

Written Testimony in Support of Senate Bill 2289

My name is Jesse Jahner, and I am the elected Sheriff in Cass County North Dakota. I write in support of Senate Bill 2289. Current statute (NDCC 44-04-18) and Administrative Rule 41 (Access to Court Records) do not allow law enforcement access to Domestic Violence Protection Orders in Odyssey (ndcourts.gov) or electronic court records without special request and approval on a case-by-case basis. Even the existence of an order is unavailable.

The Sheriff's Office is expected to serve, comply with, validate, and enforce these orders, yet we can't access them in Odyssey. Not knowing if an order exists and without access to these orders and associated file information (petition, information sheet), makes fulfilling job responsibilities difficult and usually creates a significant delay in verification and enforcement. This can cause a safety issue to the petitioner if we come into contact with the respondent before we receive the order and do not know that the order is in existence. In that case we would not serve the order or notify the respondent that they are not to have contact with the petitioner because we do not know the order exists. Without access to court electronic files, Odyssey or up-to-date information we cannot perform our job responsibilities efficiently, effectively, and someone (petitioner) may be hurt.

In 2020, we requested access to these court records and were denied with the following explanation: "After review by legal and State Court Administration, it was determined that the privacy protections set by statute and court rule do not allow law enforcement to have blanket access to these types of cases."

Our Office reached out again in April 2022 to Sally Holewa, the State Court Administrator, about the possibility of revisiting our request. Sally indicated the answer was the same because statute had not changed and suggested using our association to ask the legislature for an exemption. Sally also referred our office to Sara Behrens, State Court Administrator Staff Attorney, when asked for the specific language and statute used to deny law enforcement access. Sara indicated that "Supreme Court Administrative Rule 41 provides that domestic violence protection order files are confidential except for the order. Providing Odyssey access to law enforcement is not feasible, and you would only be entitled to access the orders." (It should be noted that the Jail receives a hard copy of all orders but not the entire file). Currently, Administrative Rule 41 does not preclude or prohibit access if another statute were to exist that provides an exemption to the Sheriff's Office.

Past Cass County States Attorney Birch Burdick was also involved in these conversations in April 2022 and ultimately suggested the same thing to get access to DM files in Odyssey—that we act through the ND Association of Counties or the Sheriff's Association to request the Supreme Court allow a Sheriff's Office exemption so we can do our jobs effectively.

Ultimately, the request would be to get an exemption for all Sheriff's Office Deputies (including Correctional Officers) access to these files, electronic files, access to Odyssey and court records involving domestic violence protection orders so that we can effectively and timely serve the respondent to protect the petitioner.

Respectfully,

Jesse Jahner, Cass County Sheriff