

PROTECTION ORDER FAST FACTS

This handout provides information primarily on Domestic Abuse and Stalking Protection Orders. You are encouraged to visit an advocate for assistance and support in applying for one of these orders.

Before seeking a Vulnerable Adult Protection Order a person should seek legal advice.



What is a protection order?

- A protection order is a civil order from the court to protect people from abuse, stalking and assault.

What type of order do you need?

A **[Domestic Abuse Protection Order](#)** may be issued if the person in need of protection has evidence of abuse by a:

- Spouse or former spouse;
- Is in a significant romantic relationship with the abusing party or has been within the last 12 months;
- Has a child or is expecting a child with the abusing party;
- Parent and child, including a relationship by adoption, guardianship, or marriage;
- Siblings, whether of the whole or half blood, including a relationship through adoption or marriage.

A **[Stalking / Physical Injury Protection Order](#)** may be issued if the person in need of protection has evidence of stalking, credible threats of great bodily injury and the ability to carry out the threat, or has sustained an injury because of an assault or crime of violence. No special relationship is required.

A **[Vulnerable Adult Protection Order](#)** may be issued if there is an adult with a disability or an elder (65+) who is unable to protect themselves from abuse. Such abuse can be physical, psychological or financial. For detailed information and instructions See **SDCL 21-65** or <https://ujslawhelp.sd.gov/VulnerAdultProtectForms.aspx>.

Print forms: <https://ujslawhelp.sd.gov/protectionorders.aspx> or use **Guide and File**. All petitions must be filed in your local Clerk of Courts. *Do not sign the petition until you are at the Clerk of Courts, where a clerk can notarize it.*



PROTECTION ORDER PETITION

BEST PRACTICES

This is meant for informational purposes only and should not be construed as legal advice. You should consult an attorney for legal advice for your individual situation.



WHY

When prompted "I am asking for an order based on the facts below..." write about the most recent incident, even if not the most severe.



PAST INCIDENTS

When prompted to discuss similar incidents give a detailed history of the most severe and concerning behavior. Include specific incidents and dates.



IMPORTANT TO REMEMBER

Include relevant attachments - pictures, emails, texts, police reports. *If there is a criminal case include the docket (court file) number.*

Things to remember

- Take time to be thorough.
- Do not exaggerate or embellish.
- Discuss only this relationship and the abuse that has occurred.
- Do not include hearsay - information you received from another person that you do not have first-hand knowledge of.
- Must have Respondent's full name and DOB

Answer if you can

- Are there previous PO violations?
 - Against whom?
- Previous PO convictions?
 - Date?
 - County & State?
- Does Respondent have guns or weapons?
- Has Respondent threatened anyone with a weapon?

IF YOU NEED IMMEDIATE PROTECTION



Be as detailed as possible about why you are afraid right now. What immediate injury or irreparable injury or damages will you suffer?

PROVIDE AS MUCH INFORMATION AS YOU CAN

- DL or SSN number.
- Living and mailing addresses.
- Physical description, distinguishing features.
- Phone numbers, occupation, work hours.
- Car make/model, license plate number
- Drug abuser? Medical conditions?

South Dakota Network
Against Family Violence and Sexual Assault

P.O. Box 90453 - Sioux Falls, South Dakota 57109
(605) 731-0041 ~ Fax (605) 977-4742 ~ www.sdnafvsa.com

This project was supported by Grant Number 15JOVW-22-GG-01837-ICJR awarded by the Office on Violence Against Women, U.S. Department of Justice. The opinions, findings, conclusions, and recommendations expressed in this publication are those of the author and do not necessarily reflect the views of the U.S. Department of Justice

COMMON LEGAL TERMS IN PROTECTION ORDERS

This is meant for informational purposes only and should not be construed as legal advice. You should consult an attorney for legal advice for your individual situation.

Petitioner - The person requesting the protection order.

Respondent - The person the order will be against (the abuser).

Ex parte - This means the Court has only heard the Petitioner's side of the story. As in "ex parte protection order, commonly called "temporary protection order (TPO)."

Personal Service - The Respondent is personally informed by law enforcement giving them a copy of the TPO of the fact of the order and the hearing date.

Hearsay - Information received from another person of which the witness does not have first-hand knowledge.

OBJECTIONS

"Objection" is how someone tells the judge that a person's testimony or evidence should not be allowed.

Common Objections

Hearsay: see above

Argumentative: A question asked which does not really seek information but challenges the truthfulness or credibility of the witness.

