

1999 SENATE JUDICIARY

SB 2317

1999 SENATE STANDING COMMITTEE MINUTES

BILL/RESOLUTION NO. SB2317

Senate Judiciary Committee

Conference Committee

Hearing Date January 27, 1999

Tape Number	Side A	Side B	Meter #
1	x		1600 - end
2	x		0 - 1061
Committee Clerk Signature <i>Jackie Follmer</i>			

Minutes:

SB2317 relates to protection orders.

SENATOR WATNE opened the hearing on SB2317 at 10:50 A.M.

All were present. SENATOR STENEHJEM had to leave for a few minutes to testify at another hearing.

SENATOR LYSON testified on SB2317. I was asked to put this in by the Sheriff's Department I have no great love on it either way. The second notice of a protection order is the most dangerous time for the victims and law enforcement and for the violator.

CHARLENE SHEVRON, Department of Corrections, testified in support of SB2317. Some of the protection orders need to be served on transients, and they are hard to find the second time.

The violators don't like us to come to there place of employment to serve this notice the second time. It is hard to differentiate between the temporary and permanent orders.

SENATOR TRAYNOR asked about not serving the second notice. Under this bill the respondent would not be notified.

CHARLENE SHEVRON stated it would be on the ex-parte order.

DUANE HOUDEK testified as an information source on SB2317. Testimony attached.

I have one suggestion, if the concern is that the second service may harm the respondent, the first order should state you are a party to a court action, so we may mail you subsequent orders.

SENATOR TRAYNOR asked if the second orders can be sent by mail.

DUANE HOUDEK stated that the primary practice is personal service.

ART OLSON, Deputy Sheriff of Burleigh County Sheriff's Office, testified in support of SB2317. I work with protection orders weekly. First service needs to be personal service and then entered into NCIC. So far as mail service, I don't believe it will work, there won't be addresses. Our mission is to make it better, not easier.

DICK PECK, North Dakota Sheriff's Association, testified in support of SB2317. If we can't prove that we served the order, we can't put it into NCIC.

BONNIE PALACEK, Council of Abused Women, testified in support of SB2317. Testimony attached. We are in support of a standardized form.

SENATOR STENEHJEM asked if you do need to use the form and if you don't will it be invalid.

BONNIE PALACEK stated she did not know.

SANDI TABOR, State Bar Association, testified with concerns about SB2317. Judge Haggerty is also concerned. E-mail attached. There is a concern of service if it is not personal service.

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Senate Judiciary Committee

Bill/Resolution Number SB2317

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ROSELLEN SAND, Attorney General's Office, testified with concerns about SB2317. I would like to echo my concerns about due process and full faith and credit.

SENATOR STENEHJEM CLOSED the hearing on SB2317.

Discussion.

SENATOR LYSON made a motion for DO NOT PASS, SENATOR BERCIER seconded.

Motion carried.

SENATOR STENEHJEM will carry the bill.

6 - 0 - 0

REPORT OF STANDING COMMITTEE (410)
January 27, 1999 4:04 p.m.

Module No: SR-17-1307
Carrier: W. Stenehjem
Insert LC: . Title: .

REPORT OF STANDING COMMITTEE

SB 2317: Judiciary Committee (Sen. W. Stenehjem, Chairman) recommends DO NOT PASS (6 YEAS, 0 NAYS, 0 ABSENT AND NOT VOTING). SB 2317 was placed on the Eleventh order on the calendar.

1999 TESTIMONY

SB 2317

SENATE BILL NO. 2317

Testimony of Duane Houdek
January 27, 1999

Chairman Stenehjem and members of the Senate Judiciary Committee, my name is Duane Houdek. I am an attorney for Legal Assistance of North Dakota and, for the past three years, have served as a trainer of domestic violence advocates as they obtain their certification under the Supreme Court rule that allows them to represent people in protection order actions.

I neither favor nor oppose passage of this bill. I offer these comments because it raises issues that we have often discussed in those training sessions.

The protection order procedure is a summary one, likened by our Supreme Court to an order to show cause hearing. Because of that, the rules for service of protection orders are not the same as the rules governing personal service of a summons and complaint. The statutes are a mix of civil and criminal laws: the action for obtaining a protection order is civil in nature, the enforcement is primarily through criminal procedures and penalties. Therefore, service needs to fulfil the dual functions of providing notice in the civil action and providing a basis for prosecution under the criminal code.

