

## **Protecting Victims of Violence through the Domestic Abuse No Contact Order**

*Mary Ellingen, Staff Attorney, and Michelle Collins, Intern,  
The Advocates for Human Rights*

### **I. Introduction**

Countries in Central and Eastern Europe and the Former Soviet Union (CEE/FSU) may find that the Domestic Abuse No Contact Order (DANCO) is an effective way to protect victim safety during criminal proceedings, in addition to the civil remedy which is provided in civil Orders for Protection. Experts agree that the issuance of a DANCO must be consistently communicated to law enforcement officials, and clearly place the authority to seek a DANCO with the prosecutor, while also allowing the victim a chance to express her wishes.

In Minnesota, a DANCO may be used in certain criminal proceedings to achieve similar ends as a civil Order for Protection (OFP), by making the defendant subject to prosecution for contacting a victim of the defendant's crime. Minnesota is one of many states whose statutes either authorize or mandate the issuance of a protective order as a condition of bail or pretrial release in a criminal proceeding; others include Alabama, Alaska, Colorado, Idaho, Illinois, Kentucky, Louisiana, Maine, Montana, New Hampshire, New Jersey, New York, North Dakota, Oklahoma, Pennsylvania, Rhode Island, South Dakota, Texas, Utah, Washington and Wisconsin.<sup>1</sup> This article will first explain the content of the Minnesota Statutes relating to DANCOs, and then discuss problems that have come up as the DANCO has been used in Minnesota. While there have been some problems with the implementation of the DANCO in Minnesota, they are solvable.

### **II. The DANCO in the Minnesota Statutes**

A Domestic Abuse No Contact Order (DANCO) is a court order issued against a defendant in a criminal proceeding as specified in Chapter 518B.01, Subdivision 22 of the Minnesota Statutes. The criminal proceeding may be for domestic abuse, harassment or stalking committed against a family or household member, violation of an order for protection, or violation of a prior DANCO.<sup>2</sup> A petition for an Order For Protection (OFP) may only be filed in a case of domestic abuse.<sup>3</sup> However, an OFP may also contain remedies for issues related to the domestic violence, such as child support. Certain CEE/FSU countries allow such additional remedies in their domestic violence laws.<sup>4</sup> A DANCO does not address these remedies. A DANCO may be issued before final disposition of the case or after sentencing. A person who knowingly violates a DANCO is guilty of a misdemeanor, or a gross misdemeanor if the violation is within ten years of "a previous qualified domestic violence-related offense conviction or adjudication of delinquency."<sup>5</sup>

When a peace officer has probable cause to believe a person has violated a DANCO, the statute mandates that the officer arrest the person without warrant

and take him or her into custody. This occurs even when the violation did not take place in the presence of the officer, as long as the officer can verify the existence of the DANCO.<sup>6</sup>

A peace officer may not issue a citation in lieu of arrest and detention for violation of a DANCO.<sup>7</sup> Once arrested, the individual must be brought to the county jail or police station, where the sheriff or the officer in charge of the station will issue a citation in lieu of continued detention unless it reasonably appears that release of the person “(1) poses a threat to the alleged victim or another family or household member, (2) poses a threat to public safety, or (3) involves a substantial likelihood the arrested person will fail to appear at subsequent proceedings.”<sup>8</sup> These provisions, especially the mandatory consideration of safety factors prior to issuance of a citation by the sheriff or officer in charge, should help to ensure the security of the people intended to be protected by the DANCO.

If a citation is not issued, the person charged must be brought before a court without unnecessary delay.<sup>9</sup> There, the judge must consider the same factors listed above in order to determine pretrial release conditions, and make findings on the record.<sup>10</sup> The judge may impose various conditions of release or bail designed to protect the alleged victim’s safety and ensure the person’s appearance at future proceedings.<sup>11</sup>

Immediately after the issuance of a citation in lieu of continued detention or the entry of an order for release, but before the person is released, the agency having custody of the individual must make a reasonable, good faith effort to orally provide certain relevant information on the person’s release to the alleged victim, other local law enforcement agencies involved in the case, and at the victim’s request, any local battered women’s or sexual assault program.<sup>12</sup> In cases of an order for conditional release, the information must also be provided in writing, along with a copy of the order, as soon as practicable.<sup>13</sup> In addition, the victim must be notified when a hearing is scheduled to review the possibility of release from pretrial detention.<sup>14</sup> Like the consideration of safety issues prior to release and the imposition of conditions of release or bail, these notification requirements should help make the DANCO an effective way to protect victims.