Leading: Attorneys cannot "lead" a witness to the answer they want during direct examination. Usually leading questions are yes or no questions. "You found the car in the garage, correct?" (where the answer is given in the question).

Relevance: Something being asked or what the witness is saying has nothing to do with the case or is not important in the ultimate decision of the court.

If you hear the word "objection," stop talking.

"Sustained" means the statement or line of questioning is legally prohibited.

"Overruled" means you may continue with your answer or line of questioning.



South Dakota Network
Against Family Violence and Sexual Assault
P.O. Box 90453 - Sioux Falls, South Dakota 57109
(605) 731-0041 ~ Fax (605) 977-4742 ~ www.sdnafvsa.com

This project was supported by Grant Number 15JOVW-22-GG-01837-ICJR awarded by the Office on Violence Against Women, U.S. Department of Justice. The opinions, findings, conclusions, and recommendations expressed in this publication are those of the author and do not necessarily reflect the views of the U.S. Department of Justice

PROTECTION ORDER HEARING EXPECTATIONS

This is meant for informational purposes only and should not be construed as legal advice. You should consult an attorney for legal advice for your individual situation.



Petitioner must be prepared to testify.

- If Petitioner fails to show to the hearing the case will be dismissed.
- Petitioner testifies first, subject to cross-examination.
- Respondent provides testimony and evidence only after Petitioner's case is complete.
- Testimony must be truthful
- Stay calm and be respectful of everyone.
- Do not interrupt anyone - the court reporter is making an exact record of the proceeding.



After you take the Oath

- Introduce yourself - name, relationship to respondent
- Give background and brief history of relationship.
- Clearly explain the need for the P.O - be as detailed as possible.
- Present witnesses if you have any.
 - Must have first-hand knowledge and testify in person.
- Respondent (or their attorney) can cross-examine. Answer truthfully and do not be combative.
- Judge may also ask questions.

In general

- If Respondent fails to appear after proper service, the Judge will still ask questions of the Petitioner to determine if P.O. should be granted.
- If Respondent appears and does not object to P.O., the Judge may still ask questions of Petitioner.
- If Respondent objects to P.O., the full hearing will be held.
- Judges will generally explain the rules prior to the hearing beginning.



South Dakota Network
Against Family Violence and Sexual Assault
P.O Box 90453 ~ Sioux Falls, South Dakota 57109
(605) 731-0041 ~ Fax (605) 977-4742 ~ www.sdnafvsa.com

This project was supported by Grant Number 15JOVW-22-GG-01837-ICJR awarded by the Office on Violence Against Women, U.S. Department of Justice. The opinions, findings, conclusions, and recommendations expressed in this publication are those of the author and do not necessarily reflect the views of the U.S. Department of Justice

PRESENTING EVIDENCE IN A PROTECTION ORDER HEARING

This is meant for informational purposes only and should not be construed as legal advice. You should consult an attorney for legal advice for your individual situation.

- **Evidence must be relevant - SDCL 19-19-401 (see statute for exact language)**
 - **Is the evidence important to support a fact you want the judge to consider?**
 - **Is this fact important to the judge's decision?**



BRING COPIES

Bring 3 copies of everything to court - one for you, one for the judge, and one for the Respondent. If you want a witness to look at a piece of evidence while testifying, bring a witness copy too.



BRING YOUR OWN

Bring your own resource to play media - laptop for USB, CD player, audio recorder, etc.



IMPORTANT TO REMEMBER

Unless minors are a party to the action, hearings are open to the public. No testimony or evidence used in a hearing is secret or confidential.

Authentication of Evidence

- To authenticate or "lay foundation" for a piece of evidence, the witness must be able to truthfully answer these questions:
 - What is the piece of evidence?
 - Who produced or created it? When was it created?
 - Has it been changed from its original form? If so, how and why?
 - Does it fairly and accurately depict what it is supposed to depict?
- Witness must have first-hand knowledge and cannot rely on hearsay.
 - Hearsay is information received from another person that the witness is repeating without having first-hand knowledge of the information.
- *Answering these questions does not guarantee a piece of evidence will be admitted, it is ultimately a decision that is solely in the judge's hands.*



South Dakota Network
Against Family Violence and Sexual Assault

P.O. Box 90453 - Sioux Falls, South Dakota 57109
(605) 731-0041 - Fax (605) 977-4742 - www.sdnafvsa.com

This project was supported by Grant Number 15JOVW-22-GG-01837-ICJR awarded by the Office on Violence Against Women, U.S. Department of Justice. The opinions, findings, conclusions, and recommendations expressed in this publication are those of the author and do not necessarily reflect the views of the U.S. Department of Justice