This bill raised four issues for me that I will state briefly for your consideration.

First, although the Supreme Court in *State v. Wolff*, 512 NW2d 670 (ND 1994), affirmed a criminal conviction of violation of an amended protection order where that order was served by regular mail, language in that case makes it clear that no constitutional

issues of due process were raised in that case, and the facts made it implausible that the defendant did not have actual notice of the amended order. Whether the Court would affirm a conviction based on violating an order that was never served—under any definition—is open to serious question.

Second, protection orders are appealable orders. The time for appeal ordinarily does not start to run until service of notice of the order or judgment appealed. This bill raises the question of whether the finality of the orders would be affected.

Third, Federal full faith and credit laws have required states to recognize other states' orders and to enforce them as their own. The laws have also created federal crimes of violating protection orders where interstate activity is involved. Although federal law is not the primary means of enforcement of these orders, it may come to play a significant part. The federal crimes require the prosecutor to make an independent evaluation of whether the order was issued in accordance with the respondent's due process rights. Lack of any service of the order, I think, would doom any federal prosecution.

Finally, the language of the bill states that no service need be made "If, as a result of the hearing, no substantive modification is made to the ex parte order...". By statute, the "permanent" orders issued after an opportunity for hearing are substantively different than the ex parte orders issued prior to hearing. Under 14-07.1-02, NDCC, a court, following a hearing, is authorized to order counseling, to require monetary support for a party and any children involved, and to award temporary use of personal property such as motor

vehicles. None of these may be ordered in an ex parte order issued pursuant to 14-07.1-03, NDCC.

In conclusion, I think that although it is commendable to make this process more streamlined and to facilitate its ease of use and enforcement, this bill may have crossed the line that calls into question the integrity of the protection order itself.

I understand that there is concern, both for law enforcement and the respondents themselves, about personal service of a second order upon those respondents who do not attend the scheduled hearing. Perhaps this could be remedied by incorporating into the first, ex parte, order a notice that the respondent is now a party to a court proceeding and has the obligation to inform the court (of the officer serving the order) of any change of address, so that subsequent orders could be served upon him by regular mail. This would establish a "last known address" and probably would satisfy the *State v. Wolff* criteria, allowing all service of such orders by regular mail.

Thank you for the opportunity to provide this testimony.

BISMARCK
 Abused Adult Resource Center
 222-8370
 BOTTINEAU
 Family Crisis Center
 228-2028
 DEVILS LAKE
 Alternatives for
 Abused Families
 1-888-662-7378
 DICKINSON
 Domestic Violence and
 Rape Crisis Center
 225-4506
 ELLENDALE
 Kedish House
 349-4729
 FARGO
 Rape and Abuse Crisis Center
 800-344-7273
 FORT BERTHOLD RESERVATION
 Coalition Against
 Domestic Violence
 627-4171
 FORT YATES
 Tender Heart Against
 Domestic Violence
 854-3402
 GRAFTON
 Tri-County Crisis
 Intervention Center
 352-4242
 GRAND FORKS
 Community Violence
 Intervention Center
 782-0055
 JAMESTOWN
 S.A.F.E. Shelter
 888-353-7233
 McLEAN COUNTY
 McLean Family
 Resource Center
 800-657-8643
 MERCER COUNTY
 Women's Action and
 Resource Center
 873-2274
 MINOT
 Domestic Violence Crisis
 Center
 852-2258
 RANSOM COUNTY
 Abuse Resource Network
 683-5061
 STANLEY
 Domestic Violence Program,
 NW, ND
 628-3233
 VALLEY CITY
 Abused Persons Outreach
 Center
 845-0078
 WAHPETON
 Theaters Crisis Center
 642-2115
 WILLISTON
 Family Crisis Shelter
 572-0757
 Testimony SB 2317

Testimony SB2317
 Senate Judiciary Committee
 January 27, 1999

Senator Stenehjem and Members of the Committee:

My name is Bonnie Palecek and I am offering testimony in regard to SB2317.

