

Sixty-ninth
Legislative Assembly
of North Dakota

SENATE BILL NO. 2326

Introduced by

Senators Boschee, Cleary, Larson

Representatives Satrom, Schneider

1 A BILL for an Act to amend and reenact sections 12.1-31-01.2 and 14-07.1-02 of the North
2 Dakota Century Code, relating to sexual assault restraining orders and domestic violence
3 protection orders; and to provide for application.

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

5 **SECTION 1. AMENDMENT.** Section 12.1-31-01.2 of the North Dakota Century Code is
6 amended and reenacted as follows:

7 **12.1-31-01.2. Sexual assault restraining order - Penalty.**

8 1. For purposes of this section:

9 a. "Second or subsequent violation of a protection order" means two or more
10 violations of protection orders.

11 b. "Sexual assault" means any nonconsensual offense in chapter 12.1-20 for which
12 sexual act or sexual contact, as defined in section 12.1-20-02, is an element.

13 2. An individual who is the victim of sexual assault or the parent, stepparent, or guardian
14 of a minor who reasonably believes the minor is a victim of sexual assault may seek a
15 sexual assault restraining order from a court of competent jurisdiction in the manner
16 provided in this section.

17 3. A petition for relief must allege facts sufficient to show the name of the alleged victim,
18 the name of the individual who committed the sexual assault, and that the individual
19 committed the sexual assault. An affidavit made under oath stating the specific facts
20 and circumstances supporting the relief sought must accompany the petition.

21 4. If the petition for relief alleges reasonable grounds to believe an individual has
22 committed sexual assault, the court, pending a full hearing, may grant a temporary
23 sexual assault restraining order.

- 1 5. A temporary restraining order may be entered only against the individual named in the
2 petition. The order must include prohibiting the individual from:
 - 3 a. Harassing, stalking, or threatening the individual requesting the order;
 - 4 b. Appearing at the individual's residence, school, and place of employment; and
 - 5 c. Contacting the individual requesting the order.
- 6 6. The court may grant a sexual assault restraining order prohibiting the respondent from
7 contacting, harassing, stalking, or threatening the applicant, and from appearing at the
8 applicant's residence, school, and place of employment if:
 - 9 a. An individual files a petition under subsection 3;
 - 10 b. The sheriff serves the respondent with a copy of the temporary restraining order
11 issued under subsections 4 and 5, and with notice of the time and place of the
12 hearing;
 - 13 c. The court sets a hearing for not later than fourteen days after issuance of the
14 temporary restraining order or at a later date if good cause is shown; and
 - 15 d. The court finds after the hearing there are reasonable grounds to believe the
16 respondent committed sexual assault.
- 17 7. A restraining order may be issued only against the individual named in the petition.
18 Relief granted by the restraining order may not exceed a period of two years. The
19 restraining order may be served on the respondent by publication pursuant to rule 4 of
20 the North Dakota Rules of Civil Procedure.
- 21 8. A sexual assault restraining order must contain a conspicuous notice to the
22 respondent providing:
 - 23 a. The specific conduct that constitutes a violation of the order;
 - 24 b. Notice that violation of the restraining order is punishable as a class A
25 misdemeanor; and
 - 26 c. Notice that a peace officer may arrest the respondent without a warrant and take
27 the respondent into custody if the peace officer has probable cause to believe the
28 respondent has violated an order issued under this section.
- 29 9. If the respondent knows of an order issued under subsections 4 and 5, or
30 subsection 6, violation of the order is a class A misdemeanor and also constitutes
31 contempt of court. A second or subsequent violation of a protection order is a class C

felony. If the existence of an order issued under subsection 4, or subsections 5 and 6 can be verified by a peace officer, the officer, without a warrant, may arrest and take into custody an individual whom the peace officer has probable cause to believe has violated the order.

10. The clerk of court shall transmit a copy of a restraining order by the close of the business day on which the order was granted to the local law enforcement agency with jurisdiction over the residence of the alleged victim of sexual assault. Each appropriate law enforcement agency may make available to its officers current information as to the existence and status of any restraining order involving sexual assault.

11. Notwithstanding subsection 5 of section 11-16-05, a state's attorney may advise and assist an individual in the preparation of documents necessary to secure a restraining order under this section.

12. Fees for filing and service of process may not be charged to the petitioner in a proceeding seeking relief due to sexual assault under section 12.1-20-07.

