

# SOUTH DAKOTA PROTECTION ORDER FROM ACTS OF DOMESTIC ABUSE, ACTS OF STALKING OR PHYSICAL INJURY, AND ACTS OF VULNERABLE ADULT ABUSE

*READ THESE INSTRUCTIONS AND REVIEW THE FORMS BEFORE FILLING THEM OUT*

## APPLICATION INSTRUCTIONS FOR THE VICTIM OF DOMESTIC ABUSE, STALKING/PHYSICAL INJURY, OR VULNERABLE ADULT ABUSE

**REQUIREMENTS OF THE LAW.** You may seek a protection order from “domestic abuse,” from “stalking”/“physical injury,” or from “vulnerable adult abuse.” If you do not qualify for a domestic abuse protection order, you may still qualify for a protection order for stalking/physical injury or vulnerable adult abuse. In order for the judge to grant a protection order, you must meet certain criteria.

**RESIDENCE REQUIREMENT.** You should file in the county where you, the respondent, or another party you seek to protect with the protection order resides.

### IF YOU ARE SEEKING A PROTECTION ORDER FOR DOMESTIC ABUSE

**YOU MUST HAVE A PERSONAL RELATIONSHIP WITH THE RESPONDENT.** You must have a personal relationship with the individual against whom you are seeking an order of protection (the alleged abuser). An alleged abuser can be a (1) spouse or former spouse; (2) person in a significant romantic relationship with you or has recently been in one during the past twelve months; (3) person with whom you have a child or are expecting a child with; (4) a parent or child, including a relationship by adoption, guardianship, or marriage; or (4) a sibling, including whole or half blood, adoption or marriage. If your relationship is not one of the above, you cannot seek a protection order for domestic abuse. You may, however, be able to receive a protection order for stalking as defined later in these instructions.

**YOU MUST ALLEGE PHYSICAL HARM.** The person against whom you seek an order (1) **must have caused you physical injury or harm;** (2) **must have attempted to cause you physical injury or harm;** or (3) **you are afraid that the person is about to cause you physical injury or harm.** If the person has not done any of these things, you cannot seek a protection order for domestic abuse. You may, however, be able to receive a protection order for stalking or for vulnerable adult abuse as defined later in these instructions.

### IF YOU ARE SEEKING A PROTECTION ORDER FOR STALKING OR FROM PHYSICAL INJURY

**YOU MUST ALLEGE STALKING.** The person's acts of harassment must **seriously alarm, annoy or harass** you. The person against whom you seek a stalking order must have: (1) **followed or harassed** you in a willful and malicious manner and have done so **more than once**; or (2) made believable **threats** against you **with the intent to make you fearful of great bodily injury**; or (3) **harassed** you in a willful and malicious manner by means of verbal, electronic, digital media, mechanical, telegraphic, or written communication and have done so **more than once**. The person must intend to carry out the threats and have the apparent ability to do so, or (4) **you, as the petitioner, have suffered physical injury** as a result of **an assault or a crime of violence**.

**A crime of violence is** murder, manslaughter, rape, aggravated assault, riot, robbery, burglary in the first or second degree, arson, kidnapping, felony sexual contact or any other felony in the commission of which the perpetrator used force, or was armed with a dangerous weapon, or used any explosive or destructive device. It also includes an attempt or conspiracy to commit the above-described crimes.

**IF YOU ARE SEEKING A PROTECTION ORDER  
FOR VULNERABLE ADULT ABUSE**

**THERE MUST BE AN ADULT WITH A DISABILITY OR AN ELDER (AGE 65 AND OLDER) WHO IS UNABLE TO PROTECT THEMSELVES FROM ABUSE.** Such abuse can include (1) physical abuse or attempted physical abuse, (2) repeated emotional and psychological abuse by a caretaker (such as sexual exploitation, unreasonable confinement, threats of harm or harm to the property of the vulnerable adult, and harassment or ridiculing/demeaning conduct), or (3) financial exploitation by a caretaker, family member, or a person who is in a confidential relationship with the vulnerable adult (such as a guardian, conservator, or agent).

**IF YOU MEET THE LEGAL CRITERIA STATED ABOVE, YOU MAY  
COMPLETE THE FORMS WITH THE FOLLOWING INSTRUCTIONS**

1. **FILL OUT THE PETITIONER AND RESPONDENT INFORMATION SHEETS AND THE PETITION AND AFFIDAVIT FOR A PROTECTION ORDER** (*please print names*). You are the PETITIONER; the person against whom you seek a protection order is the RESPONDENT.
2. **THE PETITION AND AFFIDAVIT MUST BE THE TRUTH.** *Do not sign your name at the end of the form.* You will need to sign it before a court clerk and swear to its truth or if you are unable to take it to the Clerk's Office yourself, you may sign it before a notary.
3. **REQUIREMENT FOR AN IMMEDIATE ORDER.** If you are requesting that the judge grant you an immediate temporary protection order without the Respondent having notice of your request or an opportunity to be heard, **YOU MUST BE ABLE TO CLAIM THAT IMMEDIATE AND GREAT INJURY, LOSS OR DAMAGE WOULD OCCUR IF YOU HAD TO WAIT UNTIL A HEARING.**
4. **JUDGE MUST SIGN THE ORDER.** The judge will review your petition and affidavit. If the judge grants you a temporary protection order and/or a hearing, the clerk will prepare certified copies of the orders. *You will need to pick up the copies of the orders at the Clerk of Courts Office where you filed.*
5. **DELIVER FORMS TO THE SHERIFF.** Take two copies of the forms to the Sheriff Office, in the County where the petition is filed.
6. **KEEP ONE COPY OF THE SIGNED FORMS WITH YOU AT ALL TIMES.**
7. ***YOU MUST ATTEND THE HEARING FOR THE PROTECTION ORDER.***
8. ***THE HEARING IS THE TIME SET FOR YOU TO PROVE YOUR CASE.*** You will need to bring with you to the hearing any witnesses that have first-hand knowledge of the incidents that have occurred, any documentation such as pictures, phone logs, email messages, text messages, etc.

**IF THE RESPONDENT VIOLATES ANY PROTECTION ORDER,  
CALL THE POLICE IMMEDIATELY**