

Protection Orders

There are three types of Protection Orders in South Dakota:

1. Domestic Abuse Protection Order
2. Stalking Protection Order
3. Vulnerable Adult Protection Order

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. A Stalking Protection Order under SDCL 22-19A and a Vulnerable Adult Protection Order under SDCL 21-65 can also be considered.

Filing for a Protection Order

Answers to the most common questions about the process of getting a Protection Order

What does it do?

A Protection Order can tell the abuser that cannot continue to do that. It can say that the person cannot have contact with you.

What is the first step?

Call a victim advocate to talk about your situation and decide if a Protection Order is the best decision for you. The National Domestic Violence Hotline can be reached at 1-800-799-SAFE (7233)

Where do you file?

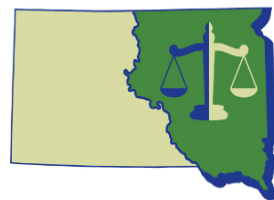
You must file with the Clerk of Courts in the county in which you live. The clerk will set your court dates and give you the paperwork you need.

Who can get a Protection Order?

A person who has been abused or has been threatened by abuse by a family member or a current or past intimate partner can be given a Protection Order. Orders can also be given in instances of stalking and sexual assault even if there is no prior relationship with the person.

Do I need a lawyer?

You don't need a lawyer, but you can talk to one if you think it will help you with your case.



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Who can I get a Domestic Abuse Protection Order against?

- A Spouse or former spouse;
- A person you are in a significant romantic relationship with or have been in one with during the past year;
- A person you have a child with or are expecting a child with;
- A Parent or child, including a relationship by adoption, guardianship, or marriage; or Siblings, whether of the whole or half blood, including a relationship through adoption or marriage;

NOTE: If you do not meet the criteria above, you may be able to receive a protection against any person under a Stalking Protection Order if you are being threatened or stalked. Adults that are Disabled or Elderly individuals may qualify for a Vulnerable Adult Protection Order.

If I cannot get a Domestic Abuse Protection Order, can I get a Stalking Protection Order?

You may get a Stalking Protection Order against any person if you are being threatened, harassed or stalked.

Are there other types of protection orders?

Yes. Vulnerable Adults (adults with a disability or an elder aged 65 and older) can apply for Protection Orders under SDCL 21-65.

How can I get a Protection Order/Stalking Protection Order/Vulnerable Adult Protection Order?

You may apply for a protection order by filing a Petition for a Protection Order form. These forms are commonly found here:

- The Clerk of Court's Office in each County has the forms needed for you to apply for a PO/Stalking PO/Vulnerable Adult PO (also available online at the South Dakota Unified Judicial System Website: <http://ujslawhelp.sd.gov/protectionorders.aspx> (search for the link to the type of Protection Order form you need: Domestic Protection Order, Stalking Protection Order or Vulnerable Adult Protection Order).
- Some Shelters and/or Advocacy Centers have the forms needed for you to apply for a PO/Stalking PO
- Advocates are always willing and able to help a victim apply for a PO/Stalking PO and can be contacted at any time day or night. Most Counties in SD are covered by DV advocates.

What do I do after I complete the form to apply for a Protection Order?

1. Return the forms to the Clerk of Courts
2. The Clerk of Courts will have a Judge review the forms
3. A Judge can do one of the following three things after reviewing the forms:
 - Decline to Protection Order
 - Grant a TPO (Temporary Protection Order) and set a hearing for Permanent PO
 - Do not grant the TPO but still set hearing to decide if Permanent PO should be granted (just because you do not get TPO does not mean a Permanent PO will not be granted at a hearing)

What happens at the Hearing?

- The petitioner must appear at the hearing and be prepared to present evidence and witnesses supporting their petition.
- If Respondent fails to show up at the hearing, the PO is not automatically granted. The Judge may still ask questions and take evidence in support of the PO.
- If Respondent shows up the Judge will generally ask for Respondents position on the PO.
 - If Respondent does not object, the Judge may then enter the Order. The Judge may still ask the Petitioner questions to support the granting of the

order.

