

DOMESTIC VIOLENCE PROTECTION ORDER PROCESS - BACKGROUND MEMORANDUM

House Concurrent Resolution No. 3013 (attached as an [appendix](#)) directs a study of the statutes and institutional resources relating to the domestic violence protection order process, including criminal cases for alleged violation of protection orders. According to testimony regarding this resolution, the study conducted by the North Dakota Supreme Court's Commission on Gender Fairness in the Courts indicated that there are concerns about the basic integrity of the domestic violence protection order process. It was noted that the study revealed general agreement, particularly among judicial officers, that the process does not serve the parties equally. It was also noted that the study also indicated concern that the expedited domestic violence protection order process may result in proceedings in which issues cannot be fully considered.

BACKGROUND

Experts have described domestic violence as a pattern of behavior in which one intimate partner uses physical violence, coercion, threats, intimidation, isolation, and emotional, sexual, or economic abuse to control and change the behavior of the other partner. The abusive person might be a current or former spouse, live-in boyfriend or girlfriend, or dating partner. Domestic violence happens to people of all ages, races, ethnicities, religions, and levels of economic status. It occurs in both opposite-sex and same-sex relationships. According to the National Coalition Against Domestic Violence, about 95 percent of victims of domestic violence are women. According to this source, over 50 percent of all women will experience physical violence in an intimate relationship, and for 24 percent to 30 percent of those women, the battering will be regular and ongoing. Every state and United States territory have laws that allow its courts to issue protection orders, as do many Indian tribes.

NORTH DAKOTA DOMESTIC VIOLENCE LAW

The North Dakota law regarding domestic violence is contained in North Dakota Century Code (NDCC) Chapter 14-07.1. This chapter, which was initially enacted in 1979, provides that domestic violence "includes physical harm, bodily injury, sexual activity compelled by physical force, assault, or the infliction of fear of imminent physical harm, bodily injury, sexual activity compelled by physical force, or assault, not committed in self-defense, on the complaining family or household members." Section 14-07.1-01 provides that a "family or household member" means "a spouse, family member, former spouse, parent, child, persons related by blood or marriage, persons who

are in a dating relationship, persons who are presently residing together or who have resided together in the past, persons who have a child in common regardless of whether they are or have been married or have lived together at any time, and, for the purpose of the issuance of a domestic violence protection order, any other person with a sufficient relationship to the abusing person as determined by the court under section 14-07.1-02."

This chapter also authorizes the appointment of a guardian ad litem for a minor in an action for a protection order. North Dakota Century Code Sections 14-07.1-10 and 14-07.1-11 provide for the arrest procedures in a situation involving domestic violence. Section 14-07.1-15 provides for the establishment of the domestic violence and sexual assault prevention fund in the state treasury. A portion of the funds deposited into this fund are derived from the \$35 supplemental marriage license fee provided for under Section 14-03-22. An estimated \$340,000 from this source is expected to be deposited into the domestic violence and sexual assault prevention fund during the 2007-09 biennium. Section 14-07.1-16 authorizes the State Department of Health to administer the money in this fund to domestic violence sexual assault organizations. This section provides that up to 10 percent of the fund may be allocated to a state domestic violence sexual assault coalition, as recognized by the State Department of Health.

Domestic Violence Protection Orders

Under NDCC Section 14-07.1-02, a victim of domestic violence may obtain a domestic violence protection order. A protection order is a court order that is designed to restrain, or keep someone from committing, violent and harassing behavior. An action for a protection order may be brought in district court by any family or household member or by any other member with a sufficient relationship. Upon receipt of the application, the court orders a hearing to be held not later than 14 days from the date of the hearing order. Service must be made upon the respondent at least five days before the hearing. Upon a showing of actual or imminent domestic violence and after due notice and a full hearing, the court may issue a domestic violence protection order. Section 14-07.1-02 provides that the relief granted by the court may include:

- a. Restraining any party from threatening, molesting, injuring, harassing, or having contact with any other person.
- b. Excluding either the respondent or any person with whom the respondent lives from the dwelling they share, from the

residence of another person against whom the domestic violence is occurring, or from a domestic violence care facility, if this exclusion is necessary to the physical or mental well-being of the applicant or others.

- c. Awarding temporary custody or establishing temporary visitation rights with regard to minor children.
- d. Recommending or requiring that either or both parties undergo counseling with a domestic violence program or other agency that provides professional services that the court deems appropriate. The court may request a report from the designated agency within a time period established by the court. The costs of the court-ordered initial counseling assessment and subsequent reports must be borne by the parties or, if indigent, by the respondent's county of residence.
- e. Requiring a party to pay such support as may be necessary for the support of a party and any minor children of the parties and reasonable attorney's fees and costs.
- f. Awarding temporary use of personal property, including motor vehicles, to either party.
- g. Requiring the respondent to surrender for safekeeping any firearm or other specified dangerous weapon, as defined in section 12.1-01-04, in the respondent's immediate possession or control or subject to the respondent's immediate control, if the court has probable cause to believe that the respondent is likely to use, display, or threaten to use the firearm or other dangerous weapon in any further acts of violence. If so ordered, the respondent shall surrender the firearm or other dangerous weapon to the sheriff, or the sheriff's designee, of the county in which the respondent resides or to the chief of police, or the chief's designee, of the city in which the respondent resides.

Section 14-07.1-02(5) authorizes a court to issue a dual protection order restricting both parties if each party has commenced an action, and, the court, after a hearing, has made specific findings of fact that both parties committed acts of domestic violence and that neither party acted in self-defense.

North Dakota Century Code Section 14-07.1-06 provides for the penalty for violating a domestic violence protection order under Section 14-07.1-02 or an ex parte temporary protection order under Section 14-07.1-03. This section provides that the first violation of any order is a Class A misdemeanor and also constitutes contempt of court. A second or

subsequent violation of either order is a Class C felony.

