



PROTECTION ORDERS

General Information

South Dakota Protection from Domestic Abuse Act, SDCL 25-10, gives you a way to seek protection from another family or household member who has physically abused you or has threatened to physically abuse you.

Family or household members are defined as: spouses, former spouses, related persons, or people presently or in the past, living in the same household, or persons who have had a child together.

This law gives you the right to go to Court, WITH OR WITHOUT any attorney, to seek a court order for your protection or that of your children.

You will be referred to as the Petitioner and the person who has abused you or threatened to physically abuse you will be referred to as the Respondent.

The Respondent may be your spouse, former spouse, boyfriend or girlfriend, your parents, your children or other relatives, etc. If you and the Respondent are presently married, you do NOT have to file for divorce before you can receive protection under this law.

Your right to relief under this law is not affected by you leaving the residence or household to avoid abuse.

You may obtain forms to apply for a Protection Order from the Clerk of Courts in the county where you live or they may be obtained on line at the South Dakota Unified Judicial System website. www.sdjudicial.com. The forms include instruction on how to complete the forms and each step necessary to obtain the protection order. Once the forms have been completed you will need to file them with the Clerk of Courts in the county where you reside.

There are no filing fees or service fees associated with the obtaining of a protection order.

Ex Parte Temporary Protection Order

This is an order issued by the circuit court judge giving you the protection you ask for without giving the Respondent an opportunity to tell his or her side of the story. The judge may grant an Ex Parte Temporary Protection Order if, from the information provided in the Petition, it appears that there is an immediate and irreparable danger that the Respondent will physically abuse you or threaten to physically abuse you before the hearing can be held. This Ex Parte Temporary

Protection Order may be granted for a period of time up to THIRTY (30) DAYS.

The Ex Parte Temporary Protection Order requires that the Respondent to stop physically abusing you or threatening such abuse. It may also order the Respondent to move out of the house.

If the judge grants an Ex Parte Temporary Protection Order, the judge will schedule a hearing within thirty (30) days so that the judge may hear both sides and decide whether or not to grant you an Order of Protection.

Order of Protection

Whether or not you are granted an Ex Parte Temporary Protection Order, the judge will schedule a hearing on your petition for an Order of Protection. At this hearing, the judge will listen to both you and the Respondent and if the Court finds by a preponderance of the evidence that domestic abuse has taken place, the Court will issue an Order of Protection. You must attend this hearing. You should bring with you any additional evidence of the abuse, such as witnesses, photos and medical records, etc.

The main difference between this order and the temporary order is that the Respondent will be allowed to be present and may give evidence. If the Protection Order is granted it may be in effect for a fixed period of time not exceeding five (5) years from the date of the order.

The Protection Order will order the Respondent to refrain from all acts of domestic abuse and may order the Respondent to move from the dwelling house which the parties share and to stay away from such residence. The Protection Order may order the abuser to stay away from your workplace as well.

The Protection Order may also grant you custody of any minor children, order the Respondent to pay child support and establish visitation rights, order the Respondent to obtain counseling, as well as any other injunctive relief the Court may deem necessary.

EVEN IF YOU ARE GRANTED A PROTECTION ORDER, YOU MAY ALSO SEEK CRIMINAL CHARGES AND OR ANY OTHER CIVIL RELIEF AVAILABLE UNDER SOUTH DAKOTA'S LAW.

Enforcement

A PROTECTION ORDER BECOMES ENFORCEABLE BY CRIMINAL PROSECUTION AS SOON AS IT IS SERVED ON THE RESPONDENT.

If an Ex Parte Temporary Protection Order is in effect and the judge signs a Protection Order, the ex parte Temporary Protection remains in effect until the Protection Order is served on the Respondent.

A Violation of a Temporary Protection Order or a Protection Order is a crime which is

punishable by up to one year in the county jail or a \$2000.00 fine or both.

A protection order granted from another state or jurisdiction such as a Native American Indian Reservation is enforceable as if it were granted by a Court of this state.

Under South Dakota law, police are required to make an arrest if they have probable cause to believe that a violation of protection has taken place. After the violator has been arrested, he or she will be jailed and the judge will be contacted to set bail and conditions for release which should include no contact with the victim. If the Defendant contacts you either before or after release from jail, he or she maybe in violation of his/her bond conditions and the authorities should be contacted immediately.

When the Defendant is released from jail, a court date will be set. At the initial appearance, the defendant enters a plea of either guilty or not guilty. If the defendant pleads not guilty, a preliminary hearing will be set. In all likelihood, it will be necessary for you to testify at the preliminary hearing.

If the defendant either pleads guilty or is found guilty after a trial, the Court may order jail time, a fine and counseling for family violence. In addition, the Protection Order remains in place prohibiting the defendant from making further contact with you.

A Protection Order is not a cure all. You must still be careful. It is important that you do not initiate contact with the Respondent. If it becomes necessary to modify the protection order, you should contact an attorney or the clerk of courts office and ask the judge to modify the protection order.

If the Respondent continues making prohibited contact with you, directly or indirectly, at your home, place of work, or any other place, after the Protection Order has been entered, contact 911 or your emergency police number for immediate assistance.

Stalking Protection Orders

South Dakota law also allows those who do not meet the definition of family or household members to obtain a Stalking Protection Order. SDCL 22-19A-8.

The Petition must allege either, stalking behavior, physical injury as a result of an assault, or a crime of violence.

Stalking is defined as willfully, maliciously, and repeatedly follow or harass another person, making a credible threat to another person with the intent to place that person in reasonable fear of death or great bodily injury; or willfully, maliciously, and repeatedly harass another person by means of any verbal, electronic, digital media, mechanical, telegraphic, or written communication.

As with a Domestic Protection Order, an Ex Parte Temporary Stalking Order is obtained first and

within thirty (30) days a hearing is held to determine if a permanent Stalking Protection Order is appropriate. If the Stalking Protection Order is granted it may be in effect for a fixed period of time not exceeding five (5) years from the date of the order.

The forms for a Stalking Protection Order are also obtained with the Clerk of Courts office or online at www.sdjudicial.com. There are no costs or fees associated with obtaining or serving a Stalking Protection Order.

A violation of an Ex Parte Temporary Stalking Order or a Stalking Protection Order is also a class 1 misdemeanor punishable by up to one year in the county jail or a fine of \$2000.00 or both. If a law enforcement officer has probable cause to believe that a violation of a Stalking Protection order exists they are required to make an arrest.

Additional information

If you want the assistance of an attorney and cannot afford one, you should contact a legal service office in your area.

Your local Clerk of Courts, Police Department, Sheriff or attorney can give you the name and phone number for the shelter or domestic violence program in your area. You are encouraged to contact your local shelter or domestic violence program to learn about the programs and services available to you.

The information in this brochure is designed to provide a basic overview of the law relating to Domestic Protection Orders and Stalking Protection Orders. Actual Protection Order practice and enforcement can vary from circuit to circuit. For specific information relating to your county of residence, please contact an attorney, shelter, domestic violence program or local law enforcement.

This brochure is based upon South Dakota law and is designed to inform not to advise. No person should ever interpret any law without the aid of an attorney who knows the facts and maybe aware of any changes in the law.

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