Sec. 1 amends
§4006, sub-§ 1

1. Full hearing. Within 21 days of the filing of a complaint, ***** a hearing must be held at which the plaintiff must prove the allegation of abuse by a preponderance of the evidence. If a request for temporary, emergency or interim relief is denied, the hearing must be held as soon as practicable within the 21-day period *****.

2. Temporary orders. The court may enter temporary orders authorized under subsection 5 that it considers necessary to protect the plaintiff or minor child from abuse, on good cause shown in an ex parte proceeding, which the court shall hear and determine as expeditiously as practicable after the filing of a complaint. Immediate and present danger of abuse to the plaintiff or minor child constitutes good cause. An order remains in effect pending a hearing pursuant to subsection 1.

2-A. Temporary orders; possession of dangerous weapons. The court may direct the defendant not to possess a firearm, muzzle-loading firearm, bow, crossbow or other dangerous weapon for the duration of the temporary order if the complaint demonstrates:

- A. Abuse that involves a firearm, muzzle-loading firearm, bow, crossbow or other dangerous weapon; or
- B. A heightened risk of immediate abuse to the plaintiff or a minor child. In determining whether a heightened risk of immediate abuse is present, the court shall consider, but is not limited to consideration of, whether:
 - (1) The temporary order of protection is not likely to achieve its purpose in the absence of such a condition;
 - (2) The defendant has violated orders of protection;
 - (3) Past or present abuse to a victim resulted in injury;
 - (4) The abuse occurred in public; and
 - (5) The abuse includes:
 - (a) Threats of suicide or homicide;
 - (b) Killing or threatening to kill pets;
 - (c) An escalation of violence;
 - (d) Stalking behavior or extreme obsession;
 - (e) Sexual violence;
 - (f) Excessive alcohol or drug use; and
 - (g) Abuse against a pregnant victim.

If the court prohibits the defendant from possessing a firearm, muzzle-loading firearm, bow, crossbow or other dangerous weapon in a temporary order and if the defendant moves for dissolution or modification of an order pursuant to subsection 7, the court must hear and decide the motion as expeditiously as possible and must issue a written decision on the motion within 24 hours after a hearing on that motion.

If the court prohibits the defendant from possessing a dangerous weapon other than a firearm, muzzle-loading firearm, bow or crossbow in a temporary order, the court shall specify the type of weapon the defendant is prohibited from possessing.

If the court prohibits the defendant from possessing a firearm, muzzle-loading firearm, bow, crossbow or other dangerous weapon in a temporary order, the court shall direct the defendant to relinquish, within 24 hours after service of the order on the defendant or such earlier time as the court specifies in the order, all firearms, muzzle-loading firearms, bows, crossbows and specified dangerous weapons in the possession of the defendant to a law enforcement officer or other individual for the duration of the order. If the weapons are relinquished to an individual other than a law enforcement officer, the defendant must file, within 24 hours after such relinquishment, with the court or local law enforcement agency designated in the order a written statement that contains the name and address of the individual holding the weapons and a description of all weapons held by that individual. The court may subsequently issue a search warrant authorizing a law enforcement officer to seize any firearms, muzzle-loading firearms, bows, crossbows and other dangerous weapons at any location if there is probable cause to believe such firearms, muzzle-loading firearms, bows, crossbows or dangerous weapons have not been relinquished by the defendant.

3. Emergency relief. Emergency relief is available as follows.

A. When there is no judge available in the District Court having venue or the District Court courthouse is closed and no other provision can be made for the shelter of an abused family or household member or minor child, a complaint may be presented to another District Court Judge or Superior Court Justice. Upon a showing of good cause, as defined in subsection 2, the court may enter temporary orders authorized under subsection 5 that it considers necessary to protect the plaintiff or minor child from abuse.

B. If a complaint is presented under this subsection, that complaint and any order issued pursuant to it must be forwarded immediately to the clerk of the District Court having venue for filing.