- If Respondent opposes the Order, the Judge will conduct a full hearing
- Hearing: Judge will generally explain the rules prior to the hearing.
 - Petitioner goes first and presents their evidence by calling witnesses and giving testimony.
 - The petitioner testifies, they are subject to cross examination by the Respondent. The Judge will not allow the respondent to badger, argue with or intimidate the petitioner during this questioning.
 - Respondent will then be given an opportunity to present evidence by witnesses or their own testimony.
 - Petitioner will be given opportunity to cross examine the respondent and/or the respondent's witnesses. The Judge will not allow the petitioner to badger or argue with the respondent during this questioning.
 - The Judge is free to ask any party or witness questions during the hearing.
 - The Judge determines if the PO should be granted and, if so, how long it should be granted for.
 - Minor children of the parties may be addressed in the Protection Order.
- The Judge generally handles the hearing the same way if anyone or both parties are represented by an attorney.
 - However, if an attorney is involved they may try to work out an agreement to avoid hearing or resolve other outstanding issues, and a Judge may grant them an opportunity to do this.
- At the end of the hearing a Judge must enter Findings of Fact:
 - These Findings are often done by the Judge orally on the Record at the end of the hearing.
 - If an attorney is involved the Judge may order that findings be in writing

What happens after the Order is granted?

- Once a Judge grants the PO/Stalking PO, the Order is in place and the respondent must follow the Order.
- Any violation of the order should be reported to the police

Can the order be changed or dismissed?

Yes, BUT the Judge is the ONLY person that can modify or dismiss the order.

Modifications/changes to the Order:

- Any party at any time can ask the Judge to modify/change the Order.
- Requests to modify the order should be made in writing and filed with the Clerk. (Motion to Modify form is available online at <http://ujslawhelp.sd.gov/onlineforms.aspx>)
- After a Judge is provided with a request to modify an Order, the Judge will decide if he will have a hearing on the modification request.
- At modification hearing the party asking for the modification must present evidence to the Judge in support of the modification request and the Judge will decide if the Order should be modified/changed.
- REMEMBER the Order is not modified unless the Judge decides it is modified.

Dismissal of Order:

- Any party at any time can ask the Judge to dismiss the Order by filing a Motion to Dismiss form.
- Requests to dismiss the order should be made in writing and filed with the Clerk. (The Motion to Dismiss form is also available on online at <http://ujslawhelp.sd.gov/onlineforms.aspx>)
- After a Judge is provided with a Request/Motion to Dismiss, the Judge will decide if there will be a hearing on the dismissal request.
- If a hearing is held, the party asking for the dismissal must present evidence to the Judge in support of the dismissal request.
- REMEMBER the Order is not dismissed unless the Judge decides it is dismissed. The Order remains valid and in place unless dismissed by the Judge.

What happens to Firearms?

In a Protection Order, the Judge can order that the Respondent not possess any firearm.

How long can a Protection/Stalking/Vulnerable Adult Order last?

1. **Temporary** Protection/Stalking/Vulnerable Adult Order: Up to 30 days. Can be extended for several different reasons. During this period the Respondent is subject

to arrest and prosecution if they violate the order.

2. **Permanent** Protection/Stalking/Vulnerable Adult Order: Up to 5 years.

How do I enforce a protection order?

If you feel the Respondent has violated the order call 911 or local law enforcement.

What is a no-contact order?

A no-contact order stops a person from being in physical or verbal contact with another person, which can be face-to-face contact or over the phone or internet. Legal actions has to have already taken place (like an arrest and charges being pressed). For example, if a person has been charged with domestic abuse, a no-contact order would stop that person from coming into contact with their victim.

What does the order say?

The court will decide things like how far away the offender must be away from their victim. It will also specify how long the order will stay in place. After the order ends, the victim has the ability to petition for the order to be extended.

What happens if the order is broken?

If the order is broken, the defendant may receive a fine or jail time with a felony or misdemeanor charge against them.

What is the difference between a No-Contact order and a Protection Order?

No-contact order requires that a legal action has already taken place. A protection order can be obtained without prior arrest or other legal action against the defendant.

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