

# House Research Act Summary

**CHAPTER:** 437

**SESSION:** 2000 Regular Session

**TOPIC:** Domestic Abuse

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## Overview

The act expands first degree murder in situations involving domestic abuse; provides enhanced penalties for fifth degree assault and domestic assault based upon a previous adjudication of delinquency or for violation of the malicious punishment of a child law or the similar law of another state; provides additional penalties for malicious punishment of a child; clarifies a provision in the harassment law and allows for enhanced penalties for harassment based upon a previous adjudication of delinquency or the violation of a similar law of another state; and increases the cash bail for individuals charged with malicious punishment of a child. The act also broadens the definition of domestic abuse for the purpose of determining the order in which the court is to dispose of criminal cases and clarifies when evidence of similar prior conduct of an accused relating to domestic abuse is admissible in court proceedings.

Finally, the act allows sex offenders contact with complainants when approved by a treatment program and the supervising correctional agent.

- 1 **Hearing on application; notice.** Current law requires personal service to be made upon a respondent of an ex parte order not less than five days prior to a hearing requested by the petitioner. This section amends the notice provision in the domestic abuse act to provide that, if the petitioner requests a 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 if served fewer than five days before the hearing, which shall be granted unless there are compelling reasons not to.
- 2 **Service; alternate service; publication; notice.** Provides that, in lieu of service of an order for protection upon the respondent personally, a law enforcement officer may serve a person with a short form notification (see section 3). Also requires any short form notification that is issued to

include a notice to the respondent that, if the order is issued to protect the petitioner or a child of the parties, the court shall, upon request of the petitioner, consider the order in making a decision regarding child visitation.

- 3 **Short form notification.** Creates a short form notification. Provides that a law enforcement officer may serve a person with a short form notification in lieu of personal service. Requires the short form notification to include:

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

Requires the short form notice to be in bold print and in specified form. This notice informs the respondent that the order is enforceable and that the respondent must report to the nearest sheriff's office or county court to obtain a copy of the order for protection. The short form notice also must notify the respondent that a violation of the order for protection or short form notice may result in criminal penalties.

Allows a law enforcement officer to detain a respondent for the amount of time necessary to complete and serve the short form notification upon verification of the respondent's identity and the existence of an unserved order. Allows service to take place at any time.

Requires the superintendent of the BCA to provide the short form to law enforcement agencies.

- 4 **Violation of a domestic abuse no contact order.** Defines a domestic abuse no contact order as an order issued by a court against a defendant in a criminal proceeding for domestic abuse and includes pretrial orders before final disposition of the case and probationary orders after sentencing. Provides a misdemeanor penalty for violation of the order.

Allows a peace officer to arrest without a warrant and take into custody a person whom the peace officer has probable cause to believe has violated a domestic abuse no contact order. Permits this arrest and detention even if the violation did not take place in the officer's presence if the existence of the order can be verified by the officer. Requires the person to be held in custody for at least 36 hours. Provides immunity from civil liability to officers acting in good faith and exercising due care in making the arrest.

- 5 **Murder in the first degree.** Current law provides that it is murder in the first degree for someone to cause the death of a human being while committing domestic abuse, when the perpetrator has engaged in a past pattern of domestic abuse upon the victim and the death occurs under circumstances manifesting an extreme indifference to human life. This section expands this crime to include situations where the domestic abuse is perpetrated upon the victim *or upon another family or household member*.

- 6 **Gross misdemeanor.** Current law provides a gross misdemeanor penalty when a person commits fifth degree assault:

- against the same victim* during the time period between a previous conviction under this section, sections 609.221 to 609.2231, 609.2242, 609.342 to 609.345, or 609.713, or any similar law of another state and the end of five years following discharge from sentence

for that conviction; or  
within two years of a previous conviction under this section of sections 609.221 to 609.2231, 609.2242, or 609.713.

This section allows consideration of prior adjudications of delinquency for any of the specified offenses to enhance the penalty for fifth degree assault. For juveniles, the time period runs from the time of the previous conviction until five years following *disposition* for that adjudication.

This section also allows previous convictions for malicious punishment of a child (section 609.377) to be used to enhance a penalty. Also clarifies that a violation of a similar law of another state may be used to enhance a penalty.

