



## OFFICE OF THE STAFF JUDGE ADVOCATE

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## PROTECTION ORDERS

### General Information

South Dakota's Protection from Domestic Abuse Act, SDCL 25-10, gives you a way to seek TEMPORARY 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 recent 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 an attorney, to seek a court order for your protection or that of your children.

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

The Defendant may be your spouse, former spouse, boyfriend or girlfriend, your parents, your children or other relatives, etc. If you and the Defendant 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 your 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. 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.

The filing fee costs are \$35.00; the sheriff's fee will depend on the mileage incurred to serve the Defendant, but generally averages \$20 to \$30. If you cannot afford these fees, you may complete an Affidavit which is a sworn statement indicating your inability to pay filing fees and service costs. The income of the Defendant does not need to be considered in determining your ability to pay. If you are found indigent, which means without the ability to pay these fees, the judge may waive the costs, which means you do not pay the court costs.

### Ex Parte Temporary Order of Protection

This is an order issued by the circuit court judge giving you the protection you ask for without giving the Defendant an opportunity to tell his side of the story. The judge may grant an Ex Parte Temporary Order of Protection if, from the information provided in the Petition, it appears that there is a real danger that the Defendant will physically abuse you or threaten to physically abuse you before a hearing can be held. This Ex Parte Temporary Order of Protection may be granted for a period of time up to THIRTY (30) DAYS.

The Ex Parte Temporary Order of Protection requires that the Defendant stop physically abusing you or threatening such abuse. It may also order the Defendant to move out of the house, restrain the Defendant from transferring, concealing, encumbering, or otherwise disposing of your property or jointly owned property.

If the judge grants an Ex Parte Temporary Order of Protection, the judge will schedule a hearing within the 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 Order of Protection, 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 Defendant 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 abuse you may have, such as witnesses to the abuse, photos, medical records, etc.

The major difference between this order and the temporary order is that the Defendant will be allowed to be present and give evidence. If the Order of Protection is granted, it may be in effect for a fixed period of time not exceeding three (3) years from the date of the order.

The Protection Order will order the Defendant to refrain from all acts of domestic abuse and may order the Defendant to move from the marital residence and to stay away from your residence.

The Protection Order may also grant you custody of any minor children, order the Defendant to pay child support, and establish visitation rights, order that either or both parties obtain counseling, as well as any other injunctive relief the court may deem necessary.

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

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

### **Additional Information**

The Protection Order orders the person abusing you or putting you in fear of abuse to STOP! The Protection Order may also order the abuser to stay away from your home and your workplace. Violation of a Protection Order is a crime and can result in a fine or incarceration up to two years for the most serious violations.

If the abuser assaults you or is found at your home or place of employment in violation of the order, he/she will be arrested. Under South Dakota law, police are required to make an arrest if they believe a Protection Order has been violated. After the violator has been arrested, he/she will be jailed and the magistrate contacted to set bail and conditions for release which should include no contact with the victim. If the Defendant contacts you after release from jail, he/she may be in violation of one of his/her bond conditions. Authorities should be contacted immediately.

When the abuser is released from jail, a court date will be set. At the initial appearance, the abuser enters a plea of either guilty or not guilty. If the abuser 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 abuser either pleads guilty or is found guilty after a trial, the Court may order a fine, jail time, and/or counseling for anger control. If the Defendant is placed on probation, the Court must order family violence counseling. In addition, the Protection Order remains in place prohibiting the abuser from further contact with you.

Remember that the abuser is not to come to your home or your workplace after the Protection Order is in place. If it is necessary to have contact, the safest contact is by phone. If it is necessary for you to talk with this individual in person, you should make arrangements to meet the person at a neutral location, preferably somewhere where there are other people around where you will be safe, such as a coffee shop.

A Protection Order is not a cure-all. You still must be careful. If you expect the abuser to abide by and follow the Protection Order, you must adhere to the conditions of the order as well. If it is necessary to amend the order to allow the abuser to come to your home or your workplace, you should contact an attorney or the judge who signed the Protection Order and ask for the appropriate modification.

If the abuser 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.

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 abuse support group in your area. You are encouraged to contact your local shelter or domestic violence support group to learn about the programs and services available to you.

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

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