Frankly, this bill worries us, although in reality it will probably not change the practice in most courts in the state relative to protection order processes. We had extensive discussion among our coalition members, and no one had experienced an identifiable problem with women being battered either more severely or more frequently as the result of the second service of a protection order. Of course we always make sure there is safety planning around the service of any order, divorce papers, etc., because we assume it is a very volatile time. We realize that our experience apparently differs from that of some law enforcement officers, although law enforcement agencies had not communicated problems with service to any of our coalition members.

The first part of the bill carries a mandate to the courts to use standardized forms, and we would applaud this movement toward consistency. In fact, the court and our coalition have worked together for the last twelve months to develop forms everyone could agree to use. Those forms have been approved by the Council of Presiding Judges and are currently in use statewide by almost every judge. We feel this is a huge step forward, even though the court chose not to mandate the use of the forms.

The second part of the bill is the portion which causes us some concern, perhaps primarily because we are always extremely wary of changing anything in the domestic violence chapter which might impede a process which seems to be serving the majority of cases so well.

That section eliminates the service of the so-called "permanent" order if there are no "substantive modifications" of the exparte temporary order. This section has fostered some interesting discussion among our members. We learned some interesting facts:

- Of the 15 programs present at a recent coalition meeting, 6 automatically provided service by mail if the respondent was not at the hearing, and so for them the issue of "second service" didn't exist. The remaining programs indicated law enforcement provided personal service.

- We were also interested in the number of cases involved and asked programs to provide data on how many respondents were showing up at hearings. We learned that respondents were appearing at hearings at a rather high rate (82% Burleigh Co.; 84% Morton; 90% Mercer; 82% Minot); although for some reason that figure was lower in the eastern part of the state-more around 60%.



All of this points to a relatively small percentage of cases which would be at issue here, especially if one narrows the category further to those orders which are not substantially modified.

And so one might argue, why not make this change to deal with these problematic but limited numbers of cases.

Our concerns in that regard are as follows:

- What would be the definition of “substantive change”? Some changes might not seem big in the eyes of the court (changes in visitation hours, for example), but might have great practical consequences, and allow for manipulation by abusers on a day to day basis. And this type of manipulation is of course at the heart of abusive behavior.
- Would it be clear that violations of the “unserved” order could be prosecuted?
- Would there be any implications for full faith and credit enforcement?

Judge John Paulson from the Southeast District shared some additional concerns which he encouraged me to communicate to you:

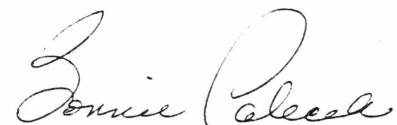
He prefaced his comments by saying that he “substantially modifies” around 95% of his orders at the full hearing:

- The respondent maintains the right to appeal even if he/she does not appear at the hearing. How can respondents appeal if they do not know exact provisions?
- The maximum length of time the order is to run is almost always set at the hearing. Wouldn't this always be a “substantive change” from 30 days?
- Without personal service, there is more room for misunderstanding in temporary distribution of personal property.
- Questions about due process must be cleared up if strong enforcement of orders can be expected.

I did contact the attorney working on the Model State Code Project for the National Council of Juvenile and Family Court Judges, and she has occasion to review legislation nationwide. She had not heard of a similar statute elsewhere that we could look to to gauge effects.

And so we are left more with vague, unanswered questions than strong opposition to this bill. We do question whether or not potential benefits outweigh possible unforeseen implications.

Thank you for your consideration.



North Dakota State Bar Association

From: Hagerty, Gail H. <HagertyG@scjd.court.state.nd.us>
To: 'S. Tabor' <Sband@btigate.com>
Subject: FW: Senate Bill 2317
Date: Tuesday, January 26, 1999 2:59 PM

Sandi -- Here's the message I sent Wayne Stenehjem re: SB 2317. Hey -- how 'bout that House Judiciary Committee. Any idea when 1275 will come to the floor? GH

>-----

>From: Hagerty, Gail H.
>Sent: Monday, January 25, 1999 2:59 PM
>To: 'wstenehjem@aol.com'
>Subject: Senate Bill 2317

>

>Wayne --

>

>I wish I had some great issue to write to you about to demonstrate my
>scholarly ability as a judge. Instead, I'll tell you what I don't like about
>Senate Bill 2317 -- which your committee will be hearing Wednesday a.m.