- 7 **Felony.** Current law provides a felony penalty when a person commits fifth degree assault:  
*against the same victim* during the time period between the first of *two or more* previous convictions under this section or sections 609.221 to 609.2231, 609.2242, 609.342 to 609.345, or 609.713, and the end of five years following discharge from sentence for that conviction; or  
within three years of the first of *two or more* previous convictions under this section or sections 609.221 to 609.2231, 609.2242, or 609.713.

This section allows consideration of prior adjudications of delinquency for any of the specified offenses to enhance the penalty for fifth degree assault. For juveniles, the time period runs from the time of the previous conviction until five years following *disposition* for that adjudication.

This section also allows previous convictions for malicious punishment of a child (section 609.377) to be used to enhance a penalty. Also clarifies that a violation of a similar law of another state may be used to enhance a penalty and that any combination of two or more previous convictions or adjudications may be used to enhance a penalty.

- 989 **Gross Misdemeanor; felony; domestic assault.** Contains similar changes to the enhancement provisions of the domestic assault law as those changes made to the fifth degree assault law in sections 6 and 7.

- 131013 **Stay.** Current law provides that, when a court stays imposition or execution of a sentence for criminal sexual conduct in the first, second, third, or fourth degree, the court must include as a condition of probation that the offender have no unsupervised contact with the complainant until the offender has successfully completed a treatment program. These sections allow unsupervised contact if approved by the treatment program and the supervising correctional agent.

14 **Malicious punishment of a child.**

**Subd. 1. Malicious punishment.** Current law provides that a parent, legal guardian, or caretaker who, by an intentional act or a series of intentional acts with respect to a child, evidences unreasonable force or cruel discipline that is excessive under the circumstances is guilty of gross misdemeanor malicious punishment of a child. This section provides that the punishment is as specified in subdivisions 2 to 6.

**Subd. 2. Gross misdemeanor.** Provides that, if the punishment results in less than substantial bodily harm, the person is guilty of a gross misdemeanor.

**Subd. 3. Enhancement to a felony.** Provides for enhancement of the gross misdemeanor penalty for malicious punishment of a child to a five-year felony if a person violates subdivision 2 during the time period between a previous conviction or adjudication for delinquency under this section or sections 609.221 to 609.2231 (first, second, third, and fourth degree assault), 609.224 (fifth degree assault), 609.2242 (domestic assault), 609.342 to 609.345 (first, second, third, and fourth degree criminal sexual conduct), or 609.713 (terroristic threats) and the end of five years following discharge from sentence or disposition for that conviction or adjudication.

**Subd. 4. Felony; child under age four.** Moves existing language from the end of the statute to subdivision 4 that provides a five-year felony penalty if the punishment is to a child under the age of four and causes bodily harm to the head, eyes, neck, or otherwise causes multiple bruises to the body.

**Subd. 5. Felony; substantial bodily harm.** Contains current law providing a five-year felony penalty if the punishment results in substantial bodily harm.

**Subd. 6. Felony; great bodily harm.** Contains current law providing a ten-year felony penalty if the punishment results in great bodily harm.

- 15 **Aggravated violations.** Makes a technical change to clarify a provision in the harassment and anti-stalking law.
- 16 **Second or subsequent violations; felony.** Amends the harassment and anti-stalking law to provide that a previous adjudication of delinquency may be used to enhance the penalty under the harassment law from a gross misdemeanor to a felony. Also provides that a violation of a similar law of another state may be used to enhance a penalty.
- 17 **Six times the fine.** Current law provides that, for domestic abuse, fifth degree assault, and domestic assault, the maximum cash bail that may be required for a person charged with a misdemeanor or gross misdemeanor is six times the highest cash fine that may be imposed for the offense. This section adds malicious punishment of a child to this provision.
- 18 **Issues, how disposed of.** Current law prescribes the order in which issues on the court's calendar shall be handled and provides that indictments or complaints alleging domestic assault where the defendant is on bail are fourth on the list of six categories. This section changes the reference from "domestic assault" to the broader term "domestic abuse." Domestic abuse is defined to have the meaning given in the Domestic Abuse Act (section 518B.01, subdivision 2).
- 19 **Evidence of prior conduct.** Clarifies that evidence of similar prior conduct by the accused against the victim of domestic abuse or against other family or household members is admissible when the criteria in the statute are satisfied. Contains definitions of "similar prior conduct," "domestic abuse," and "family or household members."
- 20 **Effective dates.** Section 1 is effective the day following final enactment. Sections 2, 3, 18, and 19 are effective August 1, 2000. Sections 4 to 16 and 17 are effective August 1, 2000, and apply to crimes committed on or after that date.