Ex Parte Temporary and Emergency Protection Orders

If the application for a domestic violence protection order under NDCC Section 14-07.1-02 alleges an immediate and present danger of domestic violence to the applicant, Section 14-07.1-03 authorizes the court to order an ex parte temporary protection order pending a full hearing. An ex parte temporary protection order may include:

- a. Restraining any party from having contact with or committing acts of domestic violence on another person.
- b. Excluding the respondent or any person with whom the respondent lives from the dwelling they share, from the residence of another person, or from a domestic violence shelter care facility.
- c. Awarding temporary custody or establishing temporary visitation rights with regard to minor children.
- d. Requiring the respondent to surrender for safekeeping any firearm or other specified dangerous weapon, as defined in section 12.1-01-04, in the respondent's immediate possession or control or subject to the respondent's immediate control, if the court has probable cause to believe that the respondent is likely to use, display, or threaten to use the firearm or other dangerous weapon in any further acts of violence. If so ordered, the respondent shall surrender the firearm or other dangerous weapon to the sheriff, or the sheriff's designee, of the county in which the respondent resides or the chief of police, or the chief's designee, of the city in which the respondent resides.

This section provides that an ex parte temporary protection order remains in effect until an order issued under NDCC Section 14-07.1-02 is served. This section also provides that a full hearing, as provided for in Section 14-07.1-02, must be set for not later than 14 days from the issuance of the temporary order.

North Dakota Century Code Section 14-07.1-08 provides that an emergency protection order may be ordered when the court is not available for an ex parte temporary protection order. Under this section, an emergency protection order may be signed by a local magistrate, such as a municipal judge or a small claims court referee. This emergency protection order can provide the same relief as the temporary order; however, an order issued under this section expires in 72 hours unless it is continued by the court or the local magistrate in the event of continuing unavailability of the court.

Other Domestic Violence Laws

North Dakota Century Code Chapter 14-07.4 provides for the Uniform Interstate Enforcement of Domestic Violence Protection Orders Act. This Act provides for procedures that enable courts to recognize and enforce valid domestic protection orders issued in other jurisdictions. Besides North Dakota, this Act has been adopted in Alabama, California, Delaware, the District of Columbia, Idaho, Indiana, Kansas, Mississippi, Montana, Nebraska, Rhode Island, South Carolina, South Dakota, Texas, the United States Virgin Islands, Utah, and West Virginia.

Case Law Regarding Domestic Violence Protection Order Process

One of the challenges to the domestic violence protection order process was the case of *Sandbeck v. Rockwell*, 524 N.W.2d 846 (N.D. 1994). In this case, the former boyfriend, who was accused of domestic violence, challenged whether he had received the "full hearing" as required by the statute and applicable rules for entering a protection order. In *Sandbeck*, the court analyzed the procedure provided for in NDCC Chapter 14-07.1. The court noted that the statute that authorizes a domestic violence protection order directs that the procedure begin not with a summons and complaint as other actions would, but with a "verified application" that is simply an affidavit. The court indicated that the special procedure authorized in this chapter, which is an affidavit application, is a motion with notice by an order to show cause rather than notice by a summons and complaint for an action. The court also noted Section 14-07.1-02 directs a faster motion procedure than the usual and longer time to answer an action provided for in the North Dakota Rules of Civil Procedure. The court concluded that Rockwell had the "full hearing" required by the statute for entering a protection order. According to the court, Rockwell had a full opportunity to present his evidence by a timely filed affidavit.

RECENT LEGISLATION

House Bill No. 1238 (2007) defined predominant aggressor as an individual who is the most significant but not necessarily the first aggressor. The bill provided that when investigating a domestic violence situation, the law enforcement officer is required to evaluate certain factors to determine which party was the predominant aggressor.

House Bill No. 1348 (2005) required the law enforcement officer, in a domestic violence situation, to evaluate each complaint separately to determine if either party acted in self-defense. If self-defense is not a factor, the bill provided that to determine

whether to seek an arrest warrant or to pursue further investigation, the officer must determine which party has engaged in the most immediately significant aggression by considering certain factors, including the comparative severity of injuries involved and the likelihood of future harm. The bill also provided that if an officer determines through the course of an investigation that one of the individuals has engaged in the most immediately significant aggression, the report must include the name of that individual and a description of the evidence that supports the findings.

House Bill No. 1072 (2003) provided for the adoption of the Uniform Interstate Enforcement of Domestic Violence Protection Orders Act. The Act established uniform procedures to enable courts to recognize and enforce valid domestic violence protection orders issued in other jurisdictions. The bill also repealed a section of the North Dakota Century Code relating to the enforceability of foreign domestic violence protection orders.

Senate Bill No. 2329 (2003) clarified the penalty for the first and subsequent violations of a protection order. The bill provided that the first violation of any protection order is a Class A misdemeanor and a second or subsequent violation of any protection order is a Class C felony. The bill provided that "first violation" means the first time any order is violated and a second or subsequent violation of any protection order includes two or more violations of protection orders.

SUGGESTED STUDY APPROACH

The committee, in its study of the statutes and institutional resources relating to the domestic violence protection order process, including criminal cases for alleged violation of protection orders, may wish to approach this study as follows:

- Receive information from representatives of the North Dakota Supreme Court regarding the findings of the Commission on Gender Fairness in the Courts study with respect to the domestic violence protection order process;
- Receive information from domestic violence advocacy organizations, judges, and attorneys regarding the domestic violence protection order process and concerns about how the cases are handled;
- Receive information regarding the access to legal services of parties to a domestic violence protection order process; and
- Develop recommendations and prepare legislation necessary to implement the recommendations.

ATTACH:1