>

>It's a bill that requires protection orders to be prepared using the form
>prescribed by the Supreme Court and says orders issued after a hearing don't
>need to be served on the respondent.

>

>In the first place, there are forms which were put together by the Supreme
>Court. They're too long and include stuff that doesn't need to be there. I
>prefer to do my orders using templates I've put together (and shared with
>many other district judges). I think we should be moving away from having
>printed forms filled out in handwriting. I don't have any problem with
>having model forms -- but the use of the forms shouldn't be mandated.

>

>And then there's due process. The bill says:

>

>If, as a result of the hearing, no substantive modification is made to the ex
>parte order and an order is issued under section 14-07.1-02, that order is
>effective upon issuance and a copy of the order need not be served upon the
>respondent.

>

>As I understand federal law, we have to consider Brady factors at a hearing
>and decide whether a respondent should be prohibited from possession of a
>fire arm. The temporary orders are not as inclusive as the longer term
>orders. I'm not sure our orders would be honored in other jurisdictions if
>they're not served. Federal law requires due process. This opens the door to
>mischief. (Victim tells respondent she isn't going to go through with request
>for order. Respondent doesn't show up. Order is entered and is effective.
>Etc.)

>

>So, I don't like SB 2317.

>

>I really did appreciate receiving a fax with your committee schedule
>Thursday. I was working on getting my little schedule ready for the Supreme
>Court website, and your schedule wasn't on the Internet yet. I had a Morton
>Co. jury trial Friday, and had to get done what could be done Thursday, and
>supplement Friday evening.

STATE OF NORTH DAKOTA
Domestic Violence Protection Order
SFN: 51565

STATE OF NORTH DAKOTA
COUNTY OF _____

IN DISTRICT COURT
Case No. _____

Petitioner

vs.

**Domestic Violence
Protection Order**

Respondent

CWIS#
Respondent D.O.B:

To the Respondent:

Petitioner has requested a protection Order against you. Until this Order is modified or superseded and served upon you, you are ordered not to have any direct or indirect contact with the Petitioner. "Domestic Violence" included physical harm, bodily harm, 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.

You may appear on the _____ day of _____, _____ at _____ (a.m.) (p.m.) before this Court and explain why the Petitioner's request should not be granted. The hearing will be held in the _____. This order is effective upon entry, enforceable upon service, and remains in effect for a period of 30 days from the date of this order or until this order is modified or superseded and served upon you, whichever is earlier. If you do not appear at the hearing, the court may enter a protection order against you which may be valid for up to two(2) years or longer. The order may subject you to any restriction or requirement set out in this order or authorized by law.

You violate this order if you:

1. () Threaten, molest, injure or harass the petitioner(s).
2. () Call, write, or visit the Petitioner, regardless of where this takes place, or have messages delivered to Petitioner, through anyone other than your attorney.
3. Enter or come within _____ (feet) (yards) of:
 - () Petitioner's home located at (address optional) _____
Or any place the petitioner may be visiting or residing.
 - () Petitioner's place of employment _____
 - () Petitioner's day care _____
 - () Other _____
4. () Take or damage any of Petitioner's property:

5. () Have any physical contact with or threaten Petitioner.

It is further ordered that:

6. () Respondent (shall) (shall not) be excluded from the family dwelling.

7. () Petitioner shall have temporary custody of the minor children the parties have in common.

() Petitioner already has permanent custody of the children.

() Visitation shall be exercised as follows: _____

8. () _____ shall accompany (Petitioner) (Respondent)

(Name of person or agency)

to _____

to retrieve essential property, i.e., toiletries, clothes and documents of identification.

9. () Respondent shall pay child support in the amount of \$ _____ per month. Payments shall be made to the Clerk of District Court, in a manner acceptable to the Clerk, payable on the _____ day of _____.

10. () Respondent shall surrender to law enforcement serving this order all firearm(s) or other dangerous weapon(s) that the respondent owns or possesses, including the following identified firearm(s) or other dangerous weapon(s): _____

10. () Upon further order of the District Court any firearms or dangerous weapons surrendered under this order may be released to the respondent by the District Court so long as the respondent is authorized by law to possess the firearms or weapons.

