

HOUSE BILL NO. 1462

Introduced by

Representatives Pollert, DeKrey

1 A BILL for an Act to amend and reenact sections 12.1-31.2-01 and 14-07.1-02 of the North
2 Dakota Century Code, relating to disorderly conduct and domestic violence protection orders.

3 **BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:**

4 **SECTION 1. AMENDMENT.** Section 12.1-31.2-01 of the North Dakota Century Code
5 is amended and reenacted as follows:

6 **12.1-31.2-01. Disorderly conduct restraining order - Penalty.**

- 7 1. "Disorderly conduct" means intrusive or unwanted acts, words, or gestures that are
8 intended to adversely affect the safety, security, or privacy of another person.
9 Disorderly conduct does not include constitutionally protected activity.
- 10 2. A person who is a victim of disorderly conduct or the parent or guardian of a minor
11 who is a victim of disorderly conduct may seek a disorderly conduct restraining
12 order from any court of competent jurisdiction in the manner provided in this
13 section.
- 14 3. A petition for relief must allege facts sufficient to show the name of the alleged
15 victim, the name of the individual engaging in the disorderly conduct, and that the
16 individual engaged in disorderly conduct. An affidavit made under oath stating the
17 specific facts and circumstances supporting the relief sought must accompany the
18 petition.
- 19 4. If the petition for relief alleges reasonable grounds to believe that an individual has
20 engaged in disorderly conduct, the court, pending a full hearing, may grant a
21 temporary disorderly conduct restraining order ordering the individual to cease or
22 avoid the disorderly conduct or to have no contact with the person requesting the
23 order. A temporary restraining order may be entered ~~only against the individual~~
24 either party named in the petition. The court may issue the temporary restraining

- 1 order without giving notice to the respondent or petitioner. Unless otherwise
2 terminated by the court, the temporary restraining order is in effect until a
3 restraining order issued under subsection 5 is served.
- 4 5. The court may grant a disorderly conduct restraining order ordering the respondent
5 or petitioner to cease or avoid the disorderly conduct or to have no contact with the
6 applicant if:
- 7 a. A person files a petition under subsection 3;
- 8 b. The sheriff serves ~~the respondent with~~ a copy of the temporary restraining
9 order on the party against whom the order was issued under subsection 4
10 ~~and~~ along with notice of the time and place of the hearing;
- 11 c. The court sets a hearing for not later than fourteen days after issuance of the
12 temporary restraining order unless the time period is extended upon written
13 consent of the parties, or upon a showing that the ~~respondent~~ party against
14 whom the temporary restraining order was issued has not been served with a
15 copy of the temporary restraining order despite the exercise of due diligence;
16 and
- 17 d. The court finds after the hearing that there are reasonable grounds to believe
18 that the respondent or petitioner has engaged in disorderly conduct. If a
19 person claims to have been engaged in a constitutionally protected activity,
20 the court shall determine the validity of the claim as a matter of law and, if
21 found valid, shall exclude evidence of the activity. Unless the court makes
22 specific findings indicating good cause not to restrain each party from the
23 other party, the order of the court must restrain each party from the presence
24 of the other party.
- 25 6. A restraining order may be issued ~~only~~ against ~~the individual~~ either party named in
26 the petition or against the person requesting the relief. Relief granted by the
27 restraining order may not exceed a period of two years. The restraining order may
28 be served on the respondent by publication pursuant to rule 4 of the North Dakota
29 Rules of Civil Procedure.
- 30 7. A disorderly conduct restraining order must contain a conspicuous notice to the
31 respondent or petitioner providing:

- 1 a. The specific conduct that constitutes a violation of the order;
- 2 b. Notice that violation of the restraining order is punishable by imprisonment of
- 3 up to one year or a fine of up to two thousand dollars or both; and
- 4 c. Notice that a peace officer may arrest the respondent or petitioner without a
- 5 warrant and take the respondent or petitioner into custody if the peace officer
- 6 has probable cause to believe the respondent or petitioner has violated an
- 7 order issued under this section.
- 8 8. If the respondent or petitioner knows of an order issued under subsection 4 or 5,
- 9 violation of the order is a class A misdemeanor. If the existence of an order issued
- 10 under subsection 3 or 4 can be verified by a peace officer, the officer, without a
- 11 warrant, may arrest and take into custody an individual whom the peace officer has
- 12 probable cause to believe has violated the order.
- 13 9. The clerk of court shall transmit a copy of a restraining order by the close of the
- 14 business day on which the order was granted to the local law enforcement agency
- 15 with jurisdiction over the residence of the alleged victim of disorderly conduct.
- 16 Each appropriate law enforcement agency may make available to its officers
- 17 current information as to the existence and status of any restraining order involving
- 18 disorderly conduct.
- 19 10. Notwithstanding subsection 5 of section 11-16-05, a state's attorney may advise
- 20 and assist any person in the preparation of documents necessary to secure a
- 21 restraining order under this section.
- 22 11. Fees for filing and service of process may not be charged to the petitioner in any
- 23 proceeding seeking relief due to domestic violence under this chapter.

