

Can a Petitioner Violate Her Own Order for Protection?

Advocates and lawyers in the United States are often asked to consider this question about Minnesota law. Minn. Stat. 518B.01 subd.14 (i) states that “[t]he admittance into petitioner’s dwelling of an abusing party excluded from the dwelling under an order for protection is not a violation by the petitioner of the order for protection.” However, Minnesota law does not explicitly address whether or not a petitioner can violate an Order for Protection (OFP) by telephoning the respondent or visiting the respondent’s home, or any other possible voluntary encounters.

The Advocates for Human Rights concludes that a petitioner cannot be held criminally liable for violation of their own OFP under any circumstances for several reasons.¹

The first is based on the language used by the statute itself, which contains language that restricts only the abuser, or the respondent.² Further, §518B.01, subd.18(2) says that, “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; in no event is the order for protection voided.” This subdivision indicates that no action on the part of the petitioner can void the OFP.

Next, as a remedial statute, the Minnesota’s Domestic Abuse Act should be treated with a liberal construction. The Domestic Abuse Act was intended both for the public good and to remedy the problems many women in Minnesota faced at the hands of their abusers. It can therefore properly be declared remedial legislation.³ Thus, the statutes are to be given a liberal construction in favor of the remedy or of those who are the intended beneficiaries of the statute, and in a way that would not defeat the main purpose of the statute. The goal of the legislation was to provide a means for victims of domestic abuse to be protected from their abusers and restrain the abusers in several different ways. To read into the statute that petitioners are able to violate their own OFP goes against the intended purpose of the statute. Further, it would mean expanding the original OFP to protect the abuser, rather than the person being abused. Therefore, from a structural standpoint, a petitioner is not legally able to violate her own order.

To further support our conclusion, the case law from Minnesota states that the Minnesota statute may not be expanded in a way that does not advance its remedial purpose.⁴ Additionally, case law from other states and relevant federal case law holds that a petitioner cannot violate her own OFP. In 2003, the Ohio Supreme Court found that the prosecutor could not charge the victim with aiding and abetting the violation of the abusers’ orders.⁵ A similar type of question was posed to the US Supreme Court in *Gebardi v. United States* (1932),⁶ where they held that a woman who voluntarily crosses state lines for the purpose of prostitution could not be prosecuted for aiding and abetting under the Mann Act. Because the legislature did not specifically address this issue, the court held that the legislature intended to leave unpunished her acquiescence to the transportation and prostitution.⁷ Similarly, in regards to domestic violence, if the legislature’s goal was to hold women punishable for violating their OFP, it would have done so in an affirmative manner.

Another pertinent federal case is the *US v. Annunziato*.⁸ In *Annunziato*, the court held that, “when the Legislature has imposed criminal penalties to protect a specific class of individuals, ‘it can hardly have meant that a member of that very class should be punishable either as an aider or abettor or as a co-conspirator.’” The abused person is the intended protected class and therefore, cannot by her own actions, remove this protection or be held liable for what the abuser does once invited inside.

¹ For further reference, see “Can a Petitioner Violate Their Own Order?” in *Agents for Change*, Vol. 18, Issue 1, January/February 2008, page 4. *Agents for Change* is a publication of Battered Women’s Legal Advocacy Project, Inc. See www.bwlap.org.

² For example, the “abusing party” is restrained from committing acts of domestic violence, from the dwelling, and from the area around the dwelling. Minn. Stat 518B.01.

³ *Swenson v. Swenson*, 490 N.W.2d 668, 670 (Minn. App. 1992).

⁴ *Id.*

⁵ *State v. Lucas*, 100 Ohio St.3d 1, 795 N.E.2d 642 (Ohio 2003).

⁶ *Gebardi v. United States*, 287 U.S. 112, 53 S.Ct.35, 77 LEd 206 (U.S. 1932).

⁷ *Id.*

⁸ *U.S. v. Annunziato*, 293 F.2d 373, 379 (2d Cir. 1961).