11. () Other relief is granted as follows:

() _____

() _____

This order is in effect until the scheduled hearing or further order of the Court. Failure of the respondent to appear will not be a defense to a violation of any part of this order.

Failure of the Respondent to appear at scheduled hearing may result in granting of the relief requested and become effective until _____.

Any peace officer may arrest you with or without a warrant and take you into custody if the peace officer has probable cause to believe you have violated this order. Consent of the Petitioner to any contact does not invalidate this order.

A VIOLATION OF THIS PROTECTION ORDER GRANTED UNDER CH 14-07.1 N.D.C.C. IS A CLASS A MISDEMEANOR AND ALSO CONSTITUTES CONTEMPT OF

COURT. A SECOND OR SUBSEQUENT VIOLATION OF A PROTECTION ORDER IS A CLASS C FELONY. A class A Misdemeanor carried a penalty of up to one year imprisonment and/or a fine of two thousand dollars. A class C Felony carries a penalty of up to five years imprisonment and/or a fine of five thousand dollars.

Fees for filing this action and service of orders issued in this action are waived under section 14-07.1-03(6). N.D.C.C.

It is further ordered that the clerk of court shall give a copy of this Order to the law enforcement agency that has jurisdiction over the residence of the Petitioner.

This Order is made pursuant to chapter 14-07.1.N.D.C.C. Federal Law required that this order be given full faith and credit by a court of any other state or Indian tribe, 18 U.S.C. Sec. 2265.

CERTIFICATE OF COMPLIANCE

This protection order meets all Full Faith and Credit requirements of the Violence Against Women Act, 18 U.S.C. 2265 (1994). This court has jurisdiction of the parties and the subject-matter; the respondent has been afforded notice and a timely opportunity to be heard as provided by the laws of this jurisdiction. This order is valid and entitled to enforcement in this and all other jurisdictions.

Dated this _____ day of _____, _____.

Judge of the District Court

NOTICE OF ENTRY OF ORDER

Notice is given on the respondent that this Order was entered by the Clerk of Court for _____ County District Court on the _____ day of _____, _____.

I hereby certify that this document is a true and correct copy; of the Order as issued by the Court.

Clerk of Court Signature

Date

Court Stamp

DATE: August 19, 1998
FROM: Sharlene Schuh, Deputy Sheriff
REF. TO: Proposed Amendment to Protection Orders

Attached is a proposal to eliminate the service and drafting of the second or Permanent Protection Order.

The positive aspects of changing this are as follows:

1. The respondent would not have to be found to be re-served with the second order.

Advantages: Most of the time the respondent does not go to the court hearing and has been evicted from their residence. The respondent then has to be found again which can be difficult.

The Permanent Order would take effect immediately after the court hearing if the Judge rules that way. There would be no time lapse between the first and second order.

Most of the time when the respondent is served with the second/Permanent Order the respondent gets angry all over again and say they already have a copy of this same order.

The service of the second order refreshes their memory and refuels their anger towards the Petitioner.

2. Repetition:

The second/Permanent Order is an exact duplicate of the first order. This creates confusion to the respondent and the Officer serving the order. For example: if the Order states that certain items need to be surrendered to the Officer on the second order and this has already been taken care of from the first order. Only having one order would eliminate a lot of extra repetitious paperwork for everyone involved, including the respondent, the court system, abused resource center, petitioner and the Sheriff's Department.

3. Notification:

The respondent would have the opportunity to go to court if they wish. If the respondent has interest in receiving property or disagreements they would be able to bring it to the court's attention on the court date.