C. An order remains in effect pending a hearing pursuant to subsection 1.

4. Denial of relief. Before a request for temporary, emergency or interim relief is denied, the judge shall:

A. Allow the plaintiff the opportunity to be heard in person to support the complaint. The plaintiff may be accompanied by a person of the plaintiff's choice; and

B. Advise the plaintiff of reasons for the denial.

5. Interim relief. The court, in an ex parte proceeding, may make an order concerning the parental rights and responsibilities relating to minor children residing in the household and may enjoin the defendant from engaging in the following:

A. Imposing a restraint upon the person or liberty of the plaintiff;

B. Threatening, assaulting, molesting, harassing, attacking or otherwise disturbing the peace of the plaintiff;

C. Entering the family residence or the residence of the plaintiff;

D. Repeatedly and without reasonable cause:

(1) Following the plaintiff; or

(2) Being at or in the vicinity of the plaintiff's home, school, business or place of employment;

E. Taking, converting or damaging property in which the plaintiff may have a legal interest;

F. Having any direct or indirect contact with the plaintiff;

G. Engaging in the unauthorized dissemination of certain private images as prohibited pursuant to Title 17-A, section 511-A; or

H. Destroying, transferring or tampering with the plaintiff's passport or other immigration document in the defendant's possession.

If the court enjoins the defendant under this subsection and the enjoined conduct constitutes harassment under Title 17-A, section 506-A, the court shall include in the order a warning in conformity with Title 17-A, section 506-A.

5-A. Interim relief; care, custody or control of animals. The court may make an order concerning the care, custody or control of any animal owned, possessed, leased, kept or held by either party or a minor child residing in the household and may enjoin the defendant from injuring or threatening to injure any such animal.

6. Service of order. If the court issues a temporary order or orders emergency or interim relief, the court shall order an appropriate law enforcement agency or, if the defendant is present in the courthouse, a court security officer qualified pursuant to Title 4, section 17, subsection 15 or, if the defendant is in the custody of the Department of Corrections, the Department of Corrections to serve the defendant personally with the order, the complaint and the summons. The court shall cause the order to be delivered to the law enforcement agency, court security officer or the correctional facility in which the defendant is incarcerated as soon as practicable following the issuance of the order and the law enforcement agency, court security officer or chief administrative officer of a correctional facility or the chief administrative officer's designee shall make a good faith effort to serve process expeditiously.

A. Notwithstanding any other provision of law, service of an order may be made pursuant to this section through the use of electronically transmitted printed copies of orders that have been transmitted directly from the court to the law enforcement agency or correctional facility making service. Return of proof of service may be made by electronic transmission of the proof of service directly to the court from the law enforcement officer making service or the chief administrative officer, or the chief administrative officer's designee, of the correctional facility making service.

B. In any subsequent criminal prosecution for violation of this section when the service of an order was made through the use of an electronically transmitted printed copy of the order, with 10 days' advance written notice to the prosecution, the defendant may request that the prosecution call as a witness the law enforcement officer who served the order or the chief administrative officer, or the chief administrative officer's designee, of the correctional facility that served the order.

7. Dissolution or modification. Notwithstanding any statutory provision to the contrary, upon 2 days' notice to the plaintiff or upon such shorter notice as the court may order, a person who is subject to an order may appear and move the dissolution or modification of the order and, in that event, the court shall proceed to hear and determine the motion as expeditiously as the ends of justice require. At that hearing, the plaintiff has the burden of justifying a finding in the ex parte order that the defendant has challenged by affidavit. This section may not be construed to abolish or limit any means, otherwise available by law, for obtaining dissolution, modification or discharge of an order.

8. Extension. If a hearing under subsection 1 is continued, the court may make or extend temporary orders it considers necessary. Notwithstanding any other provision of this section, if a protective order is issued pursuant to section 4007, the temporary protective order issued pursuant to this section remains in effect pending service of the final order.