13. A hearing on a petition filed under this section is closed to the public. The court shall allow to be present the parties, the parties' attorneys, the state's attorney, a domestic violence sexual assault advocate certified under the North Dakota Supreme Court Administrative Rules, and any witness and victim. The court may allow any other individual the court determines has a proper interest in the hearing to be present.

14. The name of a victim in a protection order under this section is confidential and must be redacted from a record that is otherwise accessible to the public.

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

14-07.1-02. Domestic violence protection order.

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

section, regardless of whether a petition for legal separation, annulment, or divorce has been filed.

2. Upon receipt of the application, the court shall order a hearing to be held not later than fourteen days from the date of the hearing order, or at a later date if good cause is shown.

3. Service must be made upon the respondent at least five days before the hearing. Service of the hearing notice, for a protection order under this section or for an ex parte temporary protection order under section 14-07.1-03, must be attempted by personal service before service by publication under rule 4 of the North Dakota Rules of Civil Procedure may be attempted. If service cannot be made, or if additional time is required to complete service by publication, the court may set a new date.

4. Upon a showing of actual or imminent domestic violence, the court may enter a protection order after due notice and full hearing. The relief provided by the court may include any or all of the following:

- 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 in the manner and at the time and place determined by that law enforcement officer. If the firearm or other dangerous weapon is not surrendered, the law enforcement officer may arrest the respondent pursuant to section 14-07.1-11 and take possession of the firearm or other dangerous weapon.
5. A court of competent jurisdiction may issue a dual protection order restricting both parties involved in a domestic violence dispute if each party has commenced an action pursuant to subsection 1 and the court, after a hearing, has made specific written findings of fact that both parties committed acts of domestic violence and that neither party acted in self-defense. The order must clearly define the responsibilities and restrictions placed upon each party so that a law enforcement officer may readily determine which party has violated the order if a violation is alleged to have occurred.
 6. The court may amend its order or agreement at any time upon subsequent petition filed by either party.
 7. No order or agreement under this section affects title to any real property in any matter.
 8. The petition for an order for protection must contain a statement listing each civil or criminal action involving both parties.

- 1 9. Upon the application of an individual residing within the state, a court may issue a
2 domestic violence protection order or an ex parte temporary protection order under
3 this chapter even though the actions constituting domestic violence occurred
4 exclusively outside the state. In these cases, a respondent is subject to the personal
5 jurisdiction of this state upon entry into this state. If the domestic violence justifying the
6 issuance of a protection order under this chapter occurred exclusively outside the
7 state, the relief that may be granted is limited to an order restraining the party from
8 having contact with or committing acts of domestic violence on another person in this
9 state.
- 10 10. Whenever a protection order is issued, extended, modified, or terminated under this
11 section, the court shall transmit the order electronically to the bureau. The bureau shall
12 enter the order electronically in the national crime information center database
13 provided by the federal bureau of investigation, or its successor agency. The sheriff of
14 the county in which the order was issued shall maintain and respond to inquiries
15 regarding the record in the national crime information center database provided by the
16 federal bureau of investigation, or its successor agency, pursuant to bureau and
17 federal requirements. Whenever a protection order is issued, the clerk of court shall
18 forward a copy of the order to the local law enforcement agency with jurisdiction over
19 the residence of the protected party by the close of business on the day the protection
20 order is issued. Once the bureau, after consultation with the state court administrator,
21 determines and implements an electronic method to notify the sheriff of the county that
22 issued the order, the clerk of court's requirement to forward the order to a law
23 enforcement agency will be satisfied.
- 24 11. As used in this section and in section 14-07.1-03:
25 a. "Domestic violence" has the meaning provided in section 14-07.1-01 and
26 includes stalking.
27 b. "Stalking" has the meaning provided for in the term "stalk" in section
28 12.1-17-07.1.
- 29 12. A hearing on an application under this section is closed to the public. The court shall
30 allow to be present the parties, the parties' attorneys, the state's attorney, a domestic
31 violence sexual assault advocate certified under the North Dakota Supreme Court

1 Administrative Rules, and any witness and victim. The court may allow any other
2 individual the court determines has a proper interest in the hearing to be present.
3 13. The name of a victim in a protection order under this section is confidential and must
4 be redacted from a record that is otherwise accessible to the public.

5 **SECTION 3. APPLICATION** This Act applies to records relating to a hearing and any
6 hearing held after the effective date of this Act.