State Networking Office:

North Dakota Council on Abused Women's Services/Coalition Against Sexual Assault in North Dakota
418 E. Rosser Ave #320
Bismarck, ND 58501
p 701-255-6240
f 701-255-1905

Domestic Violence Service Providers:

- Boulah/Mercer County:** WOMEN'S ACTION RESOURCE CENTER
873-2274 office, 748-2274 crisis line
- Bismarck:** ABUSED ADULT RESOURCE CENTER 222-8370 office, 800-472-2911 crisis line
- Bottineau:** FAMILY CRISIS CENTER 228-2028 office & crisis line
- Devils Lake:** SAFE ALTERNATIVES FOR ABUSED FAMILIES 662-5323 office, 662-5050 crisis line
- Dickinson:** DOMESTIC VIOLENCE AND RAPE CRISIS CENTER
office & crisis line
- Ellendale:** KEDDISH HOUSE 349-4729 office, 349-5118 crisis line
- Ft Yates:** TENDER HEARTS AGAINST FAMILY VIOLENCE 854-3402 office, 854-7241 crisis line
- Fargo:** RAPE AND ABUSE CRISIS CENTER 293-7273 office, 800-344-7273 crisis line
- Ft Berthold:** COALITION AGAINST DOMESTIC VIOLENCE 627-4171 office, 627-3617 crisis line
- Grafton:** DOMESTIC VIOLENCE PROGRAM OF WALSH COUNTY 352-4242 office, 352-2059 crisis line
- Grand Forks:** COMMUNITY VIOLENCE INTERVENTION CENTER 746-0405 office, 746-8900 crisis line
- Jamestown:** SAFE SHELTER 251-2300 office & crisis line
- McLean County:** MCLEAN FAMILY RESOURCE CENTER 462-8643 office & crisis line
- Minot:** DOMESTIC VIOLENCE CRISIS CENTER 852-2258 office, 857-2200 crisis line
- Ransom County:** ABUSE RESOURCE NETWORK 683-5061 office & crisis line
- Stanley:** DOMESTIC VIOLENCE PROGRAM NW, ND 628-3233 office & crisis line
- Valley City:** ABUSED PERSONS OUTREACH CENTER 845-0078 office, 845-0072 crisis line
- Wahpeton:** THREE RIVERS CRISIS CENTER 642-2115 office & crisis line
- Williston:** FAMILY CRISIS SHELTER 572-0705 office, 572-9111 crisis line

1-800-472-2911
confidential, 24-hour hotline

This brochure was funded
under the Federal Family Violence
Prevention and Services Act

Revised
1997

north dakota's domestic violence laws



domestic violence

- Involves "physical harm, bodily injury, or assault".*
- Involves the "imminent threat" (which may include verbal threats) of physical harm, bodily injury, or assault.*
- Can include mental anguish and incest.*
- Can include "forced sexual activity".*

*According to *ND Century Code 14-07.1-01,
*the ND Supreme Court,
*the ND Protection Order Statute.

**A Guide for Service Providers
and Law Enforcement Officers**

PROTECTION ORDERS

TEMPORARY PROTECTION ORDER

- granted when a victim of violence alleges an immediate and present danger of abuse based on a recent incident or threat.
- may be granted ex parte (without a hearing).
- gives immediate relief until a full hearing is held.

Relief may include:

- restraining the perpetrator from further abuse of, or contact with the victim.
- excluding the abuser from another person's residence, a domestic violence shelter, or the dwelling the abuser and victim share.
- awarding temporary custody or temporary visitation rights for minor children.

Court Hearing

- must be held within 14 days.
- Court listens to the accounts of both parties and determines whether or not to continue the Order.

EMERGENCY PROTECTION ORDER

- is an option when a district judge is not available.
- may be signed by a local magistrate, such as a municipal judge or a small claims court referee.
- can provide the same relief as a Temporary Order, but expires in 72 hours.
- may be extended beyond 72 hours if the victim appears before a Judge.

DOMESTIC VIOLENCE PROTECTION ORDER

ND Century Code 14-07.1

If the Court determines at a full hearing that abuse is imminent, it issues a Domestic Violence Protection Order.

The Domestic Violence Protection Order

- provides the same relief and is implemented in the same manner as a Temporary Order.
- may be issued as a Permanent Order in effect for up to one year or longer.
- may recommend or require that either or both parties undergo counseling.
- may require the abuser to pay necessary support costs and attorney's fees.

IMPORTANT PROTECTIONS

- North Dakota law requires a fee waiver for filing and serving all types of Protection Orders.
- A Protection Order does not go into effect until it has been served, or delivered to the abuser.
- The Court may issue a mutual Protection Order only if each party has filed a separate application.
- A married person does not need to file for separation or divorce to apply for or receive a Protection Order.
- If a victim wants a Protection Order dismissed before it expires, the victim must apply to the Court.