### **III. The DANCO in Practice**

Advocates for domestic violence victims have identified two main problems with the DANCO as it has been put into practice in Minnesota: the slow and inconsistent flow of information from judges to law enforcement when DANCOs are issued, and the ability of victims to easily get DANCOs dismissed. These problems are almost certainly avoidable, and should not stop CEE/FSU countries from considering implementation of something like the DANCO. Based on the Minnesota experience, it seems that an effective DANCO system requires a consistent method of informing law enforcement when DANCOs have been issued, as well as an aggressive approach by prosecutors combined with an opportunity for victims to have their wishes considered.

First, the process of making information about a DANCO's existence accessible to the appropriate law enforcement authorities is slow and uncertain. Solving this problem is crucial because law enforcement officers must be able to verify the DANCO's existence before making an arrest without a warrant for violation of it.<sup>15</sup> It appears that this problem may be remedied in Minnesota. Advocates report that the state court administrator's office is working on getting DANCOs into the database used to track OFPs.<sup>16</sup> In addition, standardized forms should make the DANCO more recognizable to law enforcement over time, and emphasize its importance to the defendant as a separate order rather than just some additional language in a standard conditional release order.<sup>17</sup> If CEE/FSU countries consider implementing a mechanism like the DANCO, they could avoid this problem by ensuring that there is a reliable and efficient system in place for conveying information on DANCOs to all law enforcement authorities.

Second, some advocates are concerned about the ease with which victims may request and receive dismissal of the DANCO, which leads to a blurring of the line between a criminal case brought by a prosecutor and a civil case brought by a victim.<sup>18</sup> Advocates are concerned that public defenders may tell the judge that the victim wants a DANCO dropped, and if the victim is present, the judge might even ask her for confirmation, on the record and in front of the defendant.<sup>19</sup> Scrutiny of a victim's opinion seems inappropriate in a case brought by the prosecutor, not the victim. These problems are part of a greater tension between seeking protection of victims' safety and respecting their autonomy.<sup>20</sup>

Provided that safeguards allowing for victims' input are in place, implementation of a procedure like the DANCO could be an effective way for CEE/FSU countries to navigate the tension between protection of safety and respect for autonomy. Advocates in Minnesota point out that victims sometimes want the state to take the lead. A victim unwilling to seek an OFP because her batterer will hold her responsible for this action and retaliate against her will often appreciate the fact that a DANCO is initiated by the prosecutor.<sup>21</sup> Ideally, wherever a DANCO system is in place, it should be clear to everyone involved that the prosecutor is in charge of the case, and while the victim should not be required to state whether she supports or opposes the DANCO (particularly not in front of the defendant), she should be given an opportunity to voice her concerns and have them considered. This way, the ultimate safety of the victim depends less upon her own choices than it would in the case of an OFP, but the other actors whose choices are important in this context, especially the prosecutor and judge, can take her desires into account.

---

<sup>1</sup> Jeannie Suk, *Criminal Law Comes Home*, 116 Yale L.J. 2, 16-17 (2006).

<sup>2</sup> Minn. Stat. Ch. 518B.01, Subd. 22(a).

<sup>3</sup> Minn. Stat. Ch. 518B.01, Subd. 4.

<sup>4</sup> For example, see "On Measures Against Violence in Family Relations," Republic of Armenia, Law No. 9669 of 18.12.2006.

<sup>5</sup> Minn. Stat. Ch. 518B.01, Subd. 22(c).

<sup>6</sup> Minn. Stat. Ch. 518B.01, Subd. 22(d).

<sup>7</sup> Minn. Stat. Ch. 629.72, Subd. 1a(a).

<sup>8</sup> Minn. Stat. Ch. 629.72, Subd. 1a(b).

- 
- <sup>9</sup> Minn. Stat. Ch. 629.72, Subd. 1a(c).  
<sup>10</sup> Minn. Stat.Ch. 629.72, Subd. 2(a).  
<sup>11</sup> Minn. Stat.Ch. 629.72, Subd. 2(b).  
<sup>12</sup> Minn. Stat. Ch. 629.72, Subd. 6(a).  
<sup>13</sup> Minn. Stat. Ch. 629.72, Subd. 6(b).  
<sup>14</sup> Minn. Stat. Ch. 629.72, Subd. 7.  
<sup>15</sup> Minn. Stat. Ch. 518B.01, Subd. 22(d).  
<sup>16</sup> Email from Advocate, 9 April 2008.  
<sup>17</sup> Email from Advocate, 11 April 2008.  
<sup>18</sup> Emails from Advocates, 9 April 2008 and 11 April 2008.  
<sup>19</sup> Email from Advocate, 10 April 2008.  
<sup>20</sup> Email from Advocate, 10 April 2008.  
<sup>21</sup> Emails from Advocates, 10 April 2008.