24 **SECTION 2. AMENDMENT.** Section 14-07.1-02 of the North Dakota Century Code is
25 amended and reenacted as follows:

26 **14-07.1-02. Domestic violence protection order.**

- 27 1. An action for a protection order commenced by a verified application alleging the
- 28 existence of domestic violence may be brought in district court by any family or
- 29 household member or by any other person if the court determines that the
- 30 relationship between that person and the alleged abusing person is sufficient to
- 31 warrant the issuance of a domestic violence protection order. An action may be

- 1 brought under this section, regardless of whether a petition for legal separation,
2 annulment, or divorce has been filed.
- 3 2. Upon receipt of the application, the court shall order a hearing to be held not later
4 than fourteen days from the date of the hearing order.
- 5 3. Service must be made upon the respondent at least five days prior to the hearing.
6 If service cannot be made, the court may set a new date.
- 7 4. Upon a showing of actual or imminent domestic violence, the court may enter a
8 protection order after due notice and full hearing. The relief provided by the court
9 may include any or all of the following:
- 10 a. Restraining any party from threatening, molesting, injuring, harassing, or
11 having contact with any other person.
- 12 b. Excluding either the respondent or petitioner or any person with whom the
13 respondent or petitioner lives from the dwelling they share, from the residence
14 of another person against whom the domestic violence is occurring, or from a
15 domestic violence care facility, if this exclusion is necessary to the physical or
16 mental well-being of the applicant or others.
- 17 c. Awarding temporary custody or establishing temporary visitation rights with
18 regard to minor children.
- 19 d. Recommending or requiring that either or both parties undergo counseling
20 with a domestic violence program or other agency that provides professional
21 services that the court deems appropriate. The court may request a report
22 from the designated agency within a time period established by the court.
23 The costs of the court-ordered initial counseling assessment and subsequent
24 reports must be borne by the parties or, if indigent, by the respondent's county
25 of residence.
- 26 e. Requiring a party to pay such support as may be necessary for the support of
27 a party and any minor children of the parties and reasonable attorney's fees
28 and costs.
- 29 f. Awarding temporary use of personal property, including motor vehicles, to
30 either party.

- 1 g. Requiring the respondent or petitioner to surrender for safekeeping any
2 firearm or other specified dangerous weapon, as defined in section
3 12.1-01-04, in the respondent's or petitioner's immediate possession or
4 control or subject to the respondent's or petitioner's immediate control, if the
5 court has probable cause to believe that the respondent or petitioner is likely
6 to use, display, or threaten to use the firearm or other dangerous weapon in
7 any further acts of violence. If so ordered, the respondent or petitioner shall
8 surrender the firearm or other dangerous weapon to the sheriff, or the sheriff's
9 designee, of the county in which the respondent or petitioner resides or to the
10 chief of police, or the chief's designee, of the city in which the respondent or
11 petitioner resides.
- 12 5. A court of competent jurisdiction may issue a dual protection order restricting both
13 parties involved in a domestic violence dispute if each party has commenced an
14 action pursuant to subsection 1 and the court, after a hearing, has made specific
15 written findings of fact that both parties committed acts of domestic violence and
16 that neither party acted in self-defense. The order must clearly define the
17 responsibilities and restrictions placed upon each party so that a law enforcement
18 officer may readily determine which party has violated the order if a violation is
19 alleged to have occurred. Unless the court makes specific findings indicating good
20 cause not to restrain each party from the other party, the order of the court must
21 restrain each party from the presence of the other party.
- 22 6. The court may amend its order or agreement at any time upon subsequent petition
23 filed by either party.
- 24 7. No order or agreement under this section affects title to any real property in any
25 matter.
- 26 8. The petition for an order for protection must contain a statement listing each civil or
27 criminal action involving both parties.
- 28 9. Upon the application of an individual residing within the state, a court may issue a
29 domestic violence protection order or an ex parte temporary protection order under
30 this chapter even though the actions constituting domestic violence occurred
31 exclusively outside the state. In these cases, a respondent is subject to the

1 personal jurisdiction of this state upon entry into this state. If the domestic violence
2 justifying the issuance of a protection order under this chapter occurred exclusively
3 outside the state, the relief that may be granted is limited to an order restraining the
4 party from having contact with or committing acts of domestic violence on another
5 person in this state.