FILING THE TEMPORARY PROTECTION ORDER

1. The individual obtains an application for an Order of Protection from
 - a local domestic violence program,
 - Victim/Witness Advocate,
 - State's Attorney,
 - Legal Assistance or attorney's office,
 - other community agency.
2. The individual completes the application by
 - outlining the history of abuse,
 - describing the most recent specific incident that caused her or him to ask for the Order.
3. The application is presented to District Court.
 - by an attorney.
 - by the victim.
 - with the help of an advocate.
4. A hearing will be scheduled within 5 to 14 days.

CUSTODY & VISITATION

North Dakota Century Code 14-05-22

- In general, the state presumes that it is not in a child's best interest
- to place him or her with a parent who has a history of violence.
 - to allow unsupervised visitation with that parent. If the Court decides otherwise, it must document why.
 - changes in the 1997 legislature created a more narrow definition of domestic violence as it applies to custody and visitation.

WHAT LAW ENFORCEMENT CAN DO

ASSISTANCE IN THE ABSENCE OF A PROTECTION ORDER

Law enforcement officers can

- provide assistance to a medical facility.
- provide referral and assistance to a domestic violence program.
- assist in removing personal belongings if the victim leaves the home.
- employ probable cause arrest of an abusive party.

ASSISTANCE PURSUANT TO A PROTECTION ORDER

Law enforcement officers may

- provide the assistance listed above.
- remove the abuser from the home.
- assist in removal of the abuser's personal belongings from the home.
- remove the abuser's firearms and other weapons if so ordered by the court.
- assist the victim in taking possession of the residence.

The Court may require the officer to provide specific assistance.

PRIORITIES

According to North Dakota statutes

- officers must file reports on all domestic violence calls.
- law enforcement must maintain a state registry of protection orders. Orders must be entered into the criminal warrant information system within 24 hours of their issuance.
- each law enforcement agency in ND must have a departmental policy on domestic violence incidents.
- according to state law, arrest is the preferred response to domestic violence.

PROBABLE CAUSE ARREST

ND Century Code 14-07.1-11
Domestic Assaults

An officer may arrest an abuser without a warrant if there is probable cause, or reasonable belief, that the abuser has assaulted

- his or her partner or spouse,
- family or household member, or
- any person with whom the abuser has had a relationship, including same sex partners.

The officer

- need *not* witness the assault.
- need *not* find other witnesses.

Either the victim or the arresting officer may file a complaint against the abuser.

Before arresting both parties in a domestic violence incident, the officer must consider

- "the comparative severity of injuries," and
- whether injuries were inflicted in self-defense.

VIOLATION OF A PROTECTION ORDER

ND Century Code 14-07.1-06

The officer *must* arrest an abuser if there is probable cause that the abuser has violated a Protection Order.

Officers may arrest even if they do not witness the incident.

Violation of a protection order by stalking a victim is a Class C felony.

CRIMINAL ARREST

The Protection Order is a civil remedy, but breaking it is a criminal offense. Violation of an Order

- is a Class A misdemeanor for the first violation and a Class C felony for subsequent violations of the Order.
- has a maximum penalty of one year in jail, a \$1,000.00 fine, or both for the first violation and a maximum of five years in prison and a \$5,000 fine, or both for subsequent violations.
- subjects the violator to mandatory arrest when the officer has established probable cause.

NON-PROTECTIVE ORDERS

"Restraining" Order

"Restraining" orders differ from Protection Orders. To get the benefits of a Protection Order, a victim of violence should specifically request an Order for Protection.

No Contact Order

The Court may issue a No Contact Order prohibiting the abuser from having contact with the victim if the abuser

- is charged with a crime involving domestic violence.
- is released before arraignment or trial.

Victims Should Know

a No Contact Order is not a Protection Order; however, a 1997 statute allows warrantless arrest when No Contact Orders are broken in domestic violence cases.

Interim Order

- covers the period between filing of divorce papers and the final decree.
- addresses custody, support, and party.
- civil remedy.
- should include protection order provisions when violence has been present.
- may include "No Contact" language.