

House Bill 1489
House Judiciary Committee
Testimony Presented by Sara Behrens
February 11, 2025

Good morning Chairman Klemin, members of the committee. My name is Sara Behrens and I am a staff attorney with the State Court Administrator's Office. I am here today in support of House Bill 1489 which was submitted at the request of the Supreme Court. We do have a few amendments to propose that were missed in the Legislative Council version filed.

Currently, there are three types of civil restraining/protection orders that can be obtained in North Dakota: disorderly conduct restraining order (DCRO), domestic violence protection order (DVPO), and sexual assault restraining order (SARO).

A DCRO is granted when an individual demonstrates the respondent has committed disorderly conduct which are "intrusive or unwanted acts, words, or gestures intended to adversely affect the safety, security, or privacy of another individual." This type of order does not require that there be a relationship of some type between the petitioner and respondent. It can encompass things such as neighbor disputes or even stranger harassment.

To obtain a DVPO, there must exist a particular relationship such as family members, dating relationship, or roommate. A DVPO is granted when an individual demonstrates the respondent has committed acts of domestic violence.

A SARO is granted when an individual demonstrates the respondent has committed sexual assault. This type of order can be granted between those who have a relationship or in instances where there is no relationship.

Each of these orders has specific requirements, but there are also many commonalities in the process. Right now, these types are scattered in the code. Disorderly conduct restraining orders and sexual assault restraining orders are found in the criminal code. DCROs are found easily enough under chapter 12.1-31.2 – Disorderly Conduct Restraining Order. SAROs, however, are hidden in chapter 12.1-31 – Miscellaneous Offenses. DVPOs are found in chapter 14-07.1 – Domestic Violence.

The discussion on these various orders arose in the State Court Administrator's Office due to the issue of service. Currently, there is no filing or service fee associated with either the DVPO or SARO. Someone filing a petition for a DCRO is required to pay the filing fee and service fee unless that petition involves domestic violence. This can cause problems for the petitioner, the clerks office, and law enforcement trying to determine if domestic violence is sufficiently alleged to not require these fees. The process for DVPOs and SAROs is much more streamlined due to the absence of these fees.

Because these issues were being examined, it made sense to try to make these processes more uniform and centralize them in one place. The Judicial Conference Committee on Legislation formed a subcommittee to accomplish this. The subcommittee included: Judges Cherie Clark and Daniel El-Dweek, district court clerk Crystal Eide,

Seth O'Neill with the North Dakota Domestic & Sexual Violence Coalition, Captain Pat Haug with the Mandan Police Department, Traill County Sheriff Steve Hunt, Stutsman County Sheriff Chad Kaiser, Jeanne Vetter with the Bureau of Criminal Investigation, and Cammie Shock with Judicial Branch IT. The subcommittee made recommendations to the Committee on Legislation which presented this bill following some additional changes. The majority of what is contained in the bill is existing law.

HB 1489 brings the three types of orders under one umbrella term: civil protection order and creates a new chapter. Currently, there are extensive provisions regarding DVPOs but very little regarding the other two types. This bill fleshes out the procedure for all types.

Sections 1-10 of the bill change citations and remove provisions that are now found in the new chapter.

Section 11 creates new chapter 14-07.7 – Civil Protection Orders. Much of what is contained in the new chapter is existing law. Some changes are being proposed to ensure a smoother, easier process for all involved.

14-07.7-01

This is the definition section. It defines what a civil protection order is and indicates that a civil protection order encompasses all three types of existing orders. Definitions are pulled in from the existing sections regarding the three types. Two amendments are proposed. The first is on page 5 of the amended version, line 22 and adds “stalking” to the definition of domestic violence. The second is on page 6 of the

amended version, lines 1-2 and adds “issued under this chapter” to make clear that the definition applies to temporary orders as well.

14-07.7-02

This section explains what must be included in a petition for a civil protection order. This section also explains that if there is a minor petitioner, the parent or guardian is the petitioner and the minor is the protected individual. If the respondent is a minor, the parent or guardian of the minor must be notified of the petition and any resulting orders. Current law does not fully address how minor parties are handled.

One benefit of having all three orders be under the umbrella term “civil protection order” is in the case of an incorrect request. Having all types be a “civil protection order” will enable a court to more easily enter the correct type of order when the incorrect type is requested because it will be the same form for all three. The term civil protection order will also assist in obscuring the type of order entered to protect the petitioner while allowing schools, employers, etc. to know an order exists against a particular respondent in favor of a particular petitioner.

Instead of having a filing fee for only one type of order (and even then, there is the exception for domestic violence allegations), there will be no filing fee for filing a petition for a civil protection order.

14-07.7-03

This section requires that the civil protection order contain a conspicuous notice to the respondent explaining the conduct that constitutes a violation, the penalties, and law enforcement can arrest the respondent without a warrant for a violation. This is currently only required for DCROs and SAROs.

This section also specifies the time when an order expires which has been ambiguous under current law.

14-07.7-04 and 14-07.7-05

These sections contain the specifics for temporary DCROs and DCROs which mainly come from the existing DCRO statutes.

14-07.7-06 and 14-07.7-07

These sections contain the specifics for temporary DVPOs and DVPOs, much of which comes from the existing DVPO statutes. Some additional time frames have been added to clarify procedure for law enforcement. We have one amendment to the timing on page 8, line 22 and page 10, lines 9-10, of the amended version to add “or upon request of a law enforcement officer, whichever is sooner” to allow law enforcement leeway when needed. The relief provisions were altered to clarify that a judge can exclude a respondent from those places necessary to protect the protected individual. On page 9, line 9, of the amended version changes “subsection 1” to “section 14-07.7-06 so that the correct citation is included.

14-07.7-08 and 14-07.7-09

These sections contain the specifics for temporary SAROs and SAROs which mainly come from the existing SARO statutes.

14-07.7-10

This section provides that a state's attorney or a domestic violence sexual assault advocate can assist an individual with preparation of documents and, the advocate may sit with the petitioner during court proceedings.

14-07.7-11

Currently, notification of the stalking law is required to be included with a DVPO but not the other two types. It made sense to have the same requirement for all three.

14-07.7-12

This section creates uniformity with service. Anytime an order is issued, extended, modified, or terminated, the court will send a copy to the sheriff for service on the respondent and no service fee will be charged. Right now, the process is different for DCROs (unless domestic violence is alleged) which creates difficulty and confusion for everyone involved.

14-07.7-13

This section makes clear that an individual can apply for a civil protection order even if the individual had to leave a residence due to domestic violence. This is an existing statute.

14-07.7-14

This section is existing law and provides for appointment of a guardian ad litem when a minor is involved and questions of primary residential responsibility, support, or parenting time are at issue.

14-07.7-15

This section provides that a petition for a civil protection order can be brought even if other civil or criminal remedies may apply.

14-07.7-16

This section requires the civil protection order be transmitted to the bureau of criminal investigation whenever an order is issued, extended, modified, or terminated for inclusion in the national crime information center database provided by the FBI.

14-07.7-17

This section standardizes the penalty for violation of a civil protection order. A violation of any order is a class A misdemeanor and constitutes contempt of court. Currently, for DVPOs and SAROs, a second or subsequent violation is a felony. The Committee on Legislation wanted to provide clarity that to enhance a charge from a misdemeanor to a felony required a conviction prior to a charging a subsequent violation as a felony charge.

14-07.7-18

Like current statute applying to all three types, a respondent can be arrested without a warrant if the officer has probable cause that the respondent has violated the order.

14-07.7-19

This section is currently found in the DVPO statutes but would have application across all types when there is a need for assistance in obtaining possession of a dwelling or otherwise execute the order.

14-07.7-20

This section provides that any order issued under existing law entered prior to the effective date of the legislation remains in effect as provided in the order.

Sections 12 through 16 make citations changes to correspond with the new chapter.

Section 17 repeals the existing statutes governing disorderly conduct restraining orders, domestic violence protection orders, and sexual assault restraining orders. I will note that section 14-07.1-08 is not being carried over into this bill. That section allowed emergency orders to be entered by a magistrate when the court is unavailable. This was a remnant remaining from when there were county courts. This is no longer an issue. Page 15, lines 11-12, in the amended version strikes out subparagraph d. because 14-07.1-08 is being repealed.

Section 18 provides for an effective date of January 1, 2026. The delayed effective date is to allow the judicial IT department to rewrite the system to correspond with the new provisions and to allow the Supreme Court's Self-Help Center to draft new forms and instructions.

Thank you for your consideration